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

Mount Vernon Nazarene University is committed to creating a welcoming work and educational environment that is free from unlawful sex or gender-based discrimination. To that end, the University will review all reports of discriminatory conduct. The following procedure describes how the University will review and adjudicate formal complaints of "sexual harassment", as defined by jurisdiction released in the Title IX regulations effective August 14, 2020, as well as other prohibited conduct listed in the Policy.

I. Initial Assessment of Report

Upon receipt of a report, the Title IX Coordinator or Deputy will conduct an initial assessment or inquiry to determine the appropriate response to the report under this policy. This assessment is to determine whether the Complainant alleges sufficient information to suggest that Prohibited Conduct may have occurred.

If the reported information would not support a violation of Prohibited Conduct, the Title IX Coordinator may decline to pursue an investigation. The matter may be referred to the appropriate administrative office, when needed. The Title IX Coordinator will communicate the decided upon manner of resolution to the Complainant in writing. As a result of this meeting, depending on the nature of the allegations, the Title IX Coordinator may be obligated to report the incident to law enforcement pursuant to state law.

The Title IX Coordinator will review with the Complainant the University's procedures for both informal and formal resolution, the rights of the Complainant, potential supportive measures of protection, information relating to law enforcement reporting if appropriate, and available medical and/or counseling resources as appropriate.

If the Complainant requests confidentiality or asks that the complaint not be pursued, the University will take all reasonable steps to investigate and respond to the Respondent consistent with the request for confidentiality or request not to pursue an investigation. If a Complainant insists that their name or other identifiable information not be disclosed to the alleged perpetrator, the University will inform the Respondent that its ability to respond may be limited.

II. Advisor of Choice

The Complainant will be permitted to have an advisor of their choice during any part of the procedures. The advisor may be a friend, mentor, or any other supporter a party chooses to advise them who is both eligible and available. People who will be called as witnesses may not serve as advisors. Advisors serve in different roles during each stage listed below, and the advisor may change.

<u>Intake Meeting:</u>

- During the intake, the advisor may ask clarifying questions, as long as they are respectful and not disruptive.

<u>Informal Resolution:</u>

- Advisors will be permitted to ask questions and advise the party with whom they are working, subject to the Title IX Representative's discretion.

<u>Investigation:</u>

- Advisors may ask clarifying questions only, as long as they are respectful and not disruptive. Advisors will receive access to the investigative report that contains all submitted evidence produced in the investigation.

Live Hearing (Title IX Misconduct Only):

- Both the Complainant and the Respondent must have an advisor for cross examination. If either party does not have one, MVNU will provide one of their choosing at no cost to the party.
- Each party's advisor will cross examine the opposite party, pursuant to the guidelines listed in these Procedures.
- The Hearing Officer reserves the right to remove an advisor who does not follow the guidelines, or is consistently disrespectful.

III. Supportive Measures

Upon receipt of a report of Prohibited Conduct, the Title IX Coordinator may provide supportive measures to either party, intended to address the short-term effects of harassment, discrimination, and/or retaliation, i.e., to redress harm to the alleged victim and the community and to prevent further violations. Thus, these supportive measures may be remedial and/or protective. The University will keep supportive remedies and actions as private as possible.

Supportive measures are available regardless of whether the Complainant chooses to pursue any action under this policy.

These remedies may include, but are not limited to the extent reasonably available and warranted by the circumstances:

Supportive Measures

- Referral to counseling and health services
- Education to the community
- Altering housing or residence arrangements
- Altering work arrangements for employees
- Providing campus escorts
- Providing transportation accommodations
- Implementing mutual restriction on contract contact limitations between parties, i.e., "no contact" order or assisting in protective orders
- Offering adjustments to academic deadlines, course schedules, alternative course completion options, etc.
- Limiting extracurricular or athletic activities
- Other appropriate actions as necessary to stop the prohibited conduct, prevent its reoccurrence, and remedy its effects on a party or improve the University community.

Supportive measures are not disciplinary in nature and will not be included on the Respondent's transcript. At the discretion of the appropriate officer and Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an impact as possible on the Respondent. Leave for an employee will be structured at the University's discretion in consultation with the appropriate administrative officer.

IV. Emergency Removal

The University at the discretion of the Title IX Coordinator in consultation with the appropriate administrative officer, who would not typically serve as the decision maker for the sanction, may request an Emergency Removal after conducting a safety and risk analysis. This entails the removal of a student, employee or organization from campus when, given the nature of the Prohibited Conduct, remaining on campus may be threatening or potentially injurious to the well-being or property of members of the University community. In addition, during this administrative leave, a student or employee may be denied access to University housing and/or University campus/facilities/events. The Respondent will be given notice in writing, and an opportunity to challenge the decision immediately following the removal.

V. Filing a Formal Complaint

In order to start the formal grievance process against sexual harassment, a formal complaint must be filed with, or initiated by, the Title IX Coordinator, and alleges "sexual harassment" against a respondent and requests that the University investigate the conduct. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail. A formal complaint may not be anonymous and must be shared with the Respondent.

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

- An employee's conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
- Unwelcome conduct 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; or
- ''Sexual assault''; ''dating violence''; ''domestic violence'' or ''stalking'' in the University's Sex/Gender-Based Discrimination, Sexual Misconduct, and Title IX Sexual Harassment Policy.

Other **non-Title IX prohibited conduct** as defined in the Policy that does not rise to the level of sexual harassment will also be resolved under these procedures, minus the hearing.

Supportive measures are available to any individual irrespective of whether they file a formal complaint, or whether or not the unwelcome sex-based conduct falls within Title IX Jurisdiction.

In certain serious circumstances and despite a Complainant's request for confidentiality, the University may determine that it is necessary to address the report in order to provide a safe and nondiscriminatory environment for all students, including the Complainant. In this instance, the Title IX Coordinator will file the formal complaint, must not be an involved party, and must be free from conflict and bias.

Factors that will be considered may include:

- Circumstances that suggest there is an increased risk of the alleged perpetrator committing additional acts of sexual violence harassment or other violence
- Whether the sexual harassment violence was perpetrated with a weapon;
- The age of the individual subjected to the sexual harassment violence; and
- Whether the University possesses other means to obtain relevant evidence (e.g. electronic or personnel, physical evidence).

If the University determines it is necessary to disclose a Complainant's identity to a Respondent, it will inform the Complainant prior to the disclosure.

Note on Specific Parties:

- Title IX Coordinator
    - 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. An inquiry assessment and/or investigation will occur following Title IX protocol.

- President of the University
    - If an individual believes that the President of the University has engaged in Prohibited Conduct or has otherwise behaved inappropriately, the individual shall contact the Title IX Coordinator who will refer it to the Board of Trustees for an inquiry assessment and/or investigation where outside investigators may be procured to resolve any potential conflicts of interest.

VI. Informal Resolution

The Informal Resolution process is designed to eliminate the hostile environment without taking formal disciplinary action against a Respondent.

Participation in the Informal Resolution process is voluntary, and either party can request to end this informal resolution at any time, including while a formal resolution is in process. Pursing Informal Resolution does not preclude a Formal Resolution process at a later date, if the Informal Resolution process fails to achieve a resolution or if the Informal Resolution is violated. The Title IX Coordinator may refer a report for Formal Resolution at any time, if appropriate. Should a Formal Resolution follow an attempt at an Informal Resolution, no information shared therein can be used in the formal grievance processes or with the decision maker.

As part of the Informal Resolution, a trained Title IX Deputy designated as an Informal Resolution Officer, may use the remedial measures mentioned above or what is necessary to:

- Resolve the report through the implementation of remedies that support the conduct.
- Act promptly in assisting parties with corrective actions.

The Title IX Coordinator will maintain records of all reports and conduct referred for Informal Resolution. When the Respondent is a student in this process, the Informal Resolution will not be recorded in Complainant's transcripts.

Steps in an Informal Resolution:

1. A formal complaint is filed by the Complainant, and the allegations are shared with the Respondent
2. Both parties must consent to the informal process, in writing
3. The complaint is passed to a Title IX Deputy, who contacts the parties to set up the initial meeting, likely via technology. Parties will be kept separate throughout the meeting.
    a. Failure to respond within 3 businesses days nullifies the informal process
    b. Parties may have an advisor present during their meeting, but the Deputy reserves the right to limit their involvement.
4. If an agreement is reached, it will be written by the Deputy and signed by both of the parties at the time of the meeting.
    a. If a review time is requested, 24 hours will be allowed. If the agreement has not been signed by that deadline, the informal resolution is nullified.

When the Respondent is an employee, a notation will be made in the employee's file maintained by the Office of Human Resources. Informal Resolution may not be used if a student was sexually harassed by a university employee.

VII. Formal Resolution Standards

The Complainant may choose to resolve a report through the Formal Resolution process, provided the initial assessment demonstrates that the information available suggests that Prohibited Conduct may have occurred to warrant an investigation. The Title IX Coordinator will identify the potential violations and prepare the initial Notice of Allegation, which will be sent simultaneously to both parties. Additionally, the formal resolution is subject to the following:

Presumption of Innocence:

- MVNU is determined to offer a fair, and non-biased process. The university has the presumption that the Respondent is not responsible for a policy violation until a determination is made when all evidence and statements have been reviewed.

Standard of Evidence:

MVNU's standard of responsibility is "Preponderance of the Evidence", which means that "more likely than not" the misconduct occurred.

Burden of Proof

- MVNU is responsible for obtaining all relevant evidence to the investigation in order to reach a determination.

VIII. Formal Resolution Process

1. Formal Complaint is filed
2. Dismissal of a Formal Complaint
    a. At any time during the process, it may be determined by the Title IX Coordinator that the complaint does not fall within the scope of Title IX. Should that occur, the Title IX Coordinator will resolve the conduct under the Sexual Misconduct portion of this policy, or refer it to the appropriate administrative office.
    b. Instances that must constitute a Mandatory Dismissal from the Title IX Process
        i. Conduct does not constitute sexual harassment
        ii. Did not occur within MVNU's education program or activity
        iii. Was outside of the United States
    c. Instances that may constitute a discretionary dismissal
        i. Complainant notifies the Title IX Coordinator in writing that they wish to withdraw the formal complaint or any allegations therein
        ii. Respondent is no longer enrolled or employed by MVNU
        iii. Specific circumstances prevent MVNU from gathering sufficient evidence to reach a determination about the allegations within the Formal Complaint
    d. All dismissals will be sent in writing with the rational simultaneously to both parties
    e. Any Party may Appeal the dismissal
        i. Parties may appeal the dismissal from Title IX jurisdiction, according to the Appeals section outlined below.
3. Investigation
    a. Notice of Allegation
        i. Both parties will receive written notice that an investigation has been initiated.
        ii. The notice will include the identities of the parties involved, the precise conduct allegedly constituting the potential violation and the date and location of the alleged violation.
        iii. This notice will be provided in advanced of any interview with investigators, to sufficiently prepare.
        iv. The charges may be amended at any time during the investigative process. Due notice will be provided to all parties if amendments are made during the process.
4. Investigator's Duties
    a. The Title IX Coordinator or Deputy will designate two trained investigators without conflict of interest, to conduct an adequate, reliable, and impartial investigation. When necessary, the University may use an external investigator.
    b. The Investigators will interview the parties and witnesses and review all inculpatory and exculpatory evidence. Witnesses must have observed the acts in question or have information relevant to the incident. The investigators must also obtain or gather any physical evidence (documents, communications, electronic records, etc.) that would assist the investigation.
    c. Both parties have equal opportunity to be heard, submit written questions for the investigators, submit information and evidence; and identify potential witnesses who

may have relevant information. Parties are required to submit any and all evidence that they would like the investigator to consider prior to review period (see section 5).

d. In gathering the facts, the investigators may consider similar prior or subsequent reports of, or findings of responsibility for similar conduct by the Respondent to the extent such information is relevant. Such patterns may indicate a heightened risk to the campus community, and therefore can be taken into account during an investigation. However, the sexual history of the Complainant will never be used to prove character or reputation, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. Moreover, evidence related to prior sexual history of either party is generally not relevant to the determination of a policy violation and will only be considered in very limited circumstances.

e. The University will seek to complete the investigation within sixty business days from the notice of the investigation, but this time frame may be extended for good cause with written notice to all parties.

5. Review of Investigation and Initial Investigative Report

   a. After conducting an initial investigation, and before writing the report, both parties and their advisors will have **ten business days** to review any evidence obtained that is directly related to the allegations and submit a written response to the Investigative Team.

      i. Parties and Advisors are to use the investigative report and related evidence only for the purpose of the grievance process and are prohibited from disseminating or disclosing these materials to other parties.

   b. The investigators will prepare an initial investigative report that summarizes the relevant evidence collected. The following evidence will not be included in the report:

      i. Testimony of the character of an individual;
      ii. Information regarding the Complainant's sexual history with anyone other than the Respondent, unless necessary to explain the presence of a physical injury to help resolve another question raised by the investigation;
      iii. Information that is more prejudicial than probative; and
      iv. Information regarding mediation that may have occurred between the parties in attempt at an informal resolution.
      v. The Title IX Coordinator or Deputy will share the initial investigation report with both parties and their advisors and provide each of them with the opportunity to review. Both parties may respond within **ten business days** to submit additional comments and/or evidence in writing.

   c. **The Non-Title IX Conduct grievance procedures end here.** The investigators will write a final report that notates whether or not there is a Preponderance of the Evidence to show responsibility for prohibited conduct, and will pass it on to the appropriate party for sanctions and appeal.

6. Pre-Hearing Conference

a. The Title IX Coordinator will communicate the details for separate pre-hearing conferences for the party's advisors, **who are required to attend.** This meeting will include the Hearing Officer, the Advisor, and the Title IX Coordinator.
    i. The Title IX Coordinator will discuss the guidelines for appropriate questioning and behavior during the hearing, based on MVNU's policy, procedures, and values.
    ii. The Hearing Officer will share their list of witnesses they believe are relevant to the decision, and parties may add one additional witness. All witnesses must have been previously identified during the investigation.

7. <u>Live Hearing</u>
    a. The investigative report will be supplied to a trained Hearing Officer to review.
    b. Parties will meet on a pre-scheduled day in separate rooms, via audio-visual technology. All parties, including the Hearing Officer, must be able to see and hear each other in real-time.
    c. Only parties, their advisor, pre-approved witnesses, and the Hearing Officer may attend the Hearing, except for those who may need assistance under the Americans with Disabilities Act.
    d. A recording of the hearing will be available to all parties for review, but not edit or download, as the recording will be the property of MVNU.
    e. Advisors may cross-examine the other party directly, orally, and in real-time, all relevant questions and follow-up questions. The Hearing Officer will decide in real-time if the question is allowable. Questions must not be:
        i. Irrelevant to the case
        ii. Related to the Complainant's sexual behavior or predisposition unless
            1. Such questions and evidence are offered to prove someone other than the Respondent committed the alleged conduct, or
            2. The questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent
        iii. Sexual history, unless related to this specific case
        iv. Asked by Complainant directly to the Respondent, and vice versa.
    f. Should the Hearing Officer decide that a question is not allowable, they must offer an explanation of why they are excluding it.
    g. Refusal to submit to cross examination by any party, including witnesses, will negate any statement or evidence submitted by them in the investigation up until this point. The Hearing officer must not draw any inference about the determination of responsibility based solely on a party's or witness's absence.
8. <u>Determination of Responsibility</u>
    a. The Hearing Officer will make a determination by a preponderance of the evidence (more likely than not), whether there is sufficient information to support a finding of responsibility.
    b. The Final Investigative Report will include the finding and the rationale for the finding. This report will be provided to the Title IX Coordinator.

c. The Title IX Coordinator will share this report with both parties and advisors simultaneously.
d. Regardless of whether a policy violation is found to have occurred, either party may appeal the decision.

9. Notice of Outcome
    a. The hearing officer will provide the written determination of the outcome, the sanction and the rationale for each to both parties. The parties will be informed of any sanctions, the date by which the requirements must be satisfied (if applicable), and the consequences of failure to satisfy the requirements.
    b. The outcome letter will also provide each party with their appeal options. If, under extenuating circumstances, there are any changes to the outcome, both parties will be simultaneously notified at the earliest possible time. The University may also notify appropriate University officials, including a direct supervisor of a sanction, as necessary to implement the outcome and/or sanctions.

IX. Sanctions

Should a there be a finding of responsibility, the Hearing Officer will determine the sanctions based on the criteria below.

The sanctions shall be communicated simultaneously to each party in writing within five [5] business days of the receipt of the decision maker's final investigative report.

The sanction is designed to eliminate the Prohibited Conduct, prevent its reoccurrence, and address its effects, while supporting the University's educational mission and Title IX obligations. The decision maker will impose a sanction based upon the following factors:

- The Respondent's prior conduct history
- How the University has sanctioned similar incidents in the past
- The nature and violence of the conduct at issue
- The impact of the conduct on the Complainant
- The impact of the conduct on the community, its members, or its property
- Whether the Complainant has accepted responsibility for their actions
- Whether the evidence, in conjunction with the prior conduct history, suggests that the Respondent is reasonably likely to engage in the same or similar conduct in the future
- The need to deter similar conduct by others; and
- Any other mitigating or aggravating circumstances, including the University's values.

Sanctions that may be imposed include, but are not limited to (see Student, Staff or Faculty Handbook):

- Continuing "no contact" orders
- Trespass order prohibiting presence on campus, at University owned facilities, and/or at campus activities or events
- Fines/work detail
- Required counseling
- Alcohol/drug assessment

- Restitution/Restoration, where property has been damaged/stolen or funds have been misappropriated
- Campus Restriction on behavior, access to certain campus facilities, participation in campus activities, housing restrictions, and/or scheduling restrictions
- Social Probation
- Suspension of student
- Dismissal
- Written warning of employee
- Suspension of employee, with or without pay
- Termination of employment
- Cancellation of third-party contract

X. Appeals

Either party may request an appeal by submitting a written notice of appeal to the Title IX Coordinator within five (5) business days from the date of the final investigative report, if no policy violation is found, or within five (5) business days from the date of the adjudication letter, if a policy violation is found. Either party may also submit an appeal for a dismissal of a formal complaint or any allegations therein. A delay in filing the appeal may be grounds for rejection of that appeal.

The written notice of appeal must outline the reasons for the appeal and must be based on at least one of the following:

- New evidence that was unavailable at the time of the original investigation or dismissal;
- Evidence of non-adherence to this policy or procedural irregularities that substantially affected the outcome of the case;
- The Title IX Coordinator, investigator, or hearing officer had a conflict of interest or bias for or against the Complainant or Respondent that affected the outcome;
- Evidence that the sanction received as grossly disproportionate to the conduct for which the party was found responsible; i.e., was the decision one that a person in the position of the decision-maker might reasonably have made?

Dissatisfaction with the outcome of the case is not a permissible ground for appeal. If the written notice of appeal is not based on at least one of the reasons for an appeal, the Title IX Coordinator may reject the appeal with written notice to the appealing party. The party may then submit a revised written notice of appeal within the original timeline.

If the written notice of appeal is deemed by the Title IX Coordinator to be sufficient, the other party will be provided with a copy of the written notice of appeal and will be provided with five (5) business days to provide a written response to the Title IX Coordinator. The Title IX Coordinator will provide a copy of the response to the appellant, but no further reply will be permitted.

The Title IX Coordinator will facilitate the appeal by choosing a trained administrative officer within the University based on whose oversight the Respondent falls under; i.e., Vice President for Student Life, Vice President and Dean for the School of Graduate and Professional Studies, Director of Human Resources, Vice President for Academic Affairs, or the Vice President for Finance/CFO. The

chosen appeal's officer must be free from conflict or bias. The appeals officer will independently review information relevant to the appeal. The appeals officer shall be permitted to ask questions of the investigator, adjudicator, and Title IX Coordinator, but speaking with parties or other witnesses is not permitted. The appeals officer may:

- Affirm the original decision and sanctions, if any;
- Reverse original decision and remove or add sanctions as appropriate;
- Affirm the original decision but revise the sanctions; or
- Request that additional steps be taken.

The appeals officer shall issue a written decision simultaneously to both parties and include the rationale for the decision within ten (10) business days of receipt of all appeal documents. The decision of the appeals officer shall be final.

XI. Records

Records will be maintained regarding the report, the investigation, evidence presented during the disciplinary process, the outcome of the disciplinary process, the outcome of any appeal, and any temporary and permanent remedies put in place by the University to address the Prohibited Conduct. Such records will be maintained by the Title IX Coordinator and, if a student is found responsible for conduct prohibited by this policy, by the University for at least ten years after the last party graduates, leaves the employment of the University, or otherwise is no longer a student or employee. Such records will be accessible only to the extent permissible under applicable records confidentiality and disclosure laws, including the Family and Educational Rights and Privacy Act, 20 U.S.C. 1232g, and the Clery Act, 20 U.S.C. 1092(f).