

Marian University Non-Discrimination Policy

University Non-Discrimination Policy Statement

As a Catholic institution, Marian University is rooted in respect for the inherent dignity of each person. The University fosters a campus community that is inclusive of persons of diverse backgrounds and faiths and does not tolerate discrimination in any form by any University employee or member of the student body. The following related policies and procedures reflect this commitment as well as the University's ongoing compliance with applicable federal and state laws and regulations. The University does not discriminate, or tolerate discrimination by any member of its community, against any individual on the basis of race, color, religion, creed, national origin, ancestry, sex, sexual orientation, marital status, age, disability, or any other factor prohibited by law in matters of admissions, employment, or services or in the educational programs or activities it operates.

Harassment, whether verbal, physical or visual, that is based on any of these characteristics, is a form of discrimination. This includes harassing conduct affecting tangible job or educational benefits, interfering unreasonably with an individual's academic or work performance, or creating what a reasonable person would perceive is an intimidating, hostile or offensive environment. Additional information regarding the University's prohibitions against non-discrimination (including sexual harassment, sexual assault, and sexual violence) is set forth below.

While the University is committed to the principles of free inquiry and free expression, discrimination, harassment, and retaliation identified in this policy are neither legally protected expression nor the proper exercise of academic freedom.

Examples of discrimination and harassment may include, but are not limited to:

- Refusing to hire or promote someone because of the person's protected status;
- Demoting or terminating someone because of the person's protected status;
- Jokes or epithets about another person's protected status;
- Teasing or practical jokes directed at a person based on his or her protected status;
- The display or circulation of written materials or pictures that degrade a person or group; and
- Verbal abuse or insults about, directed at, or made in the presence of an individual or group of individuals in a protected group.

Title IX of the Higher Education Act

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity receiving Federal financial assistance.

Title IX of the Educational Amendments of 1972 to the 1964 Civil Rights Act

Inquiries about Title IX may be made to the Title IX Coordinator-504/ADA Compliance Officer or to the Office of Civil Rights of the Department of Education.

The local office for Wisconsin is:

Chicago Office
Office for Civil Rights
U.S. Department of Education
Citigroup Center
500 W. Madison Street, Suite 1475
Chicago, IL 60661-4544

Ph: 312-730-1560
Fax: 312-730-1576
Email: OCR.Chicago@ed.gov

The national headquarters is:

U.S. Department of Education
Office for Civil Rights
Lyndon Baines Johnson Department of Education Building
400 Maryland Avenue, SW
Washington, DC 20202-1100

Ph: 800-421-3481
Fax: 202-453-6012
Email: OCR@ed.gov

Title VI of the Civil Rights Act

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Title VI of the Civil Rights Act of 1964

Title VII of the Civil Rights Act

Title VII of the Civil Rights Act of 1964 is a federal law that protects employees against discrimination based on certain specified characteristics: race, color, national origin, sex, and religion.

Adapted from website Justia, <https://www.justia.com/employment/employment-discrimination/title-vii/>, retrieved October 16, 2018

The Americans with Disabilities Act and the Rehabilitation Act Section 504

The Americans with Disabilities Act (ADA) provides broad nondiscrimination protection in employment, public services, and public accommodations (including many areas of colleges and universities), for individuals with disabilities.

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against an otherwise qualified individual with a disability, solely on the basis of the disability, in any program or activity that receives federal financial assistance.

ADA/Section 504 Reasonable Accommodations Policy

The University does not discriminate against individuals on the basis of disability. To ensure equal access to its programs and activities, the University is committed to providing reasonable accommodations, including appropriate auxiliary aids and services, academic adjustments (inside or outside the classroom), and/or modification to the University's policies and procedures, to qualified individuals with disabilities, unless providing such accommodations would result in an undue burden or fundamentally alter the nature of the relevant program or activity. The University's ADA/504 Coordinator is responsible for determining appropriate accommodations. See Addendum A for contact information.

Applicants for admission to the University or current students requesting an accommodation must complete Student Request for Accommodation and Student Authorization for Disclosure of Medical Information forms and have his or her health-care provider complete a Provider Certification of Disability and Recommendations for Accommodation form. Copies of these forms may be obtained by clicking on the links provided or from the University's ADA/504 Coordinator. The University may request only medical information that is relevant and reasonably necessary to determine whether an individual is disabled, the nature and extent of the disability, and appropriate reasonable accommodations. Completed forms and supporting documentation must be submitted to the University's ADA/504 Coordinator. To enable the University to evaluate an individual's needs, engage in an interactive process with him or her, and provide appropriate reasonable accommodations in a timely fashion, the University requests that individuals complete and submit the required forms and supporting documentation at least six (6) weeks before the first day of classes, or as soon as practicable under the circumstances.

The University will make its accommodation determination on an individualized, case-by-case basis with input from the individual requesting accommodation, the University's ADA/504 Coordinator, and faculty and administrators, as necessary. Except in unusual cases, the University will reach a determination regarding an individual's request for accommodation and notify the individual in writing of the determination within three (3) weeks of his or her properly submitted request. In the event requested accommodations have been denied, the University's determination letter will inform the individual of the reason(s) and of his or her right to appeal the University's determination, as set forth below.

The University's ADA/504 Coordinator will maintain a confidential file regarding all requests for accommodation containing the forms and supporting documentation submitted by the applicant or student, any relevant communications (including notes of oral communications) between the individual and the University, the determination letter from the University to the individual, and the reason(s) for any denials.

Any disagreements between an individual requesting accommodation and the University's ADA/504 Coordinator regarding appropriate accommodations and/or any allegations of violations of this policy may be raised under the University's Anti-Discrimination Policy or Student Grievance Policy.

Definitions

Misconduct Definitions

False Imprisonment

The detaining of a person without the person's consent and/or against the person's will to leave is prohibited. Therefore, false imprisonment can apply to any act in which a person intentionally restricts another person's freedom to move or to leave without consent. This can occur on or off campus, in a building, on the streets, in a vehicle, or any other place, in which a person is restrained, against their will, from moving, whether physically, by threat, or intimidation. This can also include but is not limited to, removing that person's means of leaving (e.g. taking and/or holding someone's keys, wallet, phone, or other means that would provide that individual with the means to leave the vicinity).

Note: This policy applies to restricting a person from leaving a resident hall room and/or failing to leave a resident's room when requested to do so. However, this policy does not apply to authorized personnel acting within the scope of their responsibilities (e.g. Campus Safety Officers, Resident Hall Staff).

Harassment

Harassment is defined as any unwelcome conduct based on actual or perceived status including: sex, gender, race, color, age, creed, national or ethnic origin, physical or mental disability, veteran status, pregnancy status, religion, sexual orientation or other protected status. Any unwelcome conduct should be reported to campus officials, who will act to remedy and resolve reported incidents on behalf of the victim and community. Additional information about Harassment and Non-Discrimination may be found in the Employee Handbook and within the Student Code of Conduct. *See also Sexual Harassment below under Sexual Misconduct.*

Hostile Environment

Sanctions can and will be imposed for the creation of a hostile environment only when harassment is sufficiently severe, pervasive (or persistent) and objectively offensive that it unreasonably interferes with, limits or denies the ability to participate in or benefit from Marian's educational or employment program or activities.

Interim Measures

Due to the nature of some forms of harassment, it may be necessary to take some measures to provide better safety and security and to protect the learning environment for the campus community. These measures include, but are not limited to:

- Stay Away/No Contact Orders (limiting physical contact and all forms of communication between parties)
- Housing Reassignment
- Housing Contract Cancellation
- Course Section Reassignment
- Human Resource actions to limit contact between an employee and any other involved party
- Temporary suspension from work or school

Relationship Violence

Violence or abuse by a person of another in a dating or intimate relationship with another.

Domestic Violence

Includes asserted violent behavior committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

Dating Violence

Violence (physical, verbal, and/or emotional) committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction

Retaliatory Discrimination or Harassment

Any intentional, adverse action taken by a responding individual or allied third party, absent legitimate nondiscriminatory purposes, against a participant or supporter of a participant in a civil rights grievance proceeding or other protected activity under this policy.

Retaliation against an individual for alleging harassment or discrimination, supporting a complaint or for assisting in providing information relevant to a claim of harassment or discrimination is a serious violation of University policy and will be treated as an instance of harassment or discrimination. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator-504/ADA Compliance Officer and will be promptly investigated. The University will take all appropriate actions to protect individuals who fear that they may be subjected to retaliation*.

Sexual Misconduct

Marian University uses the following definitions of sexual misconduct: Non-Consensual Sexual Contact and Non-Consensual Sexual Intercourse and Sexual Exploitation. Consent is obtained through verbal assent from both parties prior to engaging in any sexual behaviors defined below.

Sexual Harassment

- unwelcome, sexual or gender-based verbal, written or physical conduct that is,
- sufficiently severe, or persistent or pervasive and,
- has the effect of unreasonably interfering with, denying or limiting employment opportunities or the ability to participate in or benefit from the university's educational, social, athletic, and/or residential programs, and is based on real or reasonably perceived power differentials (quid pro quo), and/or the creation of a hostile environment or retaliation.

Non-Consensual Sexual Attempted or Actual Contact

- Any intentional sexual touching
- However slight
- With any object
- By one person upon another person
- That is without consent and/or by force

Sexual contact is defined as intentional actual or attempted bodily contact with the breasts, buttock, groin, mouth, or genitals, or touching another with any of these body parts or making another touch

you or themselves with or on any of these body parts OR any other intentional bodily contact of a sexual manner.

Non-Consensual Attempted or Actual Sexual Intercourse

- Any sexual intercourse
- However slight
- With any object
- By one person upon another person
- That is without consent and/or by force

Sexual Intercourse is defined as active or attempted vaginal penetration by a penis, object, tongue or finger, anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

Sexual Exploitation

Occurs when a person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited (and that behavior does not otherwise constitute one of other sexual misconduct offenses.) Examples include, but are not limited to:

- Invasion of sexual privacy
- Prostituting another person
- Non-consensual recording or broadcast of sexual activity
- Going beyond the boundaries of consent (such as letting someone hide in the closet to watch you having consensual sex)
- Engaging in voyeurism
- Knowingly exposing another to an STD or HIV
- Exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals

Stalking

Stalking is engaging in a course of conduct composed of a series of 2 or more separate non-continuous acts directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others and suffer emotional distress.

*Statement on Consent**

- Consent is knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct.
- A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically, or mentally incapacitated/lacks capacity has violated this

policy. It is not an excuse that the responding party of sexual misconduct was intoxicated and, therefore, did not realize the incapacity/lack of capacity of the other.

- Incapacitation is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction). This policy also covers a person whose incapacity results from mental disability, involuntary physical restraint, and/or from the taking of incapacitating drugs.
- Consent to some sexual contact, such as kissing or fondling, cannot be presumed to be consent for other sexual activity, such as intercourse. A current or previous dating relationship is not sufficient to constitute consent. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced. Silence or the absence of resistance alone is not consent.
- A person can withdraw consent at any time during sexual activity by expressing in words or actions that he or she no longer wants the act to continue, and, if that happens, the other person must stop immediately.
- A minor below the age of consent according to state law cannot consent to sexual activity. This means that sexual contact by an adult with a person below the age of consent is a crime as well as a violation of this policy, even if the minor appeared to have wanted to engage in the act.

Roles

Advocates

An advocate is any one (1) person who any party in the investigation process would like to have present with him or her throughout any part of the process. While this person may be an attorney, the role does not have the same powers of attorney. The university does train faculty and staff members to act as advocates and can help any person who seeks an advocate to find one.

Confidential Individuals

These are employees who will maintain confidentiality under the professional license or professional ethics necessary for performing their employed role at the University and are not compelled to report discussions with a victim of sexual misconduct policy to Title IX Staff. At Marian University, Confidential Individuals are:

- Office of Counseling Services professional counselors;
- Director of Health Services;
- Director of Campus Ministry.

Investigators

These are the university employees who manage investigations into a student or employee’s responsibility for violating the Marian University Non-Discrimination Policy. There are two investigators assigned to each case.

Reporting Party

This is a s person who asserts the responding person has violated the Marian University Non-Discrimination Policy. This person may be a student, university employee, visitor, guest, or contractor in some cases.

Responding Party

This is the person who has been alleged to have been involved with violating the Marian University Non-Discrimination Policy. This person may be a student, university employee, visitor, guest, or contractor in some cases.

Title IX Coordinator-504/ADA Compliance Officer

This employee is responsible for implementing and monitoring Title IX Compliance and for any acts of harassment or discrimination on behalf of the University. This includes coordination of training, education, communications, and administration of grievance procedures for the handling of complaints alleging violations of this policy.

Title IX Deputy Coordinators

These employees are responsible for implementing and monitoring Title IX compliance at the University and for notifying the Title IX Coordinator-504/ADA Compliance Officer of any alleged or suspected violations of this policy and the resolution of such alleged or suspected violations, regardless of whether a complaint is filed.

Responsible Employees

The common definition used for determining a responsible employee is any employee who has the authority to take action to redress sexual violence; who has been given the duty of reporting incidents of sexual violence or any other misconduct by any party to the Title IX Coordinator-504/ADA Compliance Officer or other appropriate school designee; or whom a party could reasonably believe has this authority or duty. At Marian University this includes all faculty, administrators, staff, and student employees, aside from those above defined as confidential individuals.

Employees (faculty, staff, and student employees) are considered mandatory reporters of sexual misconduct. This includes those who hold a professional license, but who are not employed by Marian University to counsel, provide health services, or provide pastoral or ministry care. A mandatory reporter must report all allegations of sexual misconduct to a member of the Title IX Coordinator-504/ADA Compliance Officer team, whether you are the victim of sexual misconduct or you become aware of sexual misconduct by others. The Title IX Coordinator-504/ADA Compliance Officer are on the Marian University website. Depending upon the nature of the misconduct, the Title IX Coordinator-504/ADA Compliance Officer may be required by state law to report the behavior to Human Resources or to the Fond du Lac Police Department. Failure to report sexual misconduct in a timely fashion may result in disciplinary action, up to and including termination of employment. *

Addressing Allegations of Harassment or Sexual Misconduct

Allegations of a violation of the Student Code of Conduct (Harassment, Sexual Misconduct, Stalking, Threatening Behaviors, or Retaliation) by a student or violation of the Marian University Employee Handbook (Anti-Discrimination and Anti-Harassment Policy, p. 20; Title IX Sexual Harassment, Discrimination and Sexual Misconduct, p. 43) by an employee must be referred to the Title IX Coordinator-504/ADA Compliance Officer or Deputy Title IX Coordinator who will review the allegations.

Awareness of Violations

Awareness is the term used for when a responsible university employee becomes aware of a policy or code violation. There are several possible manners in which the university may become aware, such as an incident report from a resident assistant or security officer, a police report, a self-report from any party, or through anonymous or complaint form filings. Additionally, administrators may act on notice of a potential violation whether a formal allegation is made or not. All allegations can be submitted by a victim or a third party and should be submitted as soon as possible after the offending event occurs. The University has the right to pursue an allegation or notice of misconduct on its own behalf and to serve as convener of the subsequent campus conduct process.

Any member of the University community, contractor, visitor, or guest may allege a code violation(s) by any other member of the university community. Complaints against employees, contractors, visitors, or guests may be managed by the Title IX Coordinator-504/ADA Compliance Officer or designee.

University as the Convener

The University is the convener of every action within this policy. This means the university convenes all parties involved in the incident to determine how best to proceed. Within that action, there are several roles. The responding party is the person who is alleged to have violated the policy. The reporting party bringing the complaint may be a student, employee, visitor, or guest. There may be witnesses, who may offer information regarding the allegation. There is an investigator(s) whose role is to present the allegations and share the evidence that the University has obtained regarding the allegations.

Preliminary Investigation

The Title IX Coordinator-504/ADA Compliance Officer or designee reviews the initial report which may be a formal incident report, or any notes taken from a self-report to another university responsible employee or a verbal report made to the Title IX/Campus SaVE Committee (see addenda). If the university believes it is necessary to do so, interim measures may be enacted for the safety and security of all involved (see definitions above).

The preliminary investigation will ordinarily be concluded within one week of the date the report was received by the Title IX Coordinator-504/ADA Compliance Officer or his/her/their designee. The Coordinator reviews the information in the report and determines if the description provided is a Title IX case. If not, the Title IX Coordinator-504/ADA Compliance Officer or designee may refer the case to an office better suited to manage the report. The Title IX Coordinator-504/ADA Compliance Officer or

designee may determine the conduct described by the reporting party violates this policy and will assign investigators.

Additionally, at this time, the reviewer may determine that the case involves amnesty (see below) for one or more parties involved in the reported incident.

A reporting party may choose to not divulge a name of an alleged responding party. In these instances, Marian University will inform the reporting party that they are limited in available responses, other than to provide assistance to the reporting party and to relieve adverse conditions in any environmental/climate that may be reported as present.

A reporting party may also choose to inform Marian University of the identify of a responding party but decline to pursue a formal investigation process. In these instances, Marian University will inform the reporting party that they are limited in available responses, other than to speak to the named responding party(ies) and provide education to him/her/them. Marian university will also provide assistance to the reporting party and to relieve adverse conditions in any environmental/climate that may be reported as present.

While Marian University will, to the extent possible, honor the preferences of the reporting party, there may be instances in which a formal investigation is necessary notwithstanding the reporting party's wishes to the contrary.

A reporting party may also choose to engage in a formal investigation process. This will begin the notification stage of the process (see Notification below).

The reporting party will be advised of their rights to file a criminal complaint. If he/she/they choose to do so, the university will assist in the facilitation of this. The reporting party will also be advised of medical options for self-care and for evidence collection. These actions may occur during the Awareness stage but will be repeated at this stage. Further, at any point during the investigation, Marian University will assist in the facilitation of making a report to the police. The decision to pursue a criminal investigation will not alter the university's investigation timeline or obligations. Reporting parties may pursue one, the other, or both either simultaneously or stop and start at any time.

Amnesty

For Victims

The University provides amnesty to victims who may be hesitant to report to University officials because they fear that they themselves may be accused of minor policy violations, such as underage drinking, at the time of the incident. Educational options will be explored, but no conduct proceedings or conduct record will result.

For Those Who Offer Assistance

To encourage the community to offer help and assistance to others, Marian University pursues a policy of amnesty for minor violations when a party offer help to others in need. At the discretion of the Title IX Coordinator-504/ADA Compliance Officer amnesty may also be extended on a case-by-case basis to the person offering assistance. Educational options will be explored, but no conduct proceedings or conduct record will result.

For Those Who Report Serious Violations

Parties who are engaged in minor violations but who choose to bring related serious violations by others to the attention of the University are offered amnesty for their minor violations. Educational options will be explored, but no conduct proceedings or record will result.

Abuse of amnesty requests can result in a decision by the Title IX Coordinator-504/ADA Compliance Officer not to extend amnesty to the same person repeatedly.

Gatekeeping

No Title IX complaint will be pursued through the conduct review process unless there is reasonable cause to believe a code has been violated. Reasonable cause is defined as some credible information that supports the allegation that a code has been violated, even if that information is merely a credible witness or a reporting person's statement. A complaint wholly unsupported by any credible information will not be pursued. The Title IX Coordinator-504/ADA Compliance Officer or his/her designee determines if credible information standards have been met.

Notification

In order to proceed with a formal investigation, the reporting party must provide in writing:

- The name of the alleged harasser, if known.
- A description, with reasonable specificity, of the incident(s) of alleged harassment
- Including the date(s) and place(s) of such incident(s)

It must be in the reporter's own words and may not be authored by others, including family members, advisors, or attorneys.

Attached to this complaint should be a list of any sources of information that the reporting party believes may be relevant to the investigation. However, the filing of a complaint should not be delayed if such sources of information are unknown or unavailable.

This time and date of receipt of this report will be noted by the Title IX Coordinator.

When a complaint is brought by a third-party on behalf of a potential reporting party, the investigators will endeavor to meet with the person identified as the potential reporting party both to gather information and to discuss his/her/their interest in participating in an investigation.

Notice of a Formal Investigation Process

Once the Title IX Coordinator-504/ADA Compliance Officer determines that there is initial evidence to warrant an investigation of a possible policy violation, notice will be given to the party(s) involved. Notice will be in writing and may be delivered by one or more of the following methods: in person by the Title IX Coordinator-504/ADA Compliance Officer or his/her designee or a Campus Safety and Security officer; mailed to the local or permanent address of the party as indicated in official University records; or emailed to the party(s)'s University-issued email account. Once mailed, emailed and/or received in-person, such notice will be presumptively delivered, and the university will begin the investigation process immediately, including taking any interim measures (see definitions above) for the safety and security of all parties.

The letter of notice will:

1. Include the alleged violation of the Marian University Non-Discrimination Policy, and notification of where to locate the Sex or Sex Identity Discrimination Policy and University procedures for resolution of the complaint, details and with time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved, the specific section of the code of conduct allegedly violated, the precise conduct allegedly constituting the potential violation, and the date and location of the alleged incident;
2. Include the names of the investigators assigned to the review. If they believe the investigators may have a conflict of interest they are to include their objection to these investigators (see Recusal of an Investigator, or Appeal Panel below) assigned to the process in their response to the report.

The responding party will have one week in which to submit a written response to these allegations. It must be in their own words and may not be authored by others, including family members, advisors, or attorneys. It should include a statement of acceptance or denial of responsibility for violating the policy. It should also include a list of all sources of information (for example, witnesses, correspondence, records) that the responding party believes may be relevant to the investigation

This time and date of receipt of this responding report will be noted by the Title IX Coordinator-504/ADA Compliance Officer.

Recusal or Change of an Investigator or Title IX Official

An administrator or faculty member serving as an investigator or in any official capacity, such as the Title IX Coordinator-504/ADA Compliance Officer, may ask to recuse themselves from any conduct review process on the basis of actual or perceived bias. The investigator or official will not be asked to serve in a capacity in which they feel they would not be able to render a professional and ethical review of the party's case. The staff or faculty member filling this role will be asked to disclose any conflicts of interest they have with the party(ies) involved in the conduct review process and the Title IX Coordinator-504/ADA Compliance Officer will seek a new trained faculty or staff member to fill the role.

The party(ies) will be notified of each person filling any official role in the conduct review process. Notice will be in writing and may be delivered by one or more of the following methods: in person by the Title IX Coordinator-504/ADA Compliance Officer or a Campus Safety and Security officer; mailed to the local or permanent address of the party as indicated in official University records; or emailed to the party's University-issued email account. Once mailed, emailed and/or received in-person, such notice will be presumptively delivered. The party may request, in writing through United States or Campus post or university email, that a different review investigator or appeals panelist be selected to manage the process when s/he/they feel the person assigned cannot render a professional and ethical decision because of a conflict of interest. The party requesting the recusal must present evidence of a substantive conflict of interest. Substantive means that the conflict of interest would have an actual effect on the outcome of the review. He/she/they must submit their request for a new administrator or faculty in any role within two (2) days of being notified of investigator or panelist.

Examples of a substantive conflict of interest would include but are not limited to: being in a verifiable therapeutic, spiritual counseling, and/or healthcare provision role with the party; current or past role as an instructor with authority over grading and academic progression; financial relationships outside

of the university's interests, or familial ties. Examples of recusal requests that do not meet a substantive concern are, but not limited to: potential future conflicts, previous review process interactions with an administrator where there is no evidence of bias or bad faith; and social identity (race, religion, sex, gender) difference claims.

The Title IX Coordinator-504/ADA Compliance Officer will make the determination as to the validity of any challenge or need for recusal.

In the event of a recusal from any role, the Title IX Coordinator-504/ADA Compliance Officer will select a new trained administrator to fill that role. Both parties will be notified of the change and will be permitted to challenge the selection again following the same process.

Additionally, due to circumstances other than a conflict of interest, a change of investigator or official may be necessary. The parties will be notified the same as is detailed above.

Should a party assert that the Title IX Coordinator-504/ADA Compliance Officer may have a substantive conflict of interest, the party or the Title IX Coordinator-504/ADA Compliance Officer may recuse him/her/their self and the case will be managed by an executive administrator named by the President of the University.

Investigation

If a responding party agrees that s/he/they violated a code of conduct, there is no reason to continue an investigation and the investigators will move to the sanctioning part of the deliberation step.

In most instances where an investigation is required, the Title IX Coordinator-504/ADA Compliance Officer may assign multiple investigators to manage the investigation. Requests to have new investigators assigned must be made within two (2) business days and must be in writing either through United States or campus post or through university email. See recusal or change of investigators and officials above.

After both the reporting party and responding party have had the opportunity to request new investigators or there are no objections to investigators, then investigator(s) will take the following steps,

1. Initiate, if deemed necessary, interim measures on behalf of any reporting person beyond what may have already been implemented;
2. Commence a thorough, reliable, and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses and the responding and responding parties;
3. Interview all relevant witnesses and the responding party(ies), summarize the information they are able to share and have each sign the summary to authenticate its accuracy;
4. Obtain all documentary evidence and information that is available;
5. Obtain all physical evidence that is available.

Investigations should be managed and concluded with all due haste and should not exceed more than 90 days unless extenuating circumstances are present. The Title IX Coordinator-504/ADA Compliance Officer will determine if extenuating circumstances exist.

In the interest of fundamental fairness, the process requires the university to adhere to the following:

1. The name and title of the investigator(s) will be shared with the reporting and responding parties. Either party may request a recusal as outlined in section 3 above.
2. The reporting (and if applicable, responding) party(ies) will be encouraged to have an advocate through the process. The Title IX Coordinator-504/ADA Compliance Officer will work with either party to find one should either desire assistance. The parties have the right to ONE advocate of their own choosing, including attorneys. Typically, advocates are members of the campus community, but the parties may select whomever they wish to serve as their advocate. The advocate may not make a presentation or represent the party bringing the complaint or responding party during the investigation or conduct review process. He/she/they may confer quietly with his/her/their party, exchange notes, clarify procedural questions with the investigator(s), and suggest questions to their party.
3. Notice of the time, date, and location of the investigation interviews will be in writing and may be delivered by one or more of the following methods: in person by the assigned investigators or Campus Security Officer; mailed to the local or permanent address of the party as indicated in official University records; or emailed to the party's University-issued email account. Once mailed, emailed and/or received in-person, such notice will be presumptively delivered.
4. **For students:** The responding student will be notified that if s/he/they fails to engage with the process, the Director of Student Community Standards may initiate a complaint against the student for failure to comply with the directives of a Marian official and give notice of this violation. Unless the student responds to this notice within two (2) business days by answering the original notice, a conduct review process may be scheduled and held on the student's behalf. As a result, the student may be administratively withdrawn from attending classes or a disciplinary hold may be placed on their University account, making them ineligible to register for courses or Marian housing until such time as the student responds to the initial complaint.
5. The investigators will ensure that the investigation materials, which include all evidence, both parties' statements, and witnesses' statements, and any other available written documentation is shared with the responding and the reporting party (if applicable) for their review prior to entering the deliberation phase of the process.
6. Both parties have the right to question or challenge the reports of any statements or evidence presented. The investigators will present the questions or challenges to the provider of the statement or evidence. The responses will be shared with either the reporting or responding parties. They may again question or challenge the response. Spurious, unsubstantial, or retaliatory questions or challenges will be disregarded and not put to any party. Any party may challenge a determination that a question or challenge is spurious, unsubstantial, or retaliatory. The Title IX Coordinator-504/ADA Compliance Officer will review the challenge. Decisions made by the Coordinator are final.
7. Pertinent records, exhibits, and written statements may be accepted as information for consideration by the investigator(s). Formal rules of evidence are not observed. The Title IX Coordinator-504/ADA Compliance Officer may limit the number of character witnesses interviewed or character statements submitted.
8. Recordings will be made of all proceedings, with the interviewee's permission. Those recordings will be transcribed. In cases where the interviewee declines to be recorded, notes will be taken and then will be reviewed and validated as accurate by the interviewee.

Deliberations will not be recorded. All records are the property of the University and maintained according to the University's record retention policy.

9. Reporting and responding parties will be notified when the investigation stage is complete.

Deliberation

Deliberation is the stage where evidence is reviewed to determine if the responding party(ies) violated the policy, issue sanction(s) if applicable, or both. Parties who accepted responsibility immediately for violating the Marian University Non-Discrimination policy will have responses determined by the Title IX Coordinator-504/ADA Compliance Officer in consultation with the appropriate administrator within ten (10) business days of their initial meeting. Parties who denied responsibility for violating the policy have determinations made about their responsibility and potential sanctions by the investigator(s) assigned to the conduct review process within ten (10) business days of the investigation's conclusion. The investigator(s) will conclude their part of the process by writing an investigation report.

Standard of Evidence

The procedures will use the preponderance of evidence standard (i.e. it is more likely than not that sexual harassment or violence occurred).

Findings

The investigation report is composed after all interviews have been conducted, statements and evidence have been made available for challenge and if applicable, questioned and challenged, and statements authenticated by all parties. The investigator(s) deliberate and determine whether the responding party has violated the Marian University Non-Discrimination Policy using the standard of evidence described above.

There are three possible findings that can be reached:

- no violation of policy has occurred,
- a violation(s) of policy has occurred, or
- no finding (not enough evidence to reach a decision)

All investigators must agree on a finding prior to submitting the report. Once a finding is determined, if the responding party is found to be responsible for a policy violation, the investigator will determine the appropriate response(s). The investigator's report will include information detailing the finding, the information cited in support of the finding, and any information excluded from its consideration and why. This report should conclude with any sanctions. This report must be submitted to the Title IX Coordinator-504/ADA Compliance Officer within five (5) working days after the conclusion of the investigation.

If the party is found in violation(s), responses will be determined by the investigator(s) who will include responses, if applicable, in a notification letter. The investigator will also share the status of the investigation and the findings to the reporting party if there is one. Notification of findings and responses will be made in writing and may be delivered by one or more of the following methods: in person by the Title IX or Campus Safety Officer, mailed to the local or permanent address of the party as indicated in official University records; or emailed to the party's University-issued email account. Once mailed, emailed and/or received in-person, such notice will be presumptively delivered. The notification of findings will include the evidence that all parties submitted and was considered in the investigation. In cases of sexual misconduct and other crimes of violence, notice of the outcome will be delivered to all parties simultaneously, meaning without substantial delay between the notifications to each.

Once the responding party (and in cases where there is a reporting party) receives the investigation report, either party may:

1. accept the findings and responses if applicable;
2. accept the findings and responses in part and reject them in part;
3. or may reject all findings and/or responses.

If the responding or reporting party rejects in full or in part any finding or sanction, either party may appeal the decision following the appeal processes described below.

Notification of Outcomes

As allowed by Family Education Rights and Privacy Act (FERPA), when a student is accused of a policy violation that would constitute a "crime of violence" or forcible or non-forcible sex offense, the University will inform the alleged victim/party bringing the complaint in writing of the final results of a conduct review process regardless of whether the University concludes that a violation was committed. Such release of information may only include the alleged student's/responding student's name, the violation committed, and the responses assigned (if applicable). In cases of sexual misconduct and other offenses covered by Title IX, only, the rationale for the outcome will also be shared with all parties to the complaint in addition to the finding and sanction(s).

In cases where the University determines through the student conduct process that a student violated a policy that would constitute a "crime of violence" or non-forcible sex offense, the University may also release the above information publicly and/or to any third party. FERPA defines "crimes of violence" to include forcible sex offences and non-forcible sex offenses.

Appeals

Appeals are available to both the reporting party and the responding party through the appropriate appeals process. The appeal will be reviewed by the Title IX Coordinator-504/ADA Compliance Officer to determine if the appeal meets the established grounds for appeal. Appeals must be submitted to the Title IX Coordinator-504/ADA Compliance Officer within two (2) business days of notification of findings. The grounds for appeal are defined as:

- A procedural error occurred that significantly impacted the outcome of the investigation (e.g. substantiated bias, material deviation from established procedures, etc.);
- To consider new evidence, unavailable during the investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included; and
- The sanctions imposed are substantially outside the parameters or guidelines set by Marian University for this type of offense or the cumulative conduct record of the responding individual.

Appeals are managed through the appropriate university channels:

- Student appeals are managed by the Director of Human Resources/Deputy Title IX Coordinator.
- Faculty and staff appeals are managed by the Dean of Students/Deputy Title IX Coordinator.

Sanctions/Responses from the University

Students who violate this policy are subject to the university's full range of sanctions which may range from a warning for less severe offenses to expulsion for very severe cases, such as but not limited to, sexual misconduct – non-consensual sexual intercourse. The list of sanctions is listed in the Student Code of Conduct.

Faculty and staff who violated this policy are subject to the corrective action processes as listed in the Employee and Faculty Handbooks which may range from a warning for less severe offenses to termination of employment for very severe cases such as, but not limited to, sexual misconduct – non-consensual sexual intercourse.

Hostile Environment

The university has a responsibility to address and remediate harms from harassment and discriminatory behaviors beyond addressing the behaviors of the individual. As such, mediation (where appropriate), educational programming, counseling services, community harms reduction programming, and referrals to other community resources will be offered to address the harms caused community areas where harassment and discrimination have occurred.

The University reserves the right to alleviate the effects of hostile environments through a Stay Away Order (SAO), which is also sometimes referred to as a No Contact Order. This order prohibits contact between parties when there exists a reasonable concern that physical or psychological harm may result from such contact. In sexual misconduct cases that involve sexual harassment, sexual assault, dating and domestic violence, and stalking, any Title IX Coordinator-504/ADA Compliance Officer or Deputy Coordinator should be contacted and will assist in determining if any immediate action is needed such as an interim suspension or a Stay Away Order.

Both the Reporting Party and the Responding Party may request a Title IX Coordinator-504/ADA Compliance Officer or Deputy Coordinator to invoke a SAO. The Coordinator will entertain the request and decide on the merits of the request. A SAO requires that both parties refrain from contacting the other party through any means (e.g. fact-to-face, in writing, through friends or other persons, electronically). A SAO will stay in effect until such time as both parties are officially notified in writing that the SAO has been terminated. Violations of the SAO will be considered a form of retaliation (see above).

If neither party request a SAO, the Title IX Coordinator-504/ADA Compliance Officer reserves the right to invoke a SAO if the Coordinator feels that it is in the best interest of either party or the University community as a whole.

Additionally, for the safety of either or both individuals and/or the University community as a whole, the Title IX Coordinator-504/ADA Compliance Officer may decide that one or both parties may need to be moved to other accommodations if they both are residents of the same university residence. The Title IX Coordinator-504/ADA Compliance Officer may also determine that one or both parties will be reassigned to another class or find equitable accommodation if a classroom environment is determined to be hostile.

Advocates*

Marian University allows any party involved in the investigation of an allegation of violating this policy to have an advocate present during any part of the process. An advocate is any one person who any person in the investigation process would like to have present with him or her throughout any part of the process. While this person may be an attorney, the role does not have the same powers of attorney. The university does train faculty and staff members to act as advocates and can help any person who seeks an advocate to find one. Although any party may choose to have an advocate from outside the university community, the university will not train that person in advocacy.

Marian University will not adjust any scheduling of part of the process for an advocate to attend. The advocate must adjust his/her schedule to attend any meetings.

Marian University cannot guarantee equal advocacy. Advocates are chosen by each party, although an advocate may be offered from an internal pool, and therefore the training of external advocates selected by either individual is outside the control of the institution. The university will not make recommendations on obtaining an attorney, nor will it pay for one for either party.

All advocates are subject to the same campus rules, whether they are attorneys or not. Advocates may not address campus officials in a meeting or interview unless invited to do so. Advocates may confer quietly with their advisees as necessary, as long as they do not disrupt the process. For longer or more involved discussions, the parties and their advocate should ask for breaks or step out of meetings to allow for private conversation.

If requested, advocates may be given an opportunity to meet in advance of any interview or meeting with the administrative officials or investigators conducting that interview or meeting. This pre-meeting will allow advocate to clarify any questions they may have and allows the University an opportunity to clarify the role the advocate is expected to take. The parties to the hearing are expected to ask and respond to questions on their own behalf, without representation by their advocate.

Advocates are expected to refrain from interference with the University investigation and resolution. Any advocate who steps out of their role in any meeting under the campus resolution process will be warned once and only once. If the advocate continues to disrupt or otherwise fails to respect the limits of the advocate role, the advocate will be asked to leave the meeting. When an advocate is removed from a meeting, that meeting will typically continue without the advocate present. Subsequently, the Title IX Coordinator-504/ADA Compliance Officer (or designee) will determine whether the advocate may be reinstated, may be replaced by a different advocate, or whether the party will forfeit the right to an advocate for the remainder of the process.

Individuals may change their advocate provided they inform the Title IX Coordinator-504/ADA Compliance Officer (or designee) in writing 2 business days before any meeting or interview where the new advocate will be present.

*Adapted with gratitude from Concordia University's Title IX policy.

This policy was adopted on October 17, 2018 by the Marian University Board of Trustees

Addendum A - Administration

ADA/504 Coordinator

Kathleen Candee, Vice President for Student Engagement

Room A108

kcandee@marianuniversity.edu

Phone: 920-923-8727

Title IX Coordinators

Title IX Coordinator-504/ADA Compliance Officer

Kathleen Candee, Vice President for Student Engagement

Room A108

kcandee@marianuniversity.edu

Phone: 920-923-8727

Deputy Title IX Coordinators

Paul Krikau, Dean of Students

HSC 04 - Student Life

pwkrikau25@marianuniversity.edu

Phone: 920-923-7621

Sabrina Johnson, Director of Human Resources

18 S. National

sjohnson41@marianuniversity.edu

Phone: 920-923-8082

Addendum B – Title IX and Campus SAVE Act Working Group

Campus SAVE Working Group Members

Kathleen Candee	Vice President for Student Engagement	Title IX Coordinator-504/ADA Compliance Officer	KCandee@marianuniversity.edu	920-923-8727	Administration 110
Paul Krikau	Dean of Students	Investigator, Deputy Title IX Coordinator	Pwkrikau25@marianuniversity.edu	920-923-7621	HSC 04
Sabrina Johnson	Director of Human Resources	Investigator, Deputy Title IX Coordinator	sjjohnson41@marianuniversity.edu	920-923-8082	18 S. National
Jason Bartelt	Director of Athletics	Advisory board member	JBartelt@marianuniversity.edu	920-923-8090	60 S. National
Jeneise Briggs	Special Assistant to the President for Diversity and Inclusion	Advisory board member	jsbriggs26@marianuniversity.edu	920-923-8577	Stayer 306
Bryan Brown	Coordinator of Campus Safety and Security	Advisory board member	btbrown17@marianuniversity.edu	920-923-8954	HSC 06
Sean Fitzpatrick	Assistant Professor	Advisory board member	sjfitzpatrick02@marianuniversity.edu	920-923-7677	Regina 221
Denise Harmsen	Director of Student Community Standards	Investigator, Advisory board member	DHarmsen@marianuniversity.edu	920-923-8530	HSC 03
Severa Krueger	Director of Residence Life	Outreach and programming, Advisory board member	smkrueger36@marianuniversity.edu	920-923-8091	HSC 01
Christina Kubasta	Associate Professor	Advisory board member	cckubasta60@marianuniversity.edu	920-923-8792	Regina 206
Kathy Redig	Secretary, Athletics	Advisory board member	KRedig@marianuniversity.edu	920-923-8156	60 S. National
Kim Sorensen	Athletic Trainer, Senior Women's	Advisory board member	kasorensen61@marianuniversity.edu	920-923-8754	Gymnasium 208

	Administrator Athletics				
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Addendum C – On Campus Resources and Confidential Individuals

Coordinator Campus Safety & Security	Bryan Brown	btbrown17@marianuniversity.edu	920-923-8954	HSC 06
Dean of Students	Paul Krikau	Pwkrikau25@marianuniversity.edu	920-923-8761	HSC 04
Director, Counseling Services	Robyn Williams	rawilliams61@marianuniversity.edu	920-923-8112	Regina 012
Counselor, Working Family Program	Sr. Deb Walter	DWalter@marianuniversity.edu	920-923-2114	Stayer 130
Director, Health Services	Jodi Schrauth	jsschrauth11@marianuniversity.edu	920-923- 7615	Regina 011
Director, Student Community Standards	Denise Harmsen	dharmsen@marianuniversity.edu	920-923-8940	HSC 03
Director, Campus Ministry	Sr. Edie Crews	eacrews27@marianuniversity.edu	920-923-7624	Campus Ministry
Director, Residence Life	Severa Krueger	smkrueger36@marianuniversity.edu	920-923-8091	HSC 01

Addendum D – Off Campus Resources

Fond du Lac Police Department (call 911 in an emergency) at 920-322-3700

ASTOP at 920-926-5395 or 800-418-0270 (Assist Survivors Treatment Outreach Prevention); Website:
<http://astop.org>

FDL County Crisis Intervention (24 hours) at 920-929-3535

RAINN at 800-656-4673 (Rape Abuse and Incest National Network)

Solutions Center (Domestic Violence & Homelessness) 920-923-1700

St. Agnes Hospital Behavior Health Services Outpatient at 920-926-4353

St. Agnes Hospital Emergency Department at 920-926-4600

St. Agnes Hospital Convenient Care at 920-926-8492

EZ Care Clinic 920-926-8700

Revised 10-16-2018