

ANDREWS UNIVERSITY



Sexual Misconduct, Domestic Violence, Dating Violence, and Stalking Policy and Resources

Revised August 2016

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Introduction

Andrews University is committed to maintaining a respectful learning and living environment that is free from sexual misconduct, domestic violence, dating violence, and stalking. Acts of sexual misconduct, domestic violence, dating violence, and stalking in any form, regardless of the length of the relationship or gender of the individuals, are inconsistent with this commitment, strictly prohibited and intolerable in the Andrews community. All members of the Andrews University community share a responsibility for upholding this policy.

This policy also addresses Andrews University's responsibilities regarding Title IX and the Violence Against Women Reauthorization Act of 2013: Sec 304. Title IX of the Educational Amendments of 1972 prohibits discrimination from educational programs and activities on the basis of sex (gender) in educational programs and activities that receive federal assistance. The Violence Against Women Reauthorization Act expects that universities have procedures in place to respond to matters of sexual misconduct, domestic and dating violence, and stalking (collectively, misconduct).

Jurisdiction

This policy covers sexual misconduct directed at a student by another University student, staff or faculty regardless of whether the alleged misconduct occurred on- or off-campus or in online communications. On-Campus: All on-campus violations are deemed to pose a disruption or threat to the educational environment. The campus includes the geographic confines of the University, including its land, roads and buildings, Andrews Academy, Ruth Murdoch Elementary School and University housing.

Off-Campus: Off-campus violations may pose a disruption or threat to the educational environment. Examples of misconduct that may fall within the University's clear and distinct interest include conduct that:

- Occurs in a private home or location
- Occurs during a University-sponsored event (e.g., field trips, social or educational functions, University-related travel, student recruitment activities, internships and service learning experiences)
- Occurs during a Study Abroad Program or other off-campus educational program

Online: Sexual misconduct on the Internet can occur in a variety of forums. Some of these mediums include, but are not limited to, chat rooms, forums/message boards, social networking sites, instant messaging, email, avatars, advertising, redirected/automatic linking, spam and pop-ups.

In instances where misconduct is found to have occurred, the Title IX Coordinator, Deputy Coordinator(s) and other University personnel will take appropriate steps to end such misconduct, prevent its recurrence and remedy its effects.

DEFINITIONS

Sexual Misconduct

Sexual misconduct is any sexual penetration, sexual contact, sexual exploitation or sexual harassment that occurs without the effective consent of all individuals involved.

Non-Consensual Sexual Penetration

Non-consensual sexual penetration is any sexual penetration (vaginal, anal or oral), however slight, with any object or part of the body, with another person without that person's effective consent.

Non-Consensual Sexual Contact

Non-consensual sexual contact is any intentional sexual touching, however slight, with any object or part of the body, with another person without that person's effective consent.

Effective Consent

- Effective consent is informed and freely and actively given.
- Effective consent cannot result from force, threat, intimidation, coercion or incapacitation.
- Effective consent cannot be given by minors, mentally disabled individuals, or individuals who are mentally or physically incapacitated (such as by alcohol or other drug use, etc.)—see below.
- Consent can be communicated by word or action and must be mutually understandable.
- Consent to one form of sexual activity does not imply consent to other forms of sexual activity.
- Consent at one time does not imply consent to another time.

Incapacitation

When incapacitated, an individual lacks the physical and/or mental ability to make informed, rational judgments (e.g., to understand the "who, what, when, where, why or how" of their sexual interactions) and thus cannot give effective consent to sexual activity. Incapacitation may be temporary or permanent and result from mental disability as well as states including, but not limited to, sleep, unconsciousness, blackouts resulting in memory loss, etc. Incapacitation may also occur in persons who, as a result of alcohol or drug use, **appear to be functional or coherent but still may not be able to make a rational decision or give effective consent**. Individuals who consent to sex must be able to understand what they are doing. Keep in mind that under this policy, "no" always means "no," but "yes" may not always mean "yes."

The impact of consuming alcohol or drugs will vary from person to person. Evaluating incapacitation due to the use of substances requires an assessment of each individual. Warning signs that a person may be approaching incapacitation may include slurred speech, vomiting, unsteady gait, odor of alcohol, combativeness, emotional volatility, etc.

Because incapacitation may be difficult to discern, especially where alcohol and drugs are involved, students are strongly encouraged to err on the side of caution; when in doubt, assume the other person is incapacitated and therefore unable to give effective consent. Being intoxicated or impaired by drugs or alcohol is not a defense to a charge of sexual misconduct.

In evaluating effective consent in cases of alleged incapacitation, the University asks two questions: (1) *did the accused know that the other party was incapacitated*? and (2) *if not, would a sober, reasonable person in the same situation have known that the other party was incapacitated*? If the answer to either of these questions is "YES," effective consent was absent and the conduct by the accused is likely a violation of this policy.

Sexual Exploitation

Sexual exploitation is taking advantage of another person without effective consent. It includes, but is not limited to, the following: causing the prostitution of another person; electronically recording, photographing or transmitting intimate or sexual utterances, acts, sounds or images of another person; allowing third parties to observe sexual acts; engaging in voyeurism; distributing intimate or sexual information about another person; conduct that intentionally exposes a person's private body parts to others; or knowingly having a sexually transmitted infection (including HIV) and failing to inform a sexual partner prior to engaging in sexual activity.

Sexual Harassment

Unlawful sexual harassment may take one of three forms: (1) quid pro quo harassment, (2) hostile environment harassment or (3) retaliatory harassment.

Quid pro quo harassment typically involves an exchange of sexual favors for some benefit, and it most often occurs where there is a power differential (e.g., professor and student or boss and employee).

Hostile environment harassment can occur when conduct is so objectively offensive and sufficiently severe, or persistent or pervasive, that it unreasonably interferes with or limits an individual's ability to participate in or benefit from the educational environment. An isolated incident, unless sufficiently severe, does not amount to hostile environment harassment.

Retaliatory harassment is any adverse action taken against a person participating in an investigation of sexual misconduct. Adverse actions may include name-calling, taunting or other threatening behavior. Retaliation against an individual for alleging sexual misconduct, supporting a party bringing a complaint, or assisting in providing information relevant to a claim of sexual misconduct is a serious violation of University policy and will be treated as another possible instance of sexual misconduct.

The following is a non-exhaustive set of behaviors which may constitute sexual harassment:

- Unwelcome sexual advances, propositions or requests for sexual favors
- Unwelcome or inappropriate exposure, display, touching or physical contact
- Showing/displaying sexually suggestive, demeaning or objectifying objects, pictures, words or gestures
- Unwelcome or inappropriate comments, questions or sexually suggestive jokes

Other unwanted verbal, written, visual, online or physical conduct of a sexual nature may constitute sexual harassment when:

- Submission to or rejection of such conduct is made either explicitly or implicitly as a term or condition of an individual's education or employment progress, development or performance
- Such conduct has the purpose or effect of unreasonably interfering with an individual's ability to carry out his or her responsibilities in the University environment

Stalking

Stalking is engaging in a course of conduct directed at a specific person(s) that is unwelcomed and would cause a reasonable person to (a) fear for his or her safety or the safety of others or (b) suffer substantial emotional distress. Stalking behaviors include, but are not limited to, the following:

- Non-consensual or unwelcomed communication, including face-to-face, phone calls, voice messages, electronic mail, online communication, written letters, etc.
- Excessive calling or texting
- Threatening, intrusive, frightening or obscene gestures
- Following or pursuing
- Surveillance or other types of observation
- Trespassing
- Vandalism or destruction of victim's property
- Non-consensual touching
- Unwelcomed gifts, flowers, etc.

Stalking is an insidious form of harassment that may initially be dismissed as harmless yet can dramatically impact the life of the person stalked and pose both physical and psychological risks.

All concerns about stalking should be taken seriously, whether or not there appears to be a level of threat and whether or not the stalker is known by the victim.

Relationship Violence

Relationship violence is a pattern of unwelcomed, abusive, coercive behaviors used to exert power and control over a current or former partner. These behaviors often increase in severity and frequency over time and may be cyclical. For the purposes of this policy, relationship violence includes domestic violence and dating violence.

Domestic Violence

Violence or abusive acts committed by a current or former spouse or intimate partner to the victim by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to the victim as defined by the laws of Michigan.

Dating Violence

Violence or abusive acts committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be based on a consideration of the length of the relationship, the type of the relationship and the frequency of interaction between the persons involved in the relationship.

Domestic or dating violence includes, but is not limited to, the following:

- Physical abuse
- Pushing, shoving, slapping, punching, kicking or strangling
- Restraining, holding, tying down

- Leaving the victim in a dangerous place
- Emotional/psychological abuse
- Threats of harm and/or intimidation
- Physical or social isolation
- Sexual abuse or misconduct

Complainant

A complainant is anyone who reports an incident or may be the victim of misconduct covered by this policy.

Accused

The accused is anyone who is reported and alleged to have engaged in misconduct covered by this policy.

REMINDERS AND RESOURCES

Preservation of Evidence and Medical Assistance

Victims of sexual misconduct are reminded of the importance of taking every precaution to preserve all evidence and to abstain from tampering with any items at the scene, changing clothes or washing any area of their body. Under some circumstances, victims should seek immediate medical attention before washing themselves or clothing. If clothes have been removed, place each item separately in *paper* bags. Complainants should preserve all phone call logs, emails, text messages, online communication and other evidence that is relevant to the specific complaint.

Medical assistance can be sought from any emergency room, such as the one located at Lakeland Medical Center, St. Joseph, Michigan. Sexual assault victims may request financial assistance for hospital exam costs. Contact Michigan Crime Victim Services Commission for more information (517-333-SAFE).

In addition to the collection of evidence, hospital staff is able to check for other potential injuries and respond to the potential of pregnancy and sexually transmitted diseases.



Confidentiality, Counseling and Support

The University will seek to be sensitive, supportive and respectful to all involved individuals. The University will also seek to take reasonable steps to maintain appropriate levels of confidentiality and will refrain from including in public available records the identity of the complainant. Although the University will attempt to limit the number of individuals who may learn about an allegation of misconduct, the University cannot guarantee confidentiality in all matters. To comply with certain federal laws, the University is required to report statistics regarding misconduct on its campus. Recordkeeping for this statistical report will be accomplished without the inclusion of identifying information about the complainant or witnesses to the extent permissible by law.

Counselors, pastors and chaplains have confidentiality obligations that prohibit them from reporting and activating established University processes; therefore, while these individuals are able to provide confidentiality and important support for victims, they are not the designated individuals to whom formal or informal reports should be given (see next page). Victims of sexual misconduct, domestic violence, dating violence, and stalking are encouraged to seek the assistance of trained counselors and support systems. On-campus services include:

- Andrews University's Counseling & Testing Center (located in Bell Hall, 269-471-3470)
- Chaplains (located in the Campus Center, 269-471-3211)
- Academic support services (located at the Student Success Center in Nethery Hall, 269-471-6096)

Community services provided off-campus include:

- Samaritan Counseling Center, 1850 Colfax, Benton Harbor, Michigan (269-926-6199)
- Berrien County Child & Family Services/ Safe Shelter (for women and children), PO Box 8820, Benton Harbor, Michigan 49023-8820 (phone: 269-925-1725/269-925-9500, crisis: 888-983-4275/269-925-9500), cfsswmi.org/our-programs/safe-shelter. html

- Michigan Crime Victim Services Commission, 201 S. Townsend, PO Box 30195, Lansing, Michigan 48933 (877-251-7373 for victims only or 517-373-7373)
- Rape, Abuse and Incest National Network (1-800-656-4673)
- Cass/St. Joseph County Domestic & Sexual Abuse Services, PO Box 402, Three Rivers, Michigan 49093 (phone: 269-279-5122, crisis: 800-828-2023), dasasmi.org
- S-O-S of the Family Justice Center, 533 North Niles Avenue, South Bend, Indiana 46617 (574-234-6900), Info@ficsic.org
- The National Domestic Violence Hotline (1-800-799-SAFE)

INITIATING A COMPLAINT

The University encourages complainants and witnesses to report any violations of this policy to an appropriate University official. Reports are what give the University the opportunity to investigate and address any violations; they also provide the University with an opportunity to ensure that appropriate care and resources are provided for both the victim or complainant and the accused. At the same time, before a complainant reveals information (name of the accused, details, etc.), they should understand that only professional counselors, pastors and chaplains are able to retain confidentiality, and all other faculty and staff are required to notify the designated University officials.

Designated University Officials

Frances Faehner, vice president for Campus & Student Life, is the Title IX Coordinator for Andrews University (269-471-2679).

Inquiries and sex-based complaints including sexual misconduct, domestic violence, dating violence, and stalking should be referred to designated University officials as follows:

Student Complaints Regarding Another Student

Title IX Deputy Coordinator for students, R. Deborah Weithers, dean for Student Life (269-471-6684)

Student Life deans (269-471-3215)

Residence hall deans (269-471-3446, 269-471-3390 or 269-471-3360)

Office of Campus Safety (269-471-3321)

Student Reports Regarding Faculty or Staff

Title IX Deputy Coordinator for faculty or staff, Dennis Waite (269-208-2532)

Office of Human Resources (269-471-3302)

Office of Campus Safety (269-471-3321)

Local Law Enforcement

Sexual misconduct, domestic violence, dating violence, and stalking may also be criminal. Complainants may wish to inform local law enforcement agencies; upon a complainant's request, the University will assist in making the connection between a complainant and an appropriate law enforcement agency. In Berrien Springs, the local police department can be reached at 269-471-2813. In an emergency, call 911. Complainants also have the right to decline to make a formal report to law enforcement and campus authorities.

THE UNIVERSITY'S PROCESSES AND RESPONSE

The University will take seriously all good faith reports of alleged sexual misconduct, domestic violence, dating violence, and stalking. University proceedings will seek to provide a prompt, fair and impartial consultation, investigation and response by officials who receive annual training.

Because the University recognizes that such misconduct includes an attack on an individual's dignity and self-determination rights, the University will attempt to let complainants select the process for addressing their allegations. In general, there are two main paths for addressing sexual misconduct: (1) an informal consultation pertaining to possible misconduct and (2) a formal complaint of alleged misconduct. The University will attempt to balance the complainant's request with the moral responsibility and federal guidelines to create a safe and nondiscriminatory environment. Ultimately, and especially in cases that involve pattern, predation, threats or violence, the University reserves the right to proceed in whatever manner it deems appropriate.

Informal Consultations

- If the complainant desires an informal consultation, he/she should consult with one of the designated University officials listed previously for the purpose of exploring whether or not to submit a formal complaint.
- The complainant may be reluctant to identify the accused; however, this will limit the University's ability to investigate and respond.
- The complainant may request the University to address the situation through various interim measures, informal meetings or conversations for the purpose of providing information or support or to create separation, etc. The University will seriously consider any such request.

Formal Complaint Process

- If a student desires to make a formal report of alleged misconduct, the complaint should be submitted to the appropriate Title IX Deputy Coordinator as listed above.
- The formal complaint should contain, at a minimum, a concise written statement of the alleged violation and a detailed statement of the facts supporting the allegation as well as the names of any witnesses.
- The appropriate Title IX Deputy Coordinators will review the formal complaint and/ or meet separately with the complainant and the accused to receive their formal

statements and the names of any witnesses, review University policy and processes as well as identify support systems.

The Title IX and Title IX Deputy Coordinators will assess whether the allegation(s), if true, would rise to the level of misconduct to activate a formal Title IX investigation under this policy. If it is determined that a Title IX investigation is not the appropriate course of action, the complainant will be notified. In some cases where the accused is a student, the Title IX Coordinator may refer the case directly to the Student Life Deans Council to be reviewed for a general violation of the Code of Student Conduct.

Investigation and Review

- The director of Campus Safety is generally appointed to lead the investigation and is usually assisted by the appropriate Title IX Deputy Coordinator for students or the Title IX Deputy Coordinator for faculty/staff.
- The investigation will follow established practices and will follow the trail of evidence for the purpose of fact finding and determining if there is a "preponderance of evidence" that the alleged misconduct (more likely than not) occurred.
- The investigator(s) will meet with the complainant and the accused, as well as with other witnesses, and review texts, emails, communications and other documentary evidence to gather facts.
- A summary of the investigative report will be provided both to the complainant and to the accused. Both parties will have the opportunity to review the report and to provide a written response to the investigative summary report if desired. In addition, both parties will have the opportunity to present questions they would like to be addressed to the other party before a final determination is made.
- The investigative report and recommended findings are provided to the Title IX Coordinator as well as to the assistant vice president for Campus & Student Life (where the accused is a student) and to the appointed administrative panel (where the accused is a faculty or staff).

University Response for Student Conduct Processes

- In sexual misconduct processes, the Student Life Deans Council is chaired by the assistant vice president for Campus & Student Life and convenes to review the evidence and to meet with the investigators as needed.
- Both the complainant and the accused will have the same opportunity to have formal and separate hearings as part of the investigative process and/or with the Student Life Deans Council.
- The Student Life Deans Council will deliberate using the "preponderance of evidence" standard of proof to determine whether "more likely than not" the accused student is responsible or not responsible for committing sexual misconduct as outlined in this policy. Please note, as Title IX federal law requires for educational institutions, this is a lesser standard of proof than the "beyond a reasonable doubt" standard used in the criminal justice system.
- A finding by the Student Life Deans Council that the responding student is "not responsible" does not necessarily mean the alleged misconduct did not happen, rather it may mean that there was insufficient evidence to reach a finding of responsibility.
- Any student who is found responsible for misconduct defined in this policy will be subject to disciplinary action that includes, but is not limited to, verbal counsel, written warning, probation, suspension, dismissal, mandatory education and other remedies the University deems appropriate.
- The Student Life Deans Council reserves the right to determine what type of disciplinary response is appropriate for the level of misconduct as well as to broaden or lessen the responses relative to the severity, persistence or pervasiveness of the behavior. Mitigating or aggravating circumstances, if they exist, may be considered, such as any previous or additional Code of Student Conduct violations.

• The general range of recommended responses is as follows:

Non-Consensual Sexual Penetration Any student found responsible for nonconsensual sexual penetration will likely receive a disciplinary response ranging from suspension to dismissal, depending on the severity of the incident.

Non-Consensual Sexual Contact Any student found responsible for non-consensual sexual contact will likely receive a disciplinary response ranging from probation to dismissal, depending on the severity of the incident.

Sexual Exploitation or Harassment Any student found responsible for sexual exploitation or harassment will likely receive a disciplinary response ranging from warning to dismissal, depending on the severity of the incident.

Domestic Violence, Dating Violence or Stalking

Any student found responsible for domestic violence, dating violence or stalking will likely receive a disciplinary response ranging from warning to dismissal, depending on the severity of the incident.

University Response for Faculty or Staff Conduct Processes

- The evidence developed during the investigation will be reviewed by an appointed administrative panel that includes the University's Human Resources director, the University provost, and one to two senior administrators.
- The appointed administrative panel will deliberate using the "preponderance of evidence" standard of proof to determine if the accused faculty or staff is "more likely than not" found responsible or not responsible for misconduct outlined in this policy.
- If the faculty or staff member is found responsible, the administrative panel will determine an appropriate disciplinary

response for the level of misconduct.

 The right to an appeal and related processes will be as specified in the grievance processes outlined in the University's working policies.

Amnesty, Bystander Engagement and Good Faith Reports

The welfare of students in our community is of paramount importance. The University wants to facilitate a safe and caring campus climate for all good faith reports of sexual misconduct, domestic and dating violence, and stalking. The University believes that bystanders (peers nearby) can play a key role in the prevention of misconduct. Thus the University encourages students to offer help to others in need.

In an effort to remove fears and obstacles to reporting, the University does not typically apply disciplinary action to victims or witnesses of misconduct who, in the process of helping and making a report, voluntarily report their own violation(s) of the Code of Student Conduct (such as alcohol consumption, curfew violations, etc.) related to the specific reported incident. This is reflective of the established voluntary referral processes outlined in the Substance Abuse section of the "Student Handbook" (see bulletin. andrews.edu > Student Handbook > Substance Abuse). To foster healing and growth, complainants and witnesses making good faith reports may be asked to engage in educational opportunities.

False Complaints

The University also prohibits an individual from knowingly filing a false complaint or making misrepresentations of sexual misconduct (including sexual assault and sexual harassment). However, a complaint made in good faith is not considered false merely because the evidence does not ultimately support the allegation of sexual misconduct. Acts of knowingly filing false complaints are, by themselves, cause for disciplinary action.

ADDITIONAL INFORMATION AND RIGHTS

The Counseling & Testing Center and the Student Life office provide awareness, prevention and risk reduction programs dealing with sexual misconduct, domestic violence, dating violence, and stalking. On an annual basis education is provided to new students and employees, and ongoing programs are provided periodically for the wider student body and University employees. Professional counseling and support services, as well as educational materials and information, are available for all students at the Counseling & Testing Center in Bell Hall.

- Resources—Both the complainant and the accused have the right to be notified of available resources. These resources may include chaplains, counselors at the Counseling & Testing Center, as well as community providers listed previously.
- Account of events—Both the complainant and the accused have the right to the same opportunities to present their account of events.
- Advocate—Both the complainant and the accused have the right to have a designated advocate of their choice to assist them, advise them and be present with them throughout the process. Advocates should be selected from within the University's faculty or staff, as long as they are not a relative of the parties involved. Advocates may accompany the student to any University proceedings. The advocate may not direct questions to or otherwise address the investigative team or Student Life Deans Council, however the advocate may consult with the student that they are assisting.
- Legal counsel—Both the complainant and the accused may elect to seek counsel from an attorney at their own expense; however, in accordance with all University disciplinary processes, attorneys are not permitted to speak or otherwise participate in University proceedings including the Student Life Deans Council hearing.
- Notification of outcome—Both the complainant and the accused have the right to be informed of the outcome, in writing,

without undue delay between the notifications to the parties, and usually within one business day of the end of the process.

- Appeal—Both the complainant and the accused have the same opportunity for consideration to appeal the outcome of complaints of misconduct and of any disciplinary actions. The limited grounds on which the University will consider granting an appeal are one or more of the following:
 - New Information of a Substantive Nature: New and relevant information that was not available at the time the decision was made that could have significantly impacted the findings or the outcome
 - Substantive Procedure Error: The original processes had a significant or relevant procedural error that may have impacted fundamental fairness
 - 3. Substantive Disproportionate Response: The University response was clearly disproportionate to the established range of consequences for the violation

Please see the Appeal Process as outlined in the "Student Handbook" (see bulletin. andrews.edu > Student Handbook > Student Conduct Intervention (Disciplinary) Processes).

- Accommodations—Any complainant of misconduct may request accommodations in academic or work settings, changes in living situations, "no contact" orders or other support systems designed to help the student cope with the situation and meet their responsibilities. Requests are not "guaranteed," but the University will consider carefully any such requests.
- Interim measures—The University may also consider other appropriate interim measures including, but not limited to, housing and class reassignments, "no contact" orders, restrictions on academic or co-curricular activities, campus ban, etc., to facilitate the emotional and physical wellbeing of the parties involved, the

broader community and/or the integrity of the investigative and resolution process. Interim measures are for a provisional period of time pending the outcome of an investigation or until a specified condition is met. This action does not assume the accused has been found responsible for the alleged misconduct.

- "No contact" order—Once a "no contact" order has been issued, the accused should not attempt in any way to contact or send a message to the complainant, and the complainant should not attempt in any way to contact or send a message to the accused.
- If the complainant or alleged victim is deceased as a result of such offense, the next of kin of such victim shall be treated as the accuser or alleged victim to receive information regarding the outcome or disciplinary disposition.

Duration of University Processes

- If a criminal complaint has been lodged with local law enforcement by the complainant, the University's investigation may be delayed temporarily, as requested by the criminal investigators. The University, however, may not wait on the outcome of the criminal processes and has a responsibility to begin its own investigation and to take any necessary interim protective measures.
- A typical investigation and response from the University may take up to 60 calendar days after the University has received notice of the misconduct. The timeframe may be extended for good cause such as University breaks, etc.

REGISTERED SEX OFFENDER POLICY STATEMENT

Information regarding registered sex offenders is provided by the State of Michigan to the public as well as the campus community and can be reviewed at mipsor.state.mi.us.



Seek Knowledge. Affirm Faith. Change the World.