

SEXUAL MISCONDUCT POLICY & GRIEVANCE PROCEDURES

POLICY STATEMENT

Millikin University is committed to fostering and maintaining an atmosphere free from discrimination and sexual misconduct, including, sexual harassment, sexual violence, and other sexual misconduct and creating an inclusive campus for all members of the University community regardless of their sex, sexual orientation, or gender identity.

NON-DISCRIMINATION STATEMENT

Consistent with the University's Non-discrimination Policy, Millikin University does not discriminate against any person in any of its education or employment programs and activities on any basis prohibited by applicable state or federal law, including on the basis of sex or gender. Sexual and gender-based harassment are prohibited and will not be tolerated in the University community.

SCOPE AND JURISDICTION

This Policy applies to all employees, students, applicants, volunteers, vendors, guests, and other persons visiting Millikin's premises or while acting on behalf of Millikin.

The policy addresses discrimination on the basis of sex or gender as it relates to prohibited conduct committed by an employee, student, and third-party as listed above. Discrimination or harassment on the basis of actual or perceived race, color religion, national origin age disability status, genetics, protected veteran status or any characteristic prohibited by federal, state or local laws not covered by Title IX do not fall under this Policy (refer to policy 607 in

potential policy violations. Once individuals receive a report, it is considered official notice to the University. Officials with authority at Millikin University include:

Duty To Report

It is important to understand the responsibilities of university employees. All Millikin employees (faculty, staff, and administrators) are designated as Responsible Employees, meaning they are considered mandated reporters with a duty to promptly report any prohibited conduct that they observe, receive a report of, or otherwise obtain information about such conduct, to the Title IX Coordinator or a Deputy Coordinator. This includes employees who may have a professional license requiring confidentiality if they are not employed by the University in that professional role. Failure to cooperate with, or otherwise interfere with, an investigation conducted by, or on behalf of, the University is a violation of University policy and can be subject to disciplinary action.

Institutional Crime Reporting

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”) requires institutions of higher education to compile and publish statistics on certain criminal offenses including sexual assault (i.e., non-consensual sexual intercourse), domestic and dating violence, and stalking that occur on or adjacent to school properties. Although the University strongly encourages everyone to report any crime that occurs on or around campus, the Clery Act requires certain crimes reported to Campus Security Authority (CSA) be included in those annual statistics. All crimes reported and documented under the Clery Act will be recorded in an anonymous manner that neither identifies the specifics of the crime nor the identity of the Reporting Party.

The University is also obligated to issue timely warnings of Clery Act crimes occurring within the relevant geography that represent a serious or continuing threat to students and employees. A Reporting Party under this policy will never be identified in a timely warning.

Mandatory Reporting of Child Abuse, Child Sexual Abuse, and Neglect

In addition to the above reporting responsibilities, all University employees are mandated employees under the Illinois Abused and Neglected Children’s Reporting Act. Any employee who becomes aware of or suspects child abuse and/or neglect of a child (under the age of 17) known to them in their professional capacity must report that information to the Illinois Department of Children and Family Services (DCFS). You may contact the hotline at 1-800-25-ABUSE or refer to the DCFS website at www.state.il.us/dcfs/FAQ/faq_can.shtml. Mandated reporters must also notify the Title IX Coordinator that a DCFS report has been made.

Confidential Resources

If a student or employee has experienced an incident of discrimination or harassment but does not desire action by the University but would like to speak to a “CONFIDENTIAL” resource, they may contact Growing Strong Sexual Assault Center (who serves as Millikin’s CONFIDENTIAL reporting resource) at 217/4280700.

Amnesty

Millikin University encourages reporting and seeks to remove any barrier to reporting by providing amnesty for reporting parties who report prohibited conduct for potential violations occurring at or near the time of the incident. In general, the University will not pursue

- Conduct determined by a reasonable person to be so severe, pervasive, and objectionably offensive that it effectively denies a person equal access to the University's education program or activity. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove; (Hostile environment); or
- "Sexual Assault" (as defined by the Clery Act), or Dating Violence, Domestic Violence or Stalking (as defined by the Violence Against Women Act).

Title IX Sexual Harassment applies when (i) the University has "actual knowledge" of the alleged sexual harassment, (ii) the alleged sexual harassment occurred in an education program or activity of the University; and (iii) the alleged sexual harassment was against a person physically located in the United States.

Quid pro quo harassment and Clery Act/VAWA offenses are not evaluated for severity, pervasiveness, offensiveness, or denial of equal access, because such misconduct is sufficiently serious to deprive a person of equal access.

Examples of possible Sexual Harassment may include:

- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student accedes to the request.
- A student repeatedly sends sexually oriented jokes around on an email list s/he created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.
- Explicit sexual pictures are displayed in a professor's office or on the exterior of a residence hall door.
- Two supervisors frequently "rate" several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus.

Sexual Assault is any physical sexual act against any person, including any sexual intercourse or Sexual Contact, without consent or where the other person is incapable of giving consent due to incapacitation, age, family relation to the other person, or intellectual or other disability.

- Non-Consensual Sexual Contact includes any intentional sexual touching, however slight, of a person's breasts, buttocks, groin, genitals, or other intimate parts. Touching may be over or under clothing and may include the Respondent touching the

Complainant, the Respondent making the Complainant touch the Respondent or another person, or the Respondent making the Complainant touch the Complainant's own body.

- Non-Consensual Sexual Intercourse is any act of vaginal or anal penetration, however slight, by a person's penis, finger, other body part or an object, or, regardless of whether penetration occurs, any oral-genital contact.

Sexual Exploitation occurs when a person violates the sexual privacy of another or takes advantage of another person's sexuality without consent for the purpose of benefitting anyone other than the individual being exploited. Sexual exploitation also includes behavior that does not otherwise constitute one of the other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- Prostitution;
- Invasion of sexual privacy;
- Non-consensual visual (e.g., video, photograph) or audio-recording of sexual activity;
- Unauthorized sharing or distribution of digital, video, or audio recording o.1 (g) - nefar digital

Stalking – A course of conduct directed at a specific person including repeated harassment, intimidation or threats that would cause a reasonable person to fear for their safety or the safety of others; or to suffer substantial emotional distress. This could be done by telephone, mail, electronic communication, social media, or other action, device, or method.

ADDITIONAL APPLICABLE DEFINITIONS:

Consent - is defined as clear, knowing, and voluntary words or actions that give permission for specific sexual activity – an unforced “YES” to the sexual act in question.

- Consent is active, not passive.
- Silence, in and of itself, cannot be interpreted as consent.
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Education programs or activities - under the regulations, includes locations, events or circumstances (operations) over which the University exercised substantial control over both the Respondent AND the context in which the sexual harassment occurred. Title IX applies to all of the University's education programs and activities whether such program or activity occurred on-campus or off-campus, as well as any building owned or controlled by a student organization that is officially recognized by the University (such as a fraternity or sorority house).

Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of sex or gender.

Coercion is to force a person to act based on fear of harm to self or others. Means of coercion may include, but are not limited to, pressure, threats, emotional intimidation or the use of physical force. Coercion is unreasonable pressure for sexual activity. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive. (NOTE: The presence of force is not demonstrated by the absence of resistance.)

Other misconduct offenses that may fall under Title IX when sex or gender- based, include :

Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the university community, when related to admission, initiation, pledging, joining, or any other group -affiliation activity.

power differential is inherent (faculty- student, staff -student, administrator -student, supervisor-supervisee) are generally discouraged.

Therefore, consensual sexual and amorous relationships will be considered unethical and are prohibited between a student and any member of the faculty or administrative staff who teaches, supervises, evaluates, or otherwise is in a position to exercise power or authority over the student. Efforts by members of the faculty or administrative staff to initiate these relationships are also prohibited.

Romantic or sexual relationships between a supervisor and a subordinate are also considered inappropriate. In the event that such relationships do occur, employees should self-report such relationships to a supervisor or Human Resources. Millikin University has the authority to transfer any involved employee to eliminate the supervisory authority of one over the other. Such action by the University is a proactive and preventative measure to avoid possible charges of harassment and does not constitute discipline against any affected employee.

INTERIM MEASURES

Upon receipt of a report of Sexual Misconduct, the University will provide reasonable and -INo

- Interim P ROTECTIVE Measures

Interim protective measures are only available when the University initiates an investigation as part of a disciplinary resolution. The University may make a preliminary, non-binding assessment to remove a respondent from campus on an emergency basis, provided the (i) the University undertakes an individualized safety plan and risk analysis; (ii) determines that an immediate threat to the physical health or safety of any student or individual arising from the allegations of sexual harassment justifies removal; and (iii) provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. The University may also place an employee respondent on administrative leave during the pendency of the grievance process. Interim Protective measures may include:

- Issuing a “no-contact” order
- Change in class schedule
- Change in work schedule or job assignment
- Exclusion from specified activities or areas of campus
- Any other protective measures that can be used to achieve the goals of this policy.

KNOW YOUR RIGHTS

Complainant and Respondent shall both be provided with the following in connection with the investigation and resolution of suspected or alleged violations of this Policy:

- The opportunity to speak on their own behalf;
- The opportunity to identify or present witnesses to who can provide information about the alleged conduct;
- The opportunity to submit or identify other evidence on their behalf;
- The opportunity to suggest questions to be posed by the individual or individuals resolving the complaint and respond to the party;
- The opportunity to review any information offered by the other party in support of the other party’s position, as well as the opportunity to review a written investigation report summarizing all relevant exculpatory and inculpatory evidence and respond to that report in writing;
- Have timely and equitable access to any other information that will be used during an informal or formal disciplinary proceedings;
- The right to be accompanied by an advisor or support person of their choice at the proceedings and any related meeting;
- The right to be informed of the outcome of the investigation (to the greatest extent possible and consistent with FERPA or other applicable law);
- Periodic status updates;
- The opportunity to appeal the outcome of the investigation.

OVERVIEW OF THE RESOLUTION PROCESS

The University is committed to providing a prompt, thorough, equitable, and impartial resolution of all reported violations of this Policy. The University uses two processes to resolve reports of Sexual Misconduct under this policy:

- Informal Resolution - includes an informal framework that includes restorative options for resolving reports that may not involve disciplinary action against a Respondent.
- Formal Resolution – includes formal procedures that involve an investigation, adjudication and if appropriate, the imposition of sanctions.

Intake/Initial Assessment

Upon receipt of a report of Sexual Misconduct, the Title IX Coordinator and/or Deputy Coordinator will take immediate and appropriate steps to investigate or otherwise determine what happened and work to resolve the matter promptly and equitably .

The first step is an Initial Assessment which will typically begin with a meeting between the Reporting Party (Complainant) and the Title IX Coordinator and/or Deputy Coordinator to:

- assess the nature and circumstances of the allegations;
- address any immediate concerns about the physical safety and emotional well-being of the parties;
- identify supportive and/or immediate preventive measures available (no contact, etc.) with or without filing a formal complaint ;
- notify the reporting party of the option to notify law enforcement and be assisted in doing so, as well as the option to not notify law enforcement;
- provide the reporting party with information about the range of on-campus and off-campus resources and services;
- provide the reporting party with an explanation of the procedural options, including the process for filing a formal complaint and the option of an informal Resolution; the right to be accompanied by an advisor of their choice; the investigation and resolution process; and the need to preserve any relevant evidence or documentation in the case;
- Inform them of the University's policy prohibiting retaliation against parties who have filed a report, assisted, or participated in an investigation or proceeding under this policy; and
- assess whether there is a need for a timely warning or emergency notification under federal law.

As soon as practicable after the initial meeting with the Complainant, the Respondent will also be notified that a report or complaint alleging a violation of the policy has been made unless the University determines that it is not necessary or appropriate to move forward with the informal or formal resolution process.

At the conclusion of the initial assessment, the University finds the incident meets the definition of sexual harassment, they will proceed with one of the following options:

- (1) Proceed with an Informal Resolution. This will always require voluntary consent of the Complainant. The consent of the Respondent is also required.
- (2) Proceed with an investigation under the Formal Resolution process. This will occur when a Complainant requests an investigation, where the Title IX Coordinator or Deputy Coordinator determines to proceed with an investigation even when a

When notified of the report or complaint, the Respondent will also receive a parallel discussion and written explanation of the options, rights, and responsibilities of the Responding Party, including the following:

- Information regarding the right to be accompanied during any meeting related to the matter by an advisor of their choice who participation will be limited to consulting privately with the Respondent;
- Information regarding the investigation and resolution process;
- Information regarding the need to preserve any relevant evidence or documentation in the case;
- Information about the range of available on-campus and off-campus resources and services, including confidential resources and services;
- Assistance in accessing these resources;
- Information regarding the range of interim protective measures and remedies available for security and support, including orders of no-contact, changes in academic, living, dining, transportation, and working situations, course adjustments and other forms of academic support;
- Notice that the University prohibits retaliation against parties who have filed a report, assisted, or participated in an investigation or proceeding under this policy.

The investigator(s) will undertake an investigation for the purposes of adjudicating whether the Respondent is responsible for the alleged violation(s) of the Policy. The investigation will include (i) reviewing any information gathered during the initial assessment, (ii) gathering and reviewing any additional relevant evidence, (iii) interviewing both the Complainant and Respondent, and (iv) identifying, locating and interviewing witnesses who have first-hand knowledge of the events. To help ensure a prompt and thorough investigation, both parties are encouraged to provide as much information as possible in connection with the investigation.

The Investigator will also seek to gather and analyze any relevant evidence pertaining to the complaint, such as text messages and postings, written communications, law enforcement records, hospital reports, and other relevant evidence.

Interviews may be conducted either with all parties physically present or with participants appearing virtually, with technology enabling them to see and hear each other in real time.

Cross Examinations.

The Complainant and Respondent may not directly cross-examine one another. Cross examinations must be conducted by an advisor and never by the party. Questions challenging credibility are allowed. Only relevant cross-examination and other questions may be asked of a party or witness. If an individual refuses to submit to cross examination, the decision-maker may not rely on any statement of that individual to determine responsibility.

Additionally, Complainants and Respondents:

- May provide written statements;

- Are encouraged to identify witnesses who can provide information about the alleged conduct at issue to be interviewed by the Investigator and /or present statements from such witnesses; however, the burden of collecting evidence and proving a violation of policy is on the recipient, not the parties;
- Are encouraged to submit or identify any other relevant evidence;
- There are no restrictions on the parties' ability to discuss the allegations or to gather and present relevant evidence;
- May have their advisor or support persons present with them during interviews and meetings conducted during the investigation; and
- Are encouraged to suggest questions for the Investigator to consider asking of the other party or other witnesses, and the reason they believe those questions would provide relevant information.

Timely notice will be provided to both parties of all interviews/meetings at which they may/must be present, and both parties will receive timely and equitable access to information.

The University will maintain documentation of the investigation or other proceedings, which can take various forms (e.g., notes, written findings of fact, transcripts, or audio recordings, etc.)

Questions or evidence that constitute, or seek disclosure of, or information protected under a legally recognized privilege, will not be required, allowed, or1R -!¾!å6!#d3 2 (d)-5 ()1 (ur)2 (e)--2 (d-(tc)-

A. In cases involving faculty members, corrective measures may be imposed in

commence and/or complete its own investigation prior to the completion of any criminal investigator or proceeding. In the event that an internal complaint is also being investigated by law enforcement, the University will comply with law enforcement's request for cooperation and such cooperation may require the University to defer the fact-finding aspect of the investigation while the law enforcement agency gathers evidence. During this time, the Title IX Coordinator or designee will provide updates on the status and will take any additional measures necessary to protect and support the parties and the University community.

Outcome of Investigation. The University shall provide the complainant and the respondent with written notice of the outcome of the investigation (i.e. whether sexual harassment was found to have occurred) simultaneously within five (5) business days of such finding being made. The notice will include:

- The finding, by a preponderance of the evidence, as to whether or not a policy violation occurred;
- The rationale for the finding;
- If there was a finding of responsibility, the sanctions imposed on the Respondent that directly relates to the Complainant;
- Information about the appeal process.

Complaints to Administrative Agencies.

Regardless of the method of resolution or the outcome, Complainants may choose to pursue their complaints through the criminal and/or civil courts, with the Illinois Department of Human Rights (IDHR) or the Equal Employment Opportunity Commission (EEOC), or the United States Department of Education (Office of Civil Rights), in addition to, or instead of, the University's process. Complainants are encouraged to utilize the resources available through Growing Strong or other legal advocates and may wish (na)-3 (nt)6 (s)-2 6 (h)1 (g 3(f)1 (E)Tw 3

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Academic Freedom

