Sex/Gender-Based Discrimination, Sexual Misconduct, and Title IX Sexual Harassment Policy

MVNU does not discriminate on the basis of gender in our education programs or activities, which includes employment and admissions. Complaints can be made to the Title IX Coordinator:

Title IX Coordinator

Mailing Address: 800 Martinsburg Rd, Mount Vernon, OH. 43050

Email: titleix@mvnu.edu

Phone: 740-397-9000 x 3250

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How to Get Help

Any member of Mount Vernon Nazarene University (the University) community who has experienced sexual or physical assault is encouraged to immediately seek medical assistance, contact law enforcement to make a report, and make a report to the University.

EMERGENCY RESPONSE

Campus Safety
740-399-8686
740-397-9000, ext. 8686
campus.safety@mvnu.edu

Crisis Hotline
740-397-9000, ext. 5000

Mount Vernon Police
740-397-2222

Knox County Sheriff
740-397-3333

Emergency Law Enforcement Response:
911 (from anywhere)

MEDICAL TREATMENT

Knox Community Hospital
1330 Coshocton Avenue
Mount Vernon, OH 43050
740-393-9000
Provides medical treatment and sexual assault forensic exams

New Directions: The Domestic Abuse and Rape Crisis Center of Knox County
Hotline: 740-397-5525
Will accompany to a sexual assault forensic exam

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

Residential Health Advisor
740-385-0345
Health related concerns and non-emergency medical transportation overnight or weekends

COUNSELING

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

New Directions: The Domestic Abuse and Rape Crisis Center of Knox County

Hotline: 740-397-5525
Will accompany to a sexual assault forensic exam

CONFIDENTIAL RESOURCES

The resources designated below can provide counseling, information, and support under confidentiality protections.

ON CAMPUS

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

Campus Pastor
740-397-9000, Ext. 4111

Associate Campus Pastor
740-397-9000 Ext. 4130

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

OFF CAMPUS

New Directions: The Domestic Abuse and Rape Crisis Center of Knox County
Rape Crisis Center 24-Hour Hotline: 740-397-4357

Knox County Victim's Assistance
740-397-3404

National Domestic Violence Hotline (NDV)
800-799-7233 (SAFE)
www.thehotline.org

Ohio Sexual Violence Coalition Domestic Violence
24 -Hour Hotline: 844-644-6435 (OHIOHELP)

Ohio Hispanic Coalition Domestic Violence
24-Hour Hotline: 614-746-3534 (Spanish and English)

REPORTING OPTIONS ON CAMPUS *(not confidential)*

This link may be used to file an Incident Report: titleix@mvnu.edu

Katie Sherman
Title IX Coordinator
Off Campus: 740-399-8250 / On Campus: 740-397-9000, ext. 3250
titleix@mvnu.edu

Deb Oakes
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Off Campus: 740-399-8250 / On Campus: 740-397-9000, ext. 3250

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Jay Mahan
Title IX Deputy Coordinator
Off Campus: 740-399-8250 / On Campus: 740-397-9000, ext. 3250
titleix@mvnu.edu

Campus Safety
740-399-8686
740-397-9000, ext. 8686
campus.safety@mvnu.edu

I. PURPOSE & STATEMENT OF POLICY

Title IX provides that no person in the United States, on the basis of gender, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. The purpose of Title IX is to respond promptly and supportively to persons alleged to be victims of sexual harassment ensure equal access and fairness for men and women with regard to athletics, employment, admissions, financial aid, publications, educational programs, and student rights.

In addition to Title IX, sexual and gender-based discrimination and harassment interferes with an individual's employment or educational performance and has the purpose or effect of denying or limiting an individual's access to or benefit from educational programs. Thus, the University is committed to fostering a climate free from unwelcome conduct based on sex through clear and effective policies, education and prevention programs, and prompt and equitable procedures for reports of prohibited conduct under this policy. The University is committed to resolving allegations of the prohibited conduct in this policy under a predictable, fair grievance process that provides due process protections to alleged victims and alleged perpetrators of sexual harassment.

Individuals found responsible under this policy may face disciplinary sanctions up to and including dismissal from the University and/or termination of employment. Moreover, the University will not tolerate retaliation against any party participating in a proceeding 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.

II. SCOPE OF POLICY

This policy covers both Title IX violations and unwelcome sexual conduct. The scopes for each of these are different and spelled out below.

Title IX Prohibited Conduct and jurisdiction, which includes:

- Sexual Harassment, Stalking on the basis of sex, Sexual Assault, and Dating/Domestic Violence
    - In any education program or activity of the recipient against a person in the United States.

- A covered program or activity includes locations, events, or circumstances over which the University exercises substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University.

Some prohibited conduct does not rise to the level of sexual harassment as defined by Title IX, but is still considered unwelcome sexual conduct at MVNU. This conduct may not fall into Title IX jurisdiction, but would have continuing adverse effects on campus, on any member of the University community, or in the context of any University education or employment activities and programs, regardless of where the conduct occurred. Supportive measures will be made available in these situations, and the process for resolving them will be discussed in more depth in the Title IX and Sexual Misconduct procedural document.

This policy will apply to vendors as covered persons while on campus property. Approved volunteers working in sponsored events are also subject to the policy as are invited guests participating in those events.

When University facilities are leased to outside agencies or organizations, and the event is not an official University sponsored event, the leasing organization is responsible to monitor, police, investigate, and sanction violations of Title IX protections.

Regardless of whether off-campus behavior meets any of the above characteristics, the University may hold individuals and groups responsible for off-campus behavior that is prohibited by the Student, Staff or Faculty Handbooks.

Regardless of when, where or with whom the conduct occurred, the University will offer supportive measures and assistance to any individuals who have been affected by Prohibited Conduct.

III. TITLE IX TEAM

Title IX Coordinator

- The University's Title IX Coordinator oversees compliance with all aspects of the Mount Vernon Nazarene University's Sex/Gender Harassment, and Discrimination and Misconduct Policy and Procedures. The Coordinator reports directly to the President of the University. Questions about this policy should be directed to the Title IX Coordinator.
- The Title IX Coordinator (the coordinator) shall direct University efforts to comply with and implement its responsibilities under Title IX. Those responsibilities include:
    - Knowledgeable and trained in University policies and procedures and relevant and state federal laws;
    - Responsible for monitoring full compliance with all procedural requirements, record keeping and timeframes outlined in this policy and procedure;
    - Ensuring that the University properly disseminates Title IX information;
    - Responsible for overseeing trainings, prevention, and education efforts;
    - Available to advise and provide assistance to any University individual, including reporting party (Complainant) and/or responding party (Respondent), about the course of action provided within the policy and procedure;

- Overseeing and supervising the Title IX Team (deputies, hearing officers, committee and investigators);
- Overseeing Title IX incidents and ensuring the resolution procedures are implemented promptly and equitably via assigning deputies to conduct initial inquiries and assigning investigations to a Title IX Investigation Unit; and
- Identifying and addressing systematic problems that arise during the review of Title IX complaints.

Katie Sherman
Title IX Coordinator
Off Campus: 740-399-8250 / On Campus: 740-397-9000, ext. 3250
titleix@mvnu.edu
Mount Vernon Nazarene University
800 Martinsburg Road
Mount Vernon, OH 43050

If an individual believes that the Title IX Coordinator has engaged in Prohibited Conduct or has otherwise behaved inappropriately, the individual shall contact the President of Mount Vernon Nazarene University.

Title IX Deputy Coordinator

The Deputy Title IX Coordinator(s) will work closely with the Title IX Coordinator to maintain compliance. Those responsibilities may include:

- Attending and/or overseeing the Title IX Committee meetings;
- Assisting the Title IX Coordinator with intakes, investigations, and resolutions;
- Overseeing the Title IX Investigation Unit;
- Assuming the role of Title IX Coordinator in his/her absence or if he/she has a conflict of interest; and
- Working with the President in the event the Title IX Coordinator is a Complainant or Respondent

Deborah Oakes
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Off Campus: 740-399-8250 / On Campus: 740-397-9000, ext. 3250
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titleix@mvnu.edu
Mount Vernon Nazarene University
800 Martinsburg Road
Mount Vernon, OH 43050

Title IX Investigation Unit

The University will use a dual investigator model. Thus, the Title IX Coordinator will designate two investigators to conduct an adequate, reliable and impartial investigation. The Title IX Investigation Unit will consist of at least four trained investigators, preferably two females and two males. Typically, this team will be comprised of current University employees, each of whom will serve for at least a two-year term. However, The University reserves the right to engage an external investigator as one of two assigned investigators as the situation warrants. An investigator used by the University will have specific training in investigating matters of Prohibited Conduct and completing reports. The investigation will be impartial and free from any actual conflict of interest. The assigned unit will generate an investigation report after interviewing witnesses and evidence for both parties. This report will then be provided to the Title IX Coordinator for review and dissemination to the appropriate parties, as well as a hearing officer.

Title IX Hearing Advisors

The Title IX regulations state that MVNU must provide, free of charge, a Hearing Advisor of its choosing to each party for cross-examination during the hearing process. This person may, but is not required to be, an attorney. Each party is welcome to instead bring their own Hearing Advisor, and thus waive MVNU's. This person's primary responsibility is to ask the opposing party and any witnesses all relevant and follow-up questions.

Title IX Hearing Officer

The Hearing Officer will be a university appointed official who has been trained to oversee the hearing. This individual will determine in real-time if a questions is relevant and applicable to the situation. They will then allow the question and if not, state a reasoning. At the end of the hearing, the Hearing Officer will review the investigation report alongside their notes from the hearing, and determine if there is a finding of responsibility.

Title IX Committee

Each committee member will serve for a term of at least two years, excluding the position of Coordinator. The Vice President for Academic Affairs in collaboration with the President will appoint this individual for the Coordinator position to a term agreed upon by all parties. The committee is comprised of the following individuals:

- Title IX Coordinator
- Deputy Title IX Coordinator
- Assistant to the President for Effectiveness and Planning or representative of this office
- Athletic Director
- Campus Safety Representative
- Director of Human Resources or representative of this office
- University Registrar or representative of this office
- Vice President for Student Life or representative of this office
- One athletic coach
- One female student representative
- One male student representative
- One staff representative
- Two faculty members, chosen at-large with alternating terms

The responsibilities of the committee will include but are not limited to:

- Reviewing Title IX policies and procedures and making recommendations for improvements to the Senior Leadership Team;
- Conducting periodic self-evaluations of University programs, policies, and activities to determine compliance with Title IX requirements;
- Assisting with Title IX investigations, when requested;
- Participating in education, prevention, and training events, when needed;
- Assisting the Title IX Coordinator, as needed.

V. PRIVACY AND CONFIDENTIALITY

Privacy

- Generally means that information related to a report of Prohibited Conduct will only be shared with those University employees who "need to know" in order to assist in the active review, investigation, or resolution of the report, including the issuance of supportive measures. The University will determine which employees have a legitimate need to know about individual conduct complaints pursuant to the Family Educational Rights and Privacy Act (FERPA) and will share information accordingly.
- The University may notify the parents or guardians of any dependent students who are Respondents regarding conduct charges or sanctions, particularly disciplinary probation, loss of housing, suspension and dismissal.

Confidentiality

- Information shared by an individual with designated campus or community professionals cannot be revealed to any other individual without express permission of the individual or as otherwise permitted or required by law. These designated professionals have the right to maintain privileged conversations under state law. Confidential resources include medical professionals, mental health professionals, rape crisis or domestic violence counselors and clergy.
- Limits to Confidentiality
    - **Sexual Assault:** Ohio Felony Reporting Requirement: Under Ohio law, all individuals, excluding confidential resources, must report felonies, including sexual violence assault. Under Ohio Revised Code Section 2921.22, medical professionals, mental health professionals and clergy are not required to report felonies. This legal requirement means that the Title IX Coordinator or Campus Safety *must report* any felony to the Mount Vernon Police Department. Where the University makes a report to law enforcement under this section, the University will not typically share the names of the involved parties without permission from the Complainant. The University will communicate with the Complainant in advance of any report to law enforcement. The Complainant may choose whether and how to participate in any subsequent criminal investigation.
    - **Child Abuse**: All MVNU employees, including those designated as confidential resources, are required to report any knowledge or reasonable suspicion that a minor (someone under 18 years old) is experiencing abuse or neglect based on information shared by the minor, any other individual, or one's own observations or knowledge. Any MVNU

employee suspecting abuse or neglect is required to bring all suspicions to the immediate attention of the Director of Campus Safety and the Title IX Coordinator. In addition to notifying the Title IX Coordinator and Director of Campus Safety, employees must make a direct report to the Knox County Children's Services Child Abuse Hotline (24 hours) at 740-392- KIDS (5437).

VII. METHODS OF REPORTING

Any person with knowledge or good-faith belief of Prohibited Conduct in a University program or activity is encouraged to make a report to one of the sources identified below. Non-confidential reports can be made to the Title IX Coordinator in person or during non-business hours by mail to the listed office address or by using the listed telephone number or email address. Reports may also be made using an online Incident Report, or to the office of Office of Civil Rights.

Non-Confidential Reporting Options

All University employees (except those who are designated as confidential resources) are considered *Responsible Employees*, and are non-confidential under Title IX and are expected to share all known information related to a report, including the identities of the parties, with the Title IX Coordinator. In addition, student employees/volunteers who have responsibility for the welfare of other students, e.g., Student Residents (RA), are required to report all known information. Other student employees who receive information within the context of their jobs are required to report to the Title IX Coordinator or Deputy.

Title IX Coordinator and Deputy Coordinators
Off Campus: 740-399-8250 / On Campus: 740-397-9000, ext. 3250
titleix@mvnu.edu

Campus Safety (24-hour availability)
On campus: 740-399-8686
Off Campus: 740-397-9000, ext. 8686
campus.safety@mvnu.edu

Any Non-confidential university employee

Online incident form found at www.mvnu.edu/titleix

Confidential Reporting Options

On campus, some resources may maintain confidentiality – meaning they are not required to report actual or suspected sexual misconduct, including sexual harassment or discrimination, to appropriate University officials - thereby offering options and advice without any obligation to inform an internal or external agency or individual unless a survivor has requested information to be shared. Other resources exist for an individual to report crimes and policy violations and these resources will take action when an incident is reported to them.

If the Complainant would like the details of an incident to be kept confidential, they may speak with these individuals when they are serving in these capacities:

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

Campus Pastor
740-392-6868, Ext. 4111

Associate Campus Pastor
740-397-9000 Ext. 4130

Student Health Services
749-397-9000, Ext. 4632

Anonymous Reporting Options

Any individual may make an anonymous report concerning an act of Prohibited Conduct. A report can be made without disclosing one's own name, identifying the Respondent, or requesting any action. Depending on the level of information available about the incident or the individuals involved, anonymous reporting may limit the University's ability to respond or take further action.

Anonymous reports can be submitted through the University's online incident report, found at www.mvnu.edu/titleix. Follow-up communications with the person submitting the anonymous report are not possible unless contact information is provided.

As with all other reports, anonymous reports will be shared with the Title IX Coordinator. Where there is sufficient information, the University will ensure that anonymous reports are reviewed and included for compliance with the Clery Act.

Responsible Employees who have a duty to report information to the Title IX Coordinator under this policy may not make such reports anonymously.

Reporting to the Office of Civil rights

Individuals experiencing harassment or discrimination also always have the right to file a formal grievance with government authorities

U.S. Department of Education
1350 Euclid Avenue, Suite 325
Cleveland, OH 44115
(216) 522-4970 (phone)
(216) 522-2573 (fax)
OCR.Cleveland@ed.gov

Reporting Considerations and Provisions

Amnesty

- The University community encourages the reporting of misconduct and crimes by victims and witnesses. Sometimes, victims or witnesses are hesitant to report to University officials or participate in resolution processes because they fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident. It is in the best interests of this community that victims choose to report to University officials, and that witnesses come forward to share what they know. To encourage reporting, the University pursues a policy of offering victims of misconduct and witnesses amnesty from minor policy violations related to the incident. Such minor policy infractions may be but are not limited to: underage drinking, substance abuse, cohabitation, minor property damage, and the like. However, significant policy violations that could endanger or harm the community (e.g., drug dealing) will not be excused.
- Sometimes, students are hesitant to offer assistance to others for fear that they may get themselves in trouble (for example, a student who has been drinking underage might hesitate to help take a sexual misconduct victim to Campus Safety). The University pursues a policy of amnesty for students who offer help to others in need. While policy violations cannot be overlooked, the University will provide educational or therapeutic options, rather than punishment, to those who offer their assistance to others in need.

Anonymity

- Where a person makes a report but requests that a name or other identifiable information not be shared with the Respondent, or that no formal action be taken, the University's ability to respond may be limited by the request. The University will balance this request with its obligation to provide a safe and non-discriminatory environment for all of the University's community members.

False Reports; Participating in Bad Faith

- Students and employees will not suffer adverse consequences as a result of reporting a matter involving sexual misconduct in good faith. However, the protocol shall not be used to initiate frivolous or malicious charges without regard to the truth. After the completion of remediation efforts, if the Title IX Coordinator concludes that a party or witness made materially false statements in bad faith, the Coordinator may recommend disciplinary action against the Complainant, up to and including expulsion or termination from the University.

Timeliness of Report

- In order to maximize the University's ability to respond promptly and effectively, all those impacted by Prohibited Conduct are encouraged to report as soon as possible. There is no time limit on reporting violations of this policy, though prompt reporting by Responsible Employees is expected. If the Complainant is no longer a student or employee at the time of the report, the University may not be able to take disciplinary action against the Respondent, but it will still seek to meet its Title IX obligation by providing support for the Complainant and taking other

appropriate action to eliminate, prevent and address the effects of the Prohibited Conduct. The University will also assist a Complainant in identifying external reporting options.

Preservation of Evidence

- The University encourages all individuals to seek assistance from medical provider(s) and/or law enforcement immediately after an incident of Prohibited Conduct, whether or not the Complainant plans to pursue criminal charges. This is the best option to ensure preservation of evidence and to begin a timely response by law enforcement.

V. PROHIBITED CONDUCT

The University prohibits the following behaviors on the basis of sex: a broad spectrum of behavior, including all forms of sexual and gender-based discrimination, harassment and violence, stalking and intimate partner violence. The following conduct is specifically prohibited under this policy, with those under Title IX jurisdiction highlighted in red. Note that all Prohibited conduct could rise to the level of sexual harassment, if it means the jurisdictional and severity requirements of Title IX.

- Sexual Harassment
- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking
- Sex/Gender Discrimination
- Non-Consensual Sexual Contact
- Sexual Exploitation
- Physical Harm and Intimidation
- Cyber bullying
- Retaliation

Title IX Prohibited Conduct

Sexual Harassment

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- 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
- Hostile Environment
    - Unwelcome conduct on the basis of sex determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity

Sexual Assault

Sexual assault is engaging or attempting to engage in one of the following activities with another individual *without consent* or where the individual cannot consent because of age or temporary or permanent mental incapacity:

- Sexual intercourse (anal, oral, or vaginal), including penetration with a body part (e.g. penis, finger, hand, or tongue) or an object, however slight
- Intentional touching of the intimate body parts of another for the purpose of sexual gratification. Intimate body parts include the breasts, buttocks, groin, and genitals.
- Sexual intercourse (anal, oral, or vaginal) between individuals who are not permitted to marry. In Ohio, this means that individuals closer in kin than second cousins may not have sexual intercourse.
- Sexual intercourse (anal, oral, or vaginal) with a person who is under the statutory age of consent. In Ohio, state law prohibits sex with any individual under the age of 13; additionally, individuals over the age of 18 may not have sex with individuals under the age of 16.

Dating and Domestic Violence

Dating violence and domestic violence includes:

- Any act of violence or threatened act of violence that occurs between individuals who are involved or have been involved in a sexual, dating, spousal, domestic, or other intimate relationship.
- The University will evaluate the existence of an intimate relationship based upon the Complainant's statements and taking in to consideration the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Stalking

Stalking is conduct on the basis of sex that consists of engaging in a course of conduct that is:

- Directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others;
- or suffer substantial emotional distress

Cyber-stalking is a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used. Cyber-stalking is considered stalking under this policy if it meets either of the conditions above.

Other Prohibited Conduct

Sex/Gender Discrimination

Discrimination occurs when a behavior or policy has the purpose or effect of restricting or denying an individual's or group's access to opportunities, programs, or resources in relation to sex or gender, in a manner that interferes with an individual's working, academic, residential, or social environment or athletic participation or performance.

Examples of discrimination include but are not limited to:

- Treated differently in determining whether such person satisfies any requirement or condition for the provision of any aids, benefits, or services;
- Provided different aid, benefits, or services;
- Provided aid, benefits, or services in a different manner;
- Denied any aids, benefits or services;
- Subjected to separate or different rules of behavior, sanctions or other treatment;
- Discriminated against by providing significant assistance to any agency, organization or person which discriminates on the basis of sex in providing any aid, benefit, or service to students, faculty or staff;
- Otherwise limited in the enjoyment of any rights, privileges, advantages or opportunities with regard to aids, benefits or services; or
- Treated differently with regard to terms, conditions or benefits of employment, or in the recruitment, consideration or selection thereof.

When these or other forms of discrimination are based on sex or gender, the conduct will be resolved under this policy.

Discrimination on the basis of sex/gender in employment is permissible in situations where sex/gender is a bona fide occupational qualification reasonably necessary to the normal operation of the University. Note that the federal regulations regarding Title IX include certain exceptions, such as single-gender housing, athletic participation and chorus participation that do not constitute Sex/Gender Discrimination. These limited permissible exceptions, found in Title 34 of the Code of Federal Regulations, Part 106, will be considered when determining whether Prohibited Conduct occurred under this policy.

Non-Consensual Sexual Contact

Non-Consensual Sexual Contact is defined as having sexual contact with another individual:

- Any intentional touching, however slight, with any object, by a person upon another person,
- By force or threat of force;
- Without consent; or
- Where that individual is incapacitated.

Sexual contact includes any intentional touching of the intimate parts of another, causing another to touch one's intimate parts, or disrobing or exposure of another without permission. Intimate parts may include the breasts, genitals, buttocks, groin, mouth or any other part of the body that is touched in a sexual manner. Sexual contact may be over the clothes or skin-to-skin.

Sexual Exploitation

Sexual Exploitation is knowingly, intentionally or purposefully taking advantage of the sexuality of another person without consent or in a manner that extends the bounds of consensual sexual activity without the knowledge of the other individual for any purpose, including sexual gratification, financial gain, or personal benefit. Examples of Sexual Exploitation include but not limited to:

- Observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
- Non-consensual streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved;
- Non-consensual recording of individuals in locations in which they have a reasonable expectation of privacy, such as restrooms, locker rooms, or dorm rooms, regardless of whether the images captured reveal sexual activity or nudity;
- Prostituting another individual;
- Exposing one's genitals in non-consensual circumstances;
- Removal of a condom, without consent, during sexual intercourse;
- Knowingly exposing another individual to a sexually transmitted infection or virus without that individual's knowledge; and
- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity, e.g., by using alcohol or other drugs (such as Rohypnol or GHB).

Physical Harm and Intimidation

Physical harm and/or intimidation include:

- On the basis of sex/gender, including within the context of a romantic or sexual encounter;
- threatening, or causing physical harm, written or verbal abuse or other conduct that threatens or endangers the health or safety of any person;
- or implied threats or acts that cause an unreasonable fear of harm in another.
- Examples include but are not limited to: hitting, choking, or otherwise contacting another person in a physically aggressive manner. These acts may be directed at the individual and/or the individual's property and possessions.

Cyber bullying

Cyber bullying is defined as:

- On the basis of sex/gender, including within the context of a romantic or sexual encounter;
- Repeated and/or severe aggressive behavior likely to intimidate, threaten, or intentionally hurt, control or diminish another person, physically or mentally that includes, but is not limited to: creating web pages with a negative focus;
- posting insults or lewd photos on social networking sites;
- and/or spreading rumors with malicious intent

Retaliation

It is a violation of Title IX and this policy for any covered person to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of

sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes retaliation.

VI. RELATED DEFINITIONS AND CONCEPTS

Consent

Consent must be informed, knowing and voluntary (freely given) via affirmative action through clear words or actions that creates mutually understandable permission regarding the conditions of sexual activity. It cannot be obtained by use of force, compelling threats, intimidating behavior, or coercion. It cannot be given by someone known to be – or who should be known to be mentally or physically incapacitated.

- Consent is active, not passive
- Silence, in and of itself, cannot be interpreted as consent
- Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding willingness to engage in (and the conditions of) sexual activity.
- Consent to any one form of sexual activity cannot imply consent to future sexual acts.
- Consent can be withdrawn once given, as long as that withdrawal is clearly communicated.
- In order to give consent, one must be of legal age.

Incapacitation

One is incapacitated by some mental or cognitive impairment, injury, or when one is asleep or unconscious. Sexual activity with someone you know to be or should know to be incapacitated constitutes a violation of this policy.

- Incapacitation can occur mentally or physically, from developmental disability, by alcohol or other drug use, or blackout.
- The question of what the Respondent should have known is objectively based on what a reasonable person in the place of the Respondent, sober and exercising good judgment, would have known about the condition of the Complainant.
- Incapacitation is a state where someone cannot make rationale, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the "who, what, when, why or how" of their sexual interaction).
- This policy also covers a person whose incapacity results from mental disability, sleep, unconsciousness, involuntary physical restraint, or from the taking of rape drugs.

Evidence of incapacity will come from context clues, such as:

- Slurred speech
- Bloodshot eyes
- The smell of alcohol on the breath
- Shaky equilibrium
- Vomiting

- Outrageous or unusual behavior
- Unconsciousness (including blackout)

Force

Force is the use or threat of physical violence or intimidation to overcome an individual's freedom of will to choose whether or not to participate in sexual activity. There is no requirement that a party resists the sexual advance or request. Consent cannot be obtained by force.

Coercion

Coercion is the use of unreasonable and persistent pressure to compel another individual to initiate or continue sexual activity against an individual's will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats and blackmail. Coercion may be emotional, intellectual, psychological or moral.

Impact of Alcohol and Drugs

Alcohol and drugs have the ability to lower inhibitions, affect the decision making process, impact the awareness of consequences, and impact a person's ability to consent to sexual activity. Sexual assaults on university campuses across the nation frequently take place in the presence of alcohol and/or drugs. The important question that arises in sexual assault cases involving alcohol and/or drugs is whether the individual accused of sexual assault knew, or should have known, that the individual complaining that he/she was sexually assaulted was incapacitated due to the use of alcohol and/or drugs and was therefore unable to consent to engaging in sexual activity with the accused.

Incapacitation is defined as a state beyond that of intoxication. The Complainant asserting that he or she was incapacitated cannot prove incapacitation. Instead incapacitation is proven by a totality of the evidence. The presence of some or all of following factors shows that the initiator of sexual activity (the Respondent) knew or should have known that his or her partner was incapacitated:

- The initiator of sexual activity (the Respondent) knew his or her partner was drinking and/or using drugs and may have known how much and what kind;
- The partner was stumbling or otherwise exhibited loss of equilibrium;
- The partner exhibited slurred speech or word confusion;
- The partner had bloodshot, glassy, or unfocused eyes;
- The partner exhibited any signs of alcohol poisoning;
- The partner was vomiting, especially repeatedly;
- The partner was disoriented, or confused as to time, place, etc.; or
- The partner lost consciousness.

When determining whether an individual had the capacity to consent to sex, the University considers the following two questions:

- Did the individual initiating sexual activity (the Respondent), know that his or her partner was incapacitated?
- If not, should a sober, reasonable person in the same position as the initiator of sexual activity (the Respondent) have known that his or her partner was incapacitated?

If, through the course of the investigation, the University determines that the answer to either of these questions is "yes," then effective consent to sexual activity is not present.

Determining whether an individual is incapacitated from drugs and/or alcohol is difficult; therefore, the University strongly recommends that you err on the side of caution before engaging in sexual activity with a partner who is under the influence of alcohol and/or drugs. When in doubt, make the assumption that a partner is incapacitated and therefore unable to give consent for sexual activity. Likewise, for the individual initiating sexual activity, the Respondent, being under the influence of alcohol and/or drugs is never a defense to a complaint of sexual assault.

Remember, if in doubt, the safest (and most respectful) thing to do is not engage in sexual activity: Walk out.

Preservation of Evidence

The University encourages all individuals to seek assistance from a medical provider and/or law enforcement agency immediately after an incident of sexual misconduct. This is the best option to ensure preservation of evidence and to begin a timely investigative and remedial response. The University will assist any MVNU community member in getting to a safe place and will provide transportation to the hospital, coordination with law enforcement, and information about the University's resources and complaint processes.

Individuals who are recipients of sexual violence, domestic violence, or dating violence should do everything possible to preserve evidence by making certain that the crime scene is not disturbed. There is a limited window of time (typically 72 to 96 hours) following an incident of sexual assault to preserve physical and other forms of evidence.

Preservation of evidence may be necessary for proof of the crime or in obtaining a protection order. Recipients of sexual violence, domestic violence, or dating violence should not bathe, urinate, douche, brush teeth, or drink liquids until after they are examined and, if necessary, a rape examination is completed by a Sexual Assault Nurse Examiner (SANE). Clothes should not be changed or if removed, the garments should be secured in a paper bag.

It is also important to take steps to preserve evidence in cases of stalking, to the extent such evidence exists. In cases of stalking, evidence is more likely to be in the form of letters, emails, text messages, etc. rather than evidence of physical contact and violence. Taking the steps to gather evidence immediately does not commit an individual to any course of action. The decision to seek medical attention and gather any evidence will remain confidential and preserve the full range of options to seek resolution through MVNU's complaint processes or through the pursuit of criminal action.

The Title IX Coordinator or investigator will work in collaboration with the University's Information Technology Services Department to ensure that any potential electronic evidence of sexual misconduct is preserved.

VIII. Education, Prevention and Training

The University recognizes that the most effective way to achieve a community free of sexual and gender-based discrimination, harassment, assault, dating and domestic violence and stalking is to equip all community members with the skills to recognize and prevent these prohibited forms of conduct. The University is also committed to the protection of minors and the prevention of child abuse.

Throughout the year the University will make reasonable efforts to offer educational programs to promote awareness of sexual and gender-based harassment and violence, stalking and intimate partner violence. Prevention programs include an overview of the University's policies and procedures, relevant definitions, including Prohibited Conduct, consent, discussion of the impact of alcohol and illegal drug use, safe and positive options for bystander intervention, and information about risk reduction. Incoming first-year students and new employees will receive primary prevention and awareness programming as part of their orientation.

The Title IX Coordinator is responsible for oversight, coordination, and assessment of prevention and training programs on campus, in collaboration with appropriate departments and personnel.