ADJUDICATOR & APPEAL OFFICERS

Training 2023

MOUNT VERNON NAZARENE UNIVERSITY

Office of CIVIL RIGHTS

Trust & Transparency

MOUNT VERNON NAZARENE UNIVERSITY

Office of CIVIL RIGHTS

Trust & Transparency

Be a Good Neighbor

SEE something | HEAR something | KNOW something | SAY SOMETHING

Civil Rights Director
Christina Jones, J.D.
Lakeholm 109

Katie Sherman,
Deputy TIX
Coordinator

Religious Expression

Who We Are and What We Believe

- Being of Wesleyan heritage, and a ministry of the Church of the Nazarene, we strive to be a learning community where grace is foundational, truth is pursued, and holiness is a way of life. Furthermore, we attempt to make all policies and decisions within the doctrinal and moral convictions of the Church of the Nazarene as articulated within the Manual of the Church of the Nazarene (e.g., Articles of Faith, Covenant of Christian Conduct including the Statement on Human Sexuality and Marriage, Covenant of Christian Character, and the agreed upon Statement on Discrimination, 915). We also strive to provide a learning and living environment that promotes safety, transparency, personal integrity, civility, mutual respect and freedom from unlawful discrimination.

- This integration of faith and learning is recognized by the United States and Ohio Constitutions and many state and federal laws. Therefore, it is a recognized right of religious educational institutions such as MVNU to incorporate religious beliefs into all aspects of university life and maintain faith-based standards of behavior which all community members voluntarily agree to follow.

- MVNU seeks to recruit students of the Christian faith and to create an institutional environment conducive to their growth in Christ; however, we do not require that students be confessing Christians. We welcome and value students of every background and faith. As a Christian community, we expect that all of our students will respect the nature of our community, learn about our traditions and participate in our community practices. MVNU affirms that a Christian liberal arts education includes an understanding of and appreciation of the differences in faith, living, and practice.

Be a Good Neighbor

Civil Rights Policies

- *Discrimination, Harassment, Sexual Misconduct*
- *Pregnancy Accommodations and Related Conditions*
- *Resolving Complaints under ADA/Section 504*

Find these at
www.mvnu.edu/titleix

Ethic of Care

- **Value: Equity**
  - ***"What we do for one, we do for the other."***
  - Must give equal respect to all parties.
  - Good decision makers are going to LOOK at the FACTS.
- **Value: Transparency**
  - ***"If they hear nothing, they'll assume you're doing nothing or actively working against them."***
  - Give regular updates
  - Use similar templates for communications
  - Don't withhold anything that is relevant.
- **Value: Integrity**
  - **Personal integrity & integrity within the process**
  - Watch out for conflicts of interest or bias
  - Don't use or share information outside the process BUT all evidence should be "on the table" for all parties and advisors to see.

MVNU is committed to fostering a climate free from discrimination and harassment, through clear and effective policies, a coordinated education and prevention program, and prompt and equitable procedures for resolution of reports of conduct prohibited under this policy. The University encourages all members of its community to participate in the process of creating a safe, welcoming and respectful environment on campus.

- **Title VI**, 42 U.S.C. § 2000d et seq., was enacted as part of the landmark Civil Rights Act of 1964. It **prohibits discrimination on the basis of race, color, and national origin** in programs and activities receiving federal financial assistance.
- **Title VII,** 42 U.S.C. § 2000e et seq., of the Civil Rights Act of 1964 helps protect individuals from discrimination in the workplace. It **prohibits employment discrimination based upon race, color, national origin, sex and religion.** Title VII also protects against harassment, which can be any physical or vocal conduct that creates an intimidating, hostile or offensive work environment. Conduct can be harassment if it interferes with a person's work performance.
- **Title IX,** 20 U.S.C. §1681 et seq., of the Title IX of the Education Amendments of 1972 protects people from **discrimination based on sex** in education programs or activities that receive federal financial assistance.
- **ADA** (The Americans with Disabilities Act of 1990), 42 U.S.C. §12101 and the **Rehabilitation Act of 1973, Section 504** is a civil rights law that **prohibits discrimination against people with disabilities** in programs that receive financial assistance

CAMPUS POSTER

SEE something

SAY something

- **STOP**
  - Stop the discrimination or harassment
- **PREVENT**
  - Prevent the reoccurrence
- **REMEDY**
  - Remedy the effect

What Do YOU Report?

Take a look at PROHIBITED CONDUCT under the policy.

Prohibited Conduct

Title VI, Title VII, Title IX, ADA/504

Discrimination.
Sexual Harassment.
Sex/Gender Discrimination.
Sexual Assault.
Discriminitory Harassment.
Domestic Violence.
Dating Violence.
Stalking.

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Need to Make a Civil Rights Report? Start Here.

REPORT = SUPPORT

Complainants decide what, if anything, will happen. Support and resources will always be available for complainants, even when formal resolution is not pursued.

REPORTING OPTIONS

CIVIL RIGHTS/TITLE IX OFFICE
Christina Jones
Lakeholm 109
Off Campus: 740-399-8250
On Campus: 740-399-9000, ext. 3250

EMERGENCY SERVICES
Mount Vernon Police Department
740-397-2222 or in an Emergency, 911

CAMPUS SAFETY
740-399-8686
740-397-9000, ext. 8686
campus.safety@mvnu.edu

ONLINE REPORTS
www.mvnu.edu/titleix/

PROCEDURAL FLOWCHART
www.mvnu.edu/titleix/flowchart

CONFIDENTIAL RESOURCES

Campus Counseling Center
740-397-9000, Ext. 4610
counselingcenter@mvnu.edu

Campus Pastor
740-397-9000, Ext. 4111

Associate Campus Pastor
740-397-9000 Ext. 4130

New Directions Domestic Abuse Shelter and Rape Crisis Center of Knox County
24/7 Hotline: 740-397-4357
newdirectionsshelter.org

Student Health Services
740-397-9000, Ext. 4632

Knox Community Hospital
740-393-9000

For more information on Civil Rights at MVNU, visit www.mvnu.edu/titleix/

SEE | HEAR | KNOW | SAY SOMETHING

MANDATED REPORTER

All University employees, student employees, and affiliated individuals are **required** to disclose to the Civil Rights Office **any report of harassment or discrimination** of which they **are aware** to ensure the University is able to provide a prompt, thorough, and supportive response.

Confidential resources are exempt from this requirement.

Reports do not require that complainants take any specific course of action, or any action at all.

If YOU are a student leader or work at MVNU you are required to report an incident as soon as you know about it and as much as you know.

REPORT = SUPPORT

Amnesty for Personal Use of Alcohol or Other Drugs

The University seeks to remove barriers to reporting. MVNU will offer any student who reports or experiences Prohibited Conduct limited immunity from being charged for policy violations related to the personal ingestion of alcohol or other drugs, provided that any such violations did not and do not place the health and safety of any person at risk. However, we may pursue educational or therapeutic remedies for those individuals, rather than punishment. MVNU desires to encourage its community members to offer help to others in need.

Confidential Resources

Directly access numbers from "How to Get Help" tab on webpage

On Campus

- Campus Counseling Center
- Campus Pastor and Associate Pastor
- Student Health Services

MVNU CAMPUS MINISTRIES

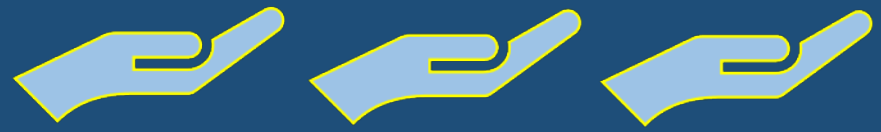
Off Campus

- New Directions Domestic Abuse & Rape Crisis Center
- Knox County Victim's Assistance
- National Domestic Violence Hotline
- Ohio Sexual Violence Domestic Violence Hotline
- Ohio Hispanic Coalition Domestic Violence Hotline

EST 1983 New Directions EMPOWER. EDUCATE. ENGAGE.

More Resources at mvnu.edu./titleix

SUPPORTIVE MEASURES



- Regardless of when, where or with whom the conduct occurred, the University will offer resources and assistance to any individual who has been affected by Prohibited Conduct.

- Non-disciplinary, non-punitive individualized services offered to both the complainant and respondent as appropriate, reasonably available, and without fee or charge.

NON-PUNITIVE SERVICES

⇒ Access to counseling and health services
⇒ Mutual "no-contact order"
⇒ Altering housing or work arrangements;
⇒ Providing campus escorts;
⇒ Providing transportation accommodations;
⇒ Offering adjustments to academic deadlines, course schedules, alternative course completion;
⇒ Limiting an individual's or organization's access to certain MVNU facilities or activities;
⇒ Voluntary leave of absence;
⇒ Increased security and monitoring of certain areas of the campus;
⇒ Providing academic support services, such as tutoring;
⇒ MVNU-imposed administrative leave or separation;
⇒ Other remedies that can reasonably be tailored to the involved individuals to achieve the goals of this policy.

Important Things to Know

• How to report?	ONLINE FORM OR IN PERSON
• What to report?	PROHIBITED CONDUCT
• Who must report?	EVERYONE
• What are supportive measures?	NON-PUNITIVE SERVICES
• What are the processes?	FORMAL / INFORMAL
• What is consent?	CLEAR, KNOWING, VOLUNTARY
• What is Bystander Intervention?	STAND UP & SPEAK UP

Terms
Roles
Prohibited Conduct

SEE something | HEAR something | KNOW something | SAY SOMETHING

Terms

- Civil Rights Director/ Title IX & 504 Coordinator
- Investigators
- Hearing Chair
- Adjudicator
- Appeal Officer
- Advisor
- Live Hearing
- Investigator Decision
- Supportive Measures
- Witness

- Title IX Dismissal
- Restricted Access
- Complainant
- Respondent
- Report
- Complaint
- Prohibited Conduct
- Formal Resolution
- Informal Resolution
- Remedies
- Preponderance of the Evidence

ADA / Section 504

Accommodations are provided under the law.

MVNU prohibits discrimination and harassment on the basis of disability.

It is covered in the Civil Rights Policy *Resolving Complaints under the Disabilities Act and the Rehabilitation Act of 1973.*

- **STUDENTS:** Further information is available on MVNU's Accessibility Student Policy webpage.

- **EMPLOYEES:** Appropriate handbooks.

Grievance Procedures are found at www.mvnu.edu/titleix.

Resolving Complaints under ADA/Section 504

Grievance Procedure

Purpose and Scope

- The University prohibits discrimination on the basis of disability. MVNU has adopted an internal grievance procedure for prompt and equitable resolution of complaints alleging any action prohibited by federal regulations implementing Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990 (ADA).
- Issues that are grievable include, but are not limited to, a denial of a requested accommodation, the inadequacy of an accommodation, the inaccessibility of a program or activity due to disability, or discrimination or harassment based on disability.

Resolving Complaints under ADA/Section 504: *Employer / Visitor*

How to File a Grievance

- Submit to CRO in writing within 30 calendar days of the date upon which the grievant becomes aware of the alleged prohibited action. Complaints received later than 30 calendar days after complainant became aware of the alleged violation will be dismissed as untimely.

Grievance Procedure

- Informal investigation by CRD
- A written determination (no later than 30 days after submission) on the grievance and a description of the resolution, will be issued by the MVNU's CRD or HRD (or designee).
- CRD and/or HRD shall maintain records
- grievant may request reconsideration of the resolution if they are dissatisfied with the resolution within 14 days:
  - Faculty: VPAA (30 days to respond)
  - Staff & Visitors: DHR (30 days to respond)

Resolving Complaints under ADA/Section 504:
Student

Grievance Procedure

- *Informal Pre-Grievance Meeting:* the grievant is strongly encouraged to discuss their concerns in a pre-grievance meeting with the respondent(s) alleged to be directly responsible for the possible violation(s) in an effort to seek an informal resolution.
- When a matter cannot be resolved informally, or if a student prefers to file a formal grievance, a written grievance must be submitted to the CRD.

Resolving Complaints under ADA/Section 504: *Student*

Grievance Procedure

- A formal grievance must be filed within 30 calendar days of the date upon which the grievant(s) become(s) aware of the alleged prohibited action(s).
- Upon receipt of a grievance, the CRD will send the respondent(s) a copy of the grievance and ask the respondent(s) to prepare a response within 14 calendar days
- CRD will conduct a prompt investigation & maintain the records
- CRD will issue a written decision within 30 days of receiving grievance
- Appeal must be filed within 14 days and VPSL will provide a written appeal decision within 30 days. This decision is final.
- See alternatives to conflict circumstances.

Terms: Preponderance of the Evidence

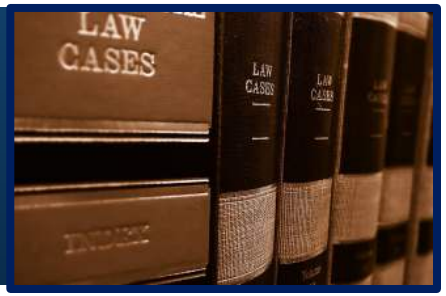
(Section II. Glossary & Definitions)

"A preponderance of the evidence means that the information or evidence provided is more likely than not to be true. When evaluating the information and evidence, the decision-maker(s) will first evaluate the quality. The decision-maker(s) will consider all of the information and evidence regardless of its origin. Any information or evidence the decision-maker(s) find to be of high quality should be given more weight than any information or evidence the decision maker(s) find to be of low quality. Quality may or may not be identical with quantity, and sheer quantity alone should not be the basis for a finding of responsibility. The testimony of a single party or witness or a single piece of information or evidence may be sufficient to establish a fact."

Definition continued on next slide

Terms: Preponderance of the Evidence

(Section II. Glossary & Definitions)



"Decisions that require the use of an evidentiary standard (*determinations of responsibility, process appeals, challenges to Title IX dismissal, and findings of fact*) will be made after the decision maker(s) assess the quality of the information or evidence and unanimously determine that the decision is justified. That is, the decision-maker(s) should find that there is sufficient evidence that is relevant, probable, and persuasive to convince them that a particular assertion is more likely than not and that the evidence supporting such an assertion outweighs any evidence to the contrary."

Definition continued from previous slide

Roles in the Formal Track

Title IX Hearing Resolution Process

- Civil Rights Director/TIX Coordinator
- Investigators
- Witness
- Hearing Chair
- Advisor (assigned if not chosen)
- Adjudicator = Advisory Role
- Appeal Officer

Non-Title IX Investigator Resolution Process

- Civil Rights Director/TIX Coordinator
- Investigators
- Witness
- Advisor (party chooses, not assigned)
- Adjudicator
- Appeal Officer

Race, Disability, Sexual Misconduct

Roles in the Formal Track

Trained Internal Investigators

- ***Katie Sherman – TIX Deputy***
- ***Michael Simmons***
- ***Katie Rhodes***
- ***Angela Compton***
- ***David Baker***
- ***Adam Diener ****

Handle All Investigations

TIX Live Hearing

Hearing Chair = will hire trained external personnel

If Respondent is found responsible, the Hearing Chair will consult and collaborate with appropriate University staff to determine sanctions. (XI.G.6.)

- *Student/groups:* ***VPSL***
- *Staff:* ***VPFA***
- *Faculty:* ***VPAA***

Investigator Resolution Process

Adjudicators = impartial decision maker to determine sanctions.

If Respondent is found responsible, the Adjudicator will produce the written determination of the outcome within 10 days. The parties have 2 days to appeal the named adjudicator.

- ***Sanction & rationale for each***
- ***Time frame for completion of sanction(s)***
- ***Provide each party with their appeal options***

Roles in the Formal Track

Appeal

- ✓ *An Appeal can be filed for either Investigator Resolution Process or the Hearing Process*
- ✓ *The Appeal Officer for all cases is the VP for GPS. If unable to serve, the alternate is based on classification of respondent.*
  - ✓ *Mut be a neutral and impartial decision maker.*
  - ✓ *Parties have one day to appeal named AO*
- ✓ *A party can appeal:*
  - ✓ *The outcome (including the finding of responsible or not responsible) and/or*
  - ✓ *The Sanction*

File Appeal Notice = 5 days of receipt of decision
Other party's response to filed appeal = 3 days

GROUNDS for APPEAL:

- ➢ *Procedural irregularity that affected the outcome of the matter*
- ➢ *New evidence that was not reasonably available at the time of determination – that could affect the outcome*
- ➢ *CRD or HC had a conflict of interest or bias*
- ➢ *The decision of investigator or HC was clearly erroneous based on the evidential record*

- ✓ *Appeal Decisions are final*

TIX – Sexual Harassment Jurisdiction (see VII.A.)

Checkpoint - all of these must be present

1. ***Complainant – participating or attempting to participate in activity/program when C filed*** ✓
2. ***Definition – PC*** ✓
3. ***Setting – occurred in ed/activity*** ✓
4. ***USA*** ✓

Initial determination by the Title IX Coordinator. Investigators provide analysis as part of Investigative Report and then Title IX Coordinator makes final Title IX Dismissal.

PROHIBITED CONDUCT (see VII. A.)

Conduct on the basis of sex that satisfies one or more of the following:

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to a program or activity; or

Quid Pro Quo - An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct; or

Sexual Assault - as defined in NIBRS*

- Sexual Intercourse
- Intentional Touching (fondling)
- Sexual Intercourse with a relative
- Statutory Rape
- Dating Violence
- Domestic Violence
- Stalking

**National Incident-Based Reporting System*

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PREGNANCY ACCOMMODATIONS AND RELATED CONDITIONS FOR STUDENTS AND EMPLOYEES

MVNU, through the Office of Civil Rights, **supports pregnant students, faculty, and staff so they can achieve academic and work success** while pregnant, recovering from birth of a child, caring for a newborn, and nursing an infant. The applicable federal laws pertaining to pregnancy at MNVU are stated below:

- **Title IX**
- **Title VII**
- **ADA/Section 504**)
- **Pregnancy Discrimination Act** prohibits discrimination on the basis of pregnancy, childbirth, or related medical conditions.

Be a Good Neighbor

PREGNANCY ACCOMMODATIONS AND RELATED CONDITIONS FOR STUDENTS AND EMPLOYEES

TITLE IX ADJUSTMENTS

Adjustments are time-limited for the period of the documented "medical necessity" per Title IX. They refer to options during and after pregnancy that provide for equitable access and ability to fully participate in academic programs, activities, practicums/field placements, and athletics.

Adjustments extend to parenting and primary caretaker of infant, and may include conditions arising from pregnancy, complicating pregnancy or resultant from pregnancy that might not otherwise be considered a disability/condition.

ADA/504 ACCOMMODATIONS

Accommodations require the presence of a "qualified" disability and/or condition per ADA/504. Pregnancy, alone, is not a disability. Pregnancy may be considered a temporary disability in certain circumstances under Section 504, or it may be considered a disability when one or more impairments related to pregnancy are present OR when a condition arising from pregnancy becomes long-lasting (i.e.: postpartum depression or gestational diabetes that becomes Type II) under ADA.

SUPPORTS

Extended deadlines
Flexible exam scheduling
Excused absences
Grades of incomplete
Temporary parking in a closer location

Breaks for nursing/pumping
Job modifications, including reassignment to others of non-essential duties
Modified work schedule
Leave of absence
Temporary assignment to a light duty position

Non-TIX PROHIBITED CONDUCT (see VII. B.)

- Non-Title IX Sexual Assault
- Non-Consensual Sexual Contact
- Sexual Harassment – look at B.2
- Gender-Based Harassment – look at B.2
- Sexual Exploitation – look at B.3
- Non-Title IX Domestic Violence
- Non-Title IX Dating Violence
- Non-Title IX Stalking

Discrimination or Harassment of a Protected Characteristic:

- *Title VI*
- *Title VII*
- *Look at VII.C*
- *Do not create a HOSTILE ENVIRONMENT!*

RETALIATION = intimidating, threatening, coercing, or discriminating against an individual to interfere in this process is NEVER permitted.

Prohibited Conduct

What Is Discriminatory Harassment?

- ***Discriminatory harassment can take many forms**. It may be, but is not limited to: words, signs, jokes, pranks, intimidation, physical contact, or violence. It also may include harassment that is sexual in nature or directed at the gender of another (as in sexual harassment).*

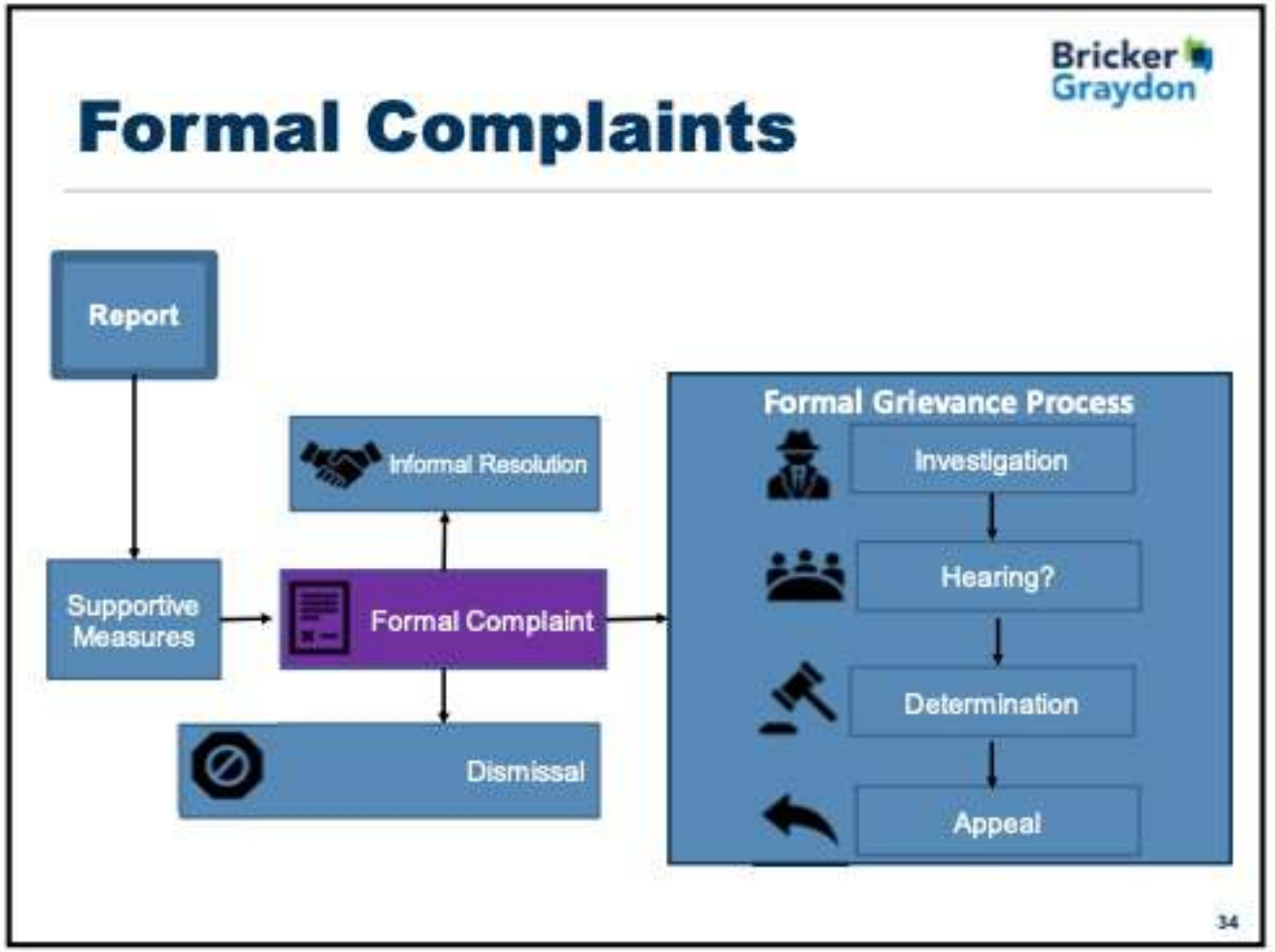
Do NOT create a HOSTILE environment!

*Harassment may also be constituted by **nonverbal acts** that would also be punishable as, for example, vandalism, physical assault, or destruction of property. Other examples of harassment include **epithets or "jokes"** referring to an individual's group-based attributes; placement of offensive **written or visual material** on another's work area; offensive messages sent through email; and undesired physical contact, physical violence, or threat of same.*

- ✓ ***Is intended to insult or stigmatize an individual or an identifiable group?***
- ✓ ***Is it addressed directly to or at (though not necessarily in the presence of) the individual or individuals whom it insults or stigmatizes***
- ✓ ***Does it make use of words or nonverbal symbols that convey hatred or contempt for human beings on the basis of a protected characteristic?***

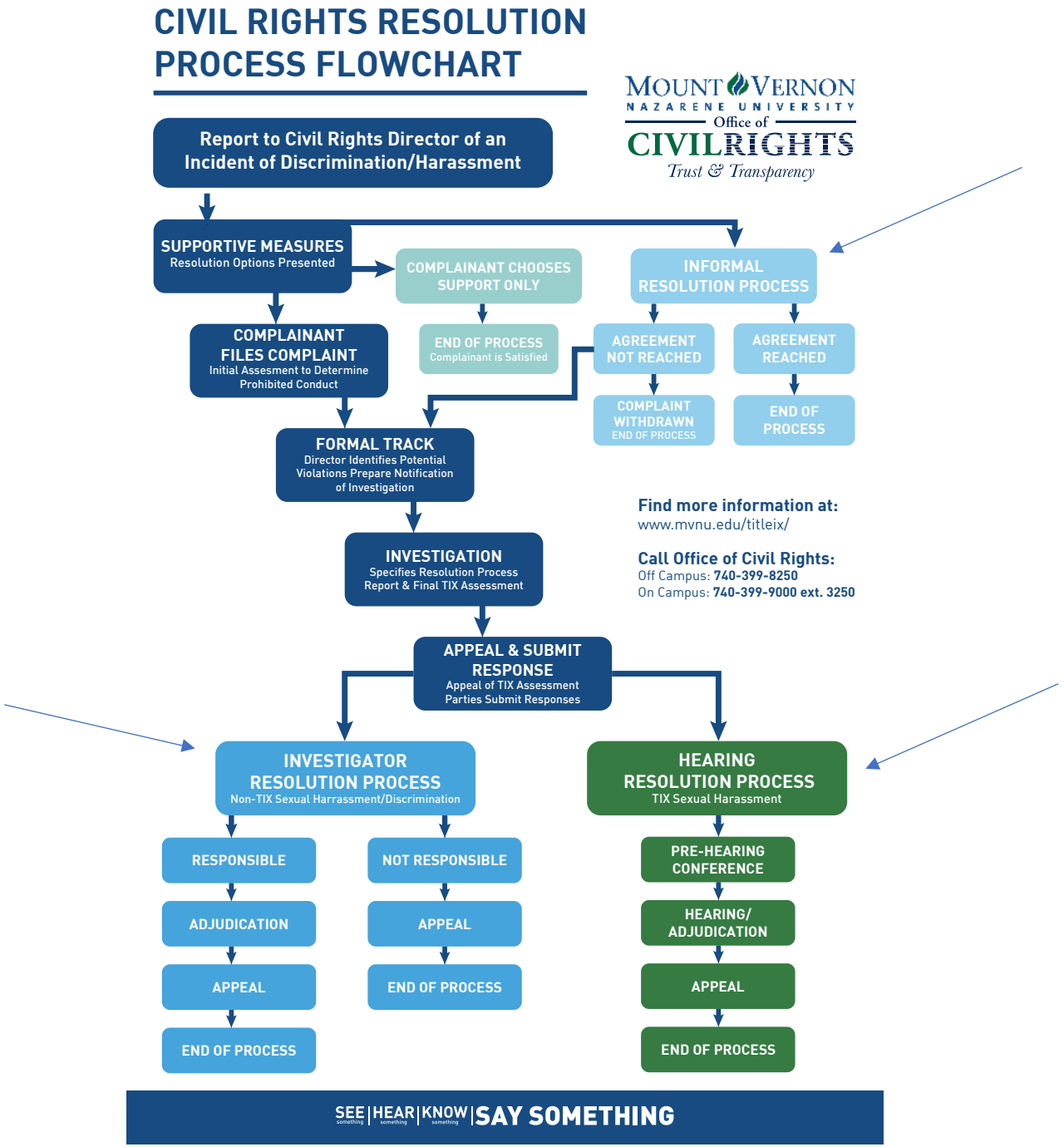
ANY QUESTIONS

Investigation & Resolution Options



There are three tracks that may be pursued if a formal complaint is lodged with the Civil Rights Office.

- ***Informal Resolution Process***
- ***Investigator Resolution Process***
- ***Hearing Resolution Process***



INFORMAL RESOLUTION PROCESS

If you have filed a Formal Complaint about a community member, you may choose to proceed with an Informal Resolution Process. Both Complainant and Respondent must give voluntary, written consent. When the Informal Resolution Process is completed, the parties may not pursue Formal Resolution for the same matter.

Why would I choose to request an Informal Resolution?

The Informal Resolution Process provides a mechanism to resolve a Formal Complaint through the imposition of individual & community remedies designed to maintain or restore access to the educational, extracurricular, and employment activities at MVNU.

Will I have to interact directly with the Respondent?

No, MVNU will not compel a Complainant to engage in mediation, to confront the Respondent directly, or to participate in any particular form of Informal Resolution.

Can I switch to a Formal Resolution Process?

Yes, though any information collected in an Informal Resolution can be used in a Formal one.

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When is an Informal Resolution Closed?

Once an Informal Resolution has been agreed upon by both parties and all requirements are completed the matter will generally be considered closed.

Investigator Role (Section XI.G.1.)

"The Civil Rights Director will designate two investigators to conduct an adequate, reliable and impartial investigation . . . MVNU may engage an external investigator as one or both of the two assigned investigators. In complex situations, the Civil Rights Director may engage additional trained investigators to assist in gathering the information that will be considered by the primary investigators. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University and not the parties.

The interviews will be recorded by the investigators."

Investigator Role (Section XI.G.1.)

"The parties will have an equal opportunity to present witnesses, including expert witnesses, and to submit evidence. The investigators will also gather any available physical evidence, including documents, communications between the parties, and other electronic records as appropriate and available. The parties may submit questions to be asked of parties and witnesses. Investigators will review submitted questions and, in their discretion, may choose which questions are necessary and appropriate to the investigation and conduct any follow-up, as they deem relevant."

Investigator Role - Review of Evidence (Section XI.G.2.)

"The evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint will be made available to the parties and their advisors, including the evidence upon which the College may not rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence. The parties will have 10 calendar days to review the evidence. The parties will be offered the opportunity to review the evidence and provide a written response that will be submitted to the investigators for the completion of the Investigation Report. Due to the privacy of all those involved, evidence shared in an electronic format will not be printable, downloadable or electronically shareable by the parties or their advisors. Exceptions may be made in compliance with Section 504 of the Rehabilitation Act of 1973."

Investigator Role - Investigation Report (Section XI.G.3.)

"In cases where Sexual Harassment is being alleged, the investigators will consider whether the conduct alleged in the formal complaint and the Notice of Investigation would constitute "Title IX - Sexual Harassment." The investigators will consider the evidence gathered from the complainant during the investigation, and make a recommendation to the Civil Rights Director regarding the appropriate resolution process. The Civil Rights Director will review the recommendation of the investigators and make the final determination as to whether the conduct alleged , if demonstrated by a preponderance of the evidence, would constitute "Title IX - Sexual Harassment." This determination is made only considering the information provided by the complainant, regardless of other evidence available in the case."

Investigator Role - Investigation Report (Section XI.G.3.)

This would be part of your review in an adjudication or appeal

- Overview of the complaint made and summary of the investigative methodology
- Summary of relevant information gathered, including:
  - timeline of incident being investigated;
  - complainant's account of events;
  - respondent's account of events;
  - witness accounts;
  - evidence gathered;

- Areas of agreement;
- Areas of disagreement;
- Assessment of whether or not the complaint meets one or more of the required elements of the definition of sexual harassment under Title IX, including rationale; and
- Appendix containing <u>all</u> the collected evidence.

FINAL TIX Assessment & Appeal (Section XI.G.4.)

"Parties have 3 business days after receipt of the investigative report to submit in writing an appeal of a determination regarding whether the conduct constitutes "Title IX - Sexual Harassment." The appeal will be considered by an appropriately trained staff member designated by the Civil Rights Director . . . The appeal decision will be communicated in writing to the parties, their advisors, and the Title IX Coordinator. The decision will also indicate the path for complaint resolution: Hearing Resolution or Investigator Resolution."

ANY QUESTIONS

Read the Final Investigation Report

Is there sufficient information to support a finding of responsibility?

Investigator Resolution Process –

Non-Title IX – Sexual Misconduct
(Section XI.G.5.)

DETERMINATION

"The investigators will make a determination, by a preponderance of the evidence, whether there is sufficient information to support a finding of responsibility. The investigators' finding, and the rationale for the finding, will be included in the final investigative report that will be shared with the parties by the Title IX Coordinator."

Investigator Resolution Process –

Non-Title IX – Sexual Misconduct (Section XI.G.5.)

DETERMINATION: EVALUATING THE EVIDENCE

"The investigators should first evaluate the quality of the evidence. The investigators should consider all of the evidence regardless of who provided it. Any evidence the investigators find to be of high quality should be given more weight than any evidence the investigators find to be of low quality. Quality may, or may not be identical with quantity, and sheer quantity alone should not be the basis for a finding of responsibility. The testimony of a single party or witness may be sufficient to establish a fact."

Investigator Resolution Process – Non-Title IX – Sexual Misconduct (Section XI.G.5.)

DETERMINATION: CREDIBILITY ANALYSIS

"The investigators will evaluate all admissible, relevant evidence for weight or credibility. Credibility is not based solely on observing demeanor, but also considers detail, interest or bias, corroboration where it would reasonably be expected to exist, the circumstances of the disclosure, and the nature of the relationship."

"The degree to which any inaccuracy, inconsistency, or implausibility in a narrative provided by a party or witness should affect a determination regarding responsibility is a matter to be decided by the investigators, after having the opportunity to ask questions of parties and witnesses, and to observe how parties and witnesses answer the questions posed by the other party. Corroborating evidence is not required."

Investigator Resolution Process – Adjudication (Section XI.G.5.)

For reports against students or student groups, the Adjudicator is typically the Vice **President of Student Life**.

For reports against staff, the Adjudicator is typically the **Vice President of Finance and Administration.**

For reports against faculty, the Adjudicator is typically the **Vice President of Academic Affairs.**

Investigator Resolution Process – Adjudication (Section XI.G.5. and XI.G.H.)

FACTORS CONSIDERED IN SANCTIONING:

(1) the respondent's prior conduct history;

(2) how MVNU has sanctioned similar incidents in the past;

(3) the nature and violence of the conduct at issue;

(4) the impact of the conduct on the complainant;

(5) the impact of the conduct on the community, its members, or its property; (

(6) whether the respondent has accepted responsibility for their actions;

(7) any other mitigating or aggravating circumstances, including MVNU's beliefs and values.

Hearing Resolution - Title IX

Hearing Resolution Process – TIX (Section XI.G.6.)

"A Hearing Resolution will be used to resolve cases that include charges of Sexual Harassment - Title IX.

"A Hearing Resolution includes a pre-hearing conference, a live hearing, decisions about responsibility and sanctioning by the Hearing Chair, and an optional appeal process."

Hearing Resolution Process – TIX (Section XI.G.6.)

HEARING CHAIR

The trained, impartial Hearing Chair will conduct the live hearing. This person facilitates the hearing, determines the order and flow of the hearing, makes decisions regarding relevance prior to a question being answered, makes the finding, and instances where the respondent is determined responsible, assigns the sanction/s.

Hearing Resolution Process – TIX (Section XI.G.6.)

PRE-HEARING CONFERENCE

- Each party will have their own pre-hearing conference.
- The CRD, the Hearing Chair, and the advisor must be in attendance.
- The advisors must share with the Hearing Chair their list of witnesses to appear at the hearing
- The Hearing Chair may, at their discretion, add names of other witnesses contained in the report for the purpose of appearing at the hearing and submitting to cross examination.

Hearing Resolution Process – TIX (Section XI.G.6.)

LIVE HEARING

"The Hearing Chair will provide an introduction detailing the purpose of the hearing, have those present identify themselves and their role, remind all parties of the expectation to be candid and honest in their response, and provide a brief overview of the procedure and the anticipated order of the hearing."

Hearing Resolution Process – TIX (Section XI.G.6.)

CROSS EXAMINATION

"The advisors will be responsible for orally asking relevant questions, including those questions which challenge credibility, to the other party or parties and any witnesses directly, in real-time and in a manner that, in the Hearing Chair's sole discretion, is not inappropriate, harassing, intimidating, irrelevant, or redundant."

Hearing Resolution Process – TIX (Section XI.G.6.)

RELEVANCE

"Relevant questions are those tending to prove or disprove a fact at issue . . . Before a complainant, respondent, or witness answers a question by an advisor, the Hearing Chair will first determine whether the question is relevant and briefly explain any decision to exclude a question as not relevant, or request rephrasing of the question. The Hearing Chair is not required to give a lengthy or complicated explanation of a relevancy determination during the hearing. The Hearing Chair may later send to the parties any revisions to the explanation of relevance that was provided during the hearing."

Hearing Resolution Process – TIX (Section XI.G.6.)

DECISION, FINDING, SANCTION

Decisions regarding responsibility will be made by the Hearing Chair and communicated to the parties and their advisors in writing within 15 business days from the conclusion of the live hearing. The Hearing Chair will also determine the sanctions. In determining the sanctions, the Hearing Chair will consult with the appropriate University staff member.

Hearing Resolution Process – TIX

(Section XI.G.6.)

WRITTEN DECISION LETTER

- Identification of the allegations potentially constituting policy violations
- Description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held
- Summary of statements made at the hearing
- Findings of fact supporting the determination
- Conclusions regarding the application of the Policy to the facts
- Statement and rationale as to the finding for each allegation, including a determination regarding responsibility
- Disciplinary sanctions imposed on the respondent
- Whether additional remedies will be provided to the complainant
- Opportunity for appeal

APPEAL Process – Hearing & Investigator Resolution (Section XI.I.)

In a request for an appeal, the burden of proof lies with the party requesting the appeal.
<u>Grounds for Appeal</u>:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter
- The Civil Rights Director, investigator(s), or Hearing had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter
- The decision of the investigators under Section XI.G.5, the Hearing Chair under Section XI.G.6, or the adjudicator under Section XI.G.5. was clearly erroneous based on the evidential record

Information & Resources

- MVNU's Policy and Flow Chart can be found at this web address: https://www.mvnu.edu/titleix
- US Dept of Education Office for Civil Rights Blog: https://www2.ed.gov/about/offices/list/ocr/blog/index.html
- Bricker & Eckler's Resource Center - DCL's, Regulations, Clery Statutes, etc.: https://www.bricker.com/resource-center/title-ix
- Christina A. Jones Contact Info:
  - Off Campus: 740-399-8250 / On Campus: 740-399-9000, ext. 3250

ANY QUESTIONS