



ANDREWS UNIVERSITY



## **TITLE IX POLICY AND RESOURCES:**

Sexual Misconduct,  
Relationship Violence,  
Stalking, and  
Discrimination Based  
on Sex/Gender

*Revised August 2019*

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Andrews University recognizes that God has created every individual, male and female, equal in His image and endowed with unique value.

As Creator and Redeemer, He calls us with loving grace and empowers us to give each of His children the utmost respect in speech and action and to expect the same from others.

## Introduction

Andrews University is committed to maintaining a respectful learning and living environment that is free from sexual misconduct, relationship violence, stalking, and discrimination based on sex (collectively, “Misconduct”). Misconduct in any form, regardless of the length of the relationship or gender of the individuals, is 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.

Any student who is found responsible for committing Misconduct is in violation of the Code of Student Conduct. Any faculty or staff who is found responsible for committing Misconduct is in violation of the University’s “Working Policy” and “Employee Handbook,” as applicable.

This policy complies with 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, relationship violence, and stalking.

## Jurisdiction

This policy governs Misconduct directed at a student, faculty or staff by another University student, faculty or staff; non-employee client; vendor; or visitor, regardless of whether the alleged Misconduct occurred on- or off-campus or in online communications. The University will generally respond to Misconduct involving faculty and/or staff according to these processes, understanding that cases involving only faculty and/or staff also fall under Title VII and, as such, are handled primarily by the Office of Human Resources.

**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, 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
- Involves students enrolled in the University’s School of Distance Education & International Partnerships or other off-campus educational programs.

**Online:** 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 action, up to and including separation from the University with the goal to end such Misconduct, prevent its recurrence and remedy its effects. Third parties who engage in Misconduct may have their relationship with the University terminated and/or their privileges of being on University premises withdrawn.

## DESCRIPTIONS OF MISCONDUCT

### 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 sexually related touching of another person's clothed or unclothed body, however slight, with any object or part of the body, without that person's effective consent.

Sexual contact includes intentional contact with the mouth, breasts, buttock, groin, or genitals, or touching another with any of these body parts or object, or making another touch you or themselves with or on any of these body parts. Sexual contact also includes any intentional bodily contact that is done in a sexual manner, even if it does not involve contact with/of/by the mouth, breast, buttocks, groin, genitals, or other orifice. For example, non-consensual sexual contact includes unwanted hugging that is sexual in nature such as (but not limited to) an embrace causing unwanted contact with another's trunk or pelvic region.

### 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; intentionally exposing 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 or Gender-based Harassment

Sexual or gender-based harassment is harassment based on sex, gender or sexual orientation expressed in the form of acts of aggression, intimidation or hostility, whether verbal or nonverbal, graphic, physical or otherwise. Gender-based harassment may occur even if the acts or words do not involve conduct of a sexual nature when the considerations outlined below exist.

Unlawful 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 sexual or gender-based 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, may not amount to hostile environment harassment.

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

be treated as a serious instance of 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, on-line or physical contact 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 the person's safety or the safety of others

**OR**

(b) suffer substantial emotional distress.

For the purposes of this definition, "course of conduct" means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

"Reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim. "Substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

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
- 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 may 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 (which includes, but not limited to pushing, shoving, slapping, punching, kicking, strangling, restraining, holding, and 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

## DEFINITIONS

### **Reporting Party**

A reporting party is anyone who is alleged to be the victim of Misconduct as defined by this policy. (Anyone who shares a report about alleged Misconduct impacting another person is considered a third-party reporter).

### **Respondent**

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

### **Effective Consent**

It is important not to make assumptions about whether a potential partner is consenting. The burden to obtain effective mutually-understood consent is on the initiator of the sexual act.

- Effective consent is informed, voluntary, and freely and actively given.
- Effective consent cannot be obtained 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 “incapacitation” definition 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.
- Silence or passivity alone, does not imply consent
- Consent can be withdrawn at any 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, combative-ness, emotional volatility, etc.

Because incapacitation may be difficult to discern, especially where alcohol and drugs are involved, persons 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 violation of Misconduct.**

In evaluating effective consent in cases of alleged incapacitation, the University asks two questions: *(1) did the respondent 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 respondent is likely a violation of this policy.

## REMINDERS AND RESOURCES

### Preservation of Evidence and Medical Assistance

A person reporting sexual misconduct is 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, the reporting party should seek immediate medical attention before washing themselves or clothing. If clothes have been removed, place each item separately in paper bags. The reporting party 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. Financial assistance for hospital exam costs may be available—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

The University will seek to be sensitive, supportive and respectful to all involved individuals. The University will also seek to take reasonable steps to safeguard privacy to the greatest extent possible and will refrain from including in public available records the identity of the reporting party.

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. The University will attempt to balance the reporting party'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. 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 reporting party or witnesses to the extent permissible by law.

Counselors and chaplains (hired or appointed by the University for a specific job description to provide counseling and pastoral care) 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, they are not the designated individuals to whom formal or informal reports should be given (see below).

### Professional Counseling and Support Resources

A person reporting sexual misconduct, relationship violence, stalking, and discrimination based on sex are encouraged to seek the assistance of trained professional

support systems. Students are encouraged to seek professional support from on-campus resources that include Campus Ministries chaplains and counselors at the Counseling & Testing Center in Bell Hall or from a community provider listed below. Faculty and staff are encouraged to seek professional support from a community provider listed below.

On-campus services for students (at no charge) include:

- Andrews University's Counseling & Testing Center (located in Bell Hall, 269-471-3470)
- Chaplains (located in the Campus Center, 269-471-3211)

Off-campus community services for students (for self-pay), faculty and staff 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](http://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](http://dasasmi.org)
- S-O-S of the Family Justice Center, 533 North Niles Avenue, South Bend, Indiana 46617 (574-234-6900), [Info@fjcsjc.org](mailto:Info@fjcsjc.org)
- The National Domestic Violence Hotline (1-800-799-SAFE)

### *Educational Resources*

The Counseling & Testing Center and the Division of Campus & Student Life provide educational materials and information as well as prevention and risk reduction programs dealing with sexual misconduct, relationship violence, stalking and discrimination based on sex. On an annual basis education is provided to new students and employees, and ongoing programs are provided periodically for the wider body of students and University employees.

## **THE UNIVERSITY'S PROCESSES AND RESPONSE TO MISCONDUCT**

- The University will take seriously all good faith reports of alleged Misconduct. 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, as far as possible the University will attempt to let reporting parties select the process for addressing their allegations.
- In general, there are two main paths for addressing sexual misconduct:  
(1) an informal resolution process pertaining to possible Misconduct **and**  
(2) a formal report process of alleged Misconduct.
- 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.

## INITIATING A REPORT

The University encourages a reporting party and witnesses to report any violations of this policy to an appropriate



University official outlined below. 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 reporting party and the respondent. At the same time, before a reporting party reveals information (name of the respondent, details, etc.), they should understand that **only professional counselors, pastors and chaplains (hired or appointed by the University for a specific job description to provide counseling and pastoral care) are able to retain confidentiality.**

**Mandatory Reporters**

Except as described above, all other faculty and staff are required to notify a designated Title IX University official below of all allegations or reports of **Misconduct (which includes**

**non-consensual sexual penetration, non-consensual sexual contact, sexual exploitation, sexual or gender-based harassment), relationship violence (which includes domestic violence and dating violence), stalking, or discrimination based on sex.**

**DESIGNATED UNIVERSITY OFFICIALS**

Title IX Compliance Officer
<i>Title IX Coordinator, Frances Faehner, vice president for Campus &amp; Student Life (269-471-2679), frances@andrews.edu, Campus Center, Student Life office</i>

Inquiries and complaints regarding **sexual misconduct (which includes non-consensual sexual penetration, non-consensual sexual contact, sexual exploitation, sexual harassment), relationship violence (which includes domestic violence and dating violence), stalking, or discrimination based on sex** should be referred

Reporter	Reporting	Should Report To
<b>Student, faculty or staff</b>	Alleged misconduct by a student toward another student	<i>Title IX Senior Deputy Coordinator and Deputy Coordinator for Students, Alyssa Palmer, associate dean for Student Life, 269-471-6684, alyssap@andrews.edu, Campus Center, Student Life</i>
<b>Student, faculty or staff</b>	Alleged misconduct by a student toward a faculty or staff member	<i>Title IX Senior Deputy Coordinator and Deputy Coordinator for Students, Alyssa Palmer, associate dean for Student Life, 269-471-6684, alyssap@andrews.edu, Campus Center, Student Life</i>
<b>Student, faculty or staff</b>	Alleged misconduct by a faculty or staff member toward a student	<i>Title IX Senior Deputy Coordinator and Deputy Coordinator for Students, Alyssa Palmer, associate dean for Student Life, 269-471-6684, alyssap@andrews.edu, Campus Center, Student Life or Title IX Deputy Coordinator, Darcy de Leon, Human Resources director, 269-471-3327, darcy@andrews.edu, Administration Building, Room 215</i>
<b>Student, faculty or staff</b>	Alleged misconduct by a faculty or staff toward another faculty or staff	<i>Title IX Deputy Coordinator, Darcy de Leon, Human Resources director, 269-471-3327, darcy@andrews.edu, Administration Building, Room 215</i>
<b>Student, faculty or staff</b>	Alleged misconduct by a student, faculty or staff toward a student, faculty or staff	<i>Title IX Investigator, Ben Panigot, director of Campus Safety, 269-471-3321, panigot@andrews.edu, Office of Campus Safety</i>

to designated University officials as in the table below:

Concerns about the University's application of Title IX or VAWA may be addressed to the Title IX Coordinator; the United States Department of Education, Office for Civil Rights at OCR@ed.gov or 800-421-3481.

### **Local Law Enforcement**

Misconduct, relationship violence, and stalking may also be criminal. In keeping with the goal to stop the harassment, prevent its re-occurrence and remedy its effects, the University encourages the reporting party to seriously consider reporting the Misconduct to local law enforcement. Upon a request from the reporting party, the University will assist in making the connection between a reporting party 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. The reporting party also has the right to decline to make a formal report to law enforcement and campus authorities.

### **Informal Processes and Resolutions**

- If the reporting party desires an informal consultation, he/she should consult with one of the appropriate designated Title IX Deputy Coordinators listed above for the purpose of exploring whether or not to submit a formal complaint.
- The reporting party may be reluctant to identify the respondent; however, this will limit the University's ability to investigate and respond.
- Informal resolutions provide both parties with the opportunity to reach a mutually agreed-upon informal resolution that may include acknowledgements and commitments to remedy the situation.
- Informal resolutions are not typically recorded in a respondent's record as a conduct violation. However, the University reserves the right to record such resolutions in a conduct record depending on the nature and severity of the conduct involved.

- An informal resolution agreement that is signed by both parties is final.
- The appropriate Title IX Deputy Coordinator will identify potential support systems for both parties.
- The reporting party may request the University to address the situation through various interim measures, informal meetings or resolutions for the purpose of providing information or support or to create separation of proximity, etc.
- The University will seriously consider requests such as confidentiality but reserves the right to proceed in whatever way it deems necessary.

### **Formal Report Process**

- If a reporting party desires to make a formal report of alleged Misconduct, the report should be submitted to the appropriate designated University official as listed above.
- The formal report 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. In general, witnesses must have observed the conduct in question or have information relevant to the incident and will not be interviewed solely to speak about an individual's character.
- The Title IX Coordinator and Title IX Deputy Coordinator will review the report to assess whether the allegation(s), if true, would rise to the level of Misconduct triggering a formal Title IX investigation.
- If it is determined that a Title IX investigation is not warranted both parties will be notified. Even when a Title IX investigation is not warranted the Title IX Coordinator or conduct panel may, nevertheless, refer the case directly to the Student Life Deans Council to be reviewed for a potential response for inappropriate conduct or a general violation of the Code of Student Conduct. In cases where the respondent is a faculty or staff, the case may be referred to Human Resources to be reviewed for a potential response for inappropriate

conduct and a general violation of the University's "Working Policy."

- **Case Awareness and Notice**—If a Title IX investigation is warranted, the appropriate Title IX Deputy Coordinator will meet separately with the reporting party and the respondent to provide a notice of charges, and review University policy and processes utilizing the Title IX Case Awareness Form.
- **ADA or Disability**—If the reporting party or the respondent has a qualified disability, they should provide documentation to the Office of Disability at 269-471-3227 and notify the Title IX Deputy Coordinator during the Case Awareness aspect of the process regarding any requests for accommodations that are appropriate to the disability.
- **Account of Events**—Both the reporting party and the respondent have the right to the same opportunities to present their account of events in a formal written statement that includes the names of any witnesses that observed the conduct in question.
- If the reporting party 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.
- **Resources**—Both the reporting party and the respondent have the right to be notified by the Title IX Deputy Coordinator of available resources and support systems.
- **Support Person**—Both the reporting party and the respondent have the right to have a single designated support person of their choice to support them and be present with them throughout the process. Support persons may accompany the reporting party or the respondent to any University proceedings. Support persons are not permitted to speak, direct questions, or otherwise participate in any University proceedings. Due to the potential conflict of interest, witnesses participating in the investigation will not be permitted to serve as support persons.
- **Accommodations**—A reporting party who reports allegations of Misconduct may request accommodations in academic or work settings, changes in living situations, "No Contact" orders or other responses and support systems designed to help the reporting party 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 protective measures including, but not limited to, academic, class, work, committee, or housing reassignments; "No Contact" orders; restrictions on academic or co-curricular activities; campus bans; 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. Interim actions do not assume the respondent has been found responsible for the alleged Misconduct.
- **No Contact Order**—A party who feels he/she is the target of threats, harassment, intimidation or other similar behaviors which poses a concern to his/her safety or well-being, may request a No Contact Order (NCO). A No Contact Order, once issued, generally directs the party to refrain from all forms of contact, via any method including, but not limited to, phone calls, text messages, emails, social media, in-person, or through a third party. The specific terms may vary case by case. Individuals requesting a NCO are likewise not permitted to contact the other party.

No Contact Orders are issued at the discretion of Campus and Student Life for students and Human Resources for faculty and staff. A NCO will typically remain in effect until the requesting party asks for it to be removed or until the University deems it no longer necessary. If the University determines that the

reported behavior does not warrant the issuance of a NCO, the reporting individual will be referred to other forms of conflict resolution. The University may put a NCO in place even if parties do not request one, if circumstances warrant it.

No Contact Orders do not become part of an individual's conduct record. However, failure to abide by a NCO may result in disciplinary action for a violation of the Code of Student Conduct, "Working Policy" or "Employee Handbook", which will become part of an individual's conduct record. Requests for a NCO or reports of violations should be directed to the Vice President or the Assistant Vice President for Campus & Student Life (students) and the Director for Human Resources (faculty/staff) for general concerns and to the Senior Deputy Title IX Coordinator for concerns related to sexual misconduct or Title IX during regular business hours and Campus Safety (269-471-3321) on weekend or after hours.

## 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 (if the respondent is a student) or the Title IX Deputy Coordinator for faculty/staff (if the respondent is a faculty or staff).
- According to established practices, the investigation is a neutral fact-gathering process and will follow the trail of evidence to determine if there is a "preponderance of evidence" that the alleged Misconduct (more likely than not) occurred.
- The investigator(s) will meet in separate settings with the reporting party and the respondent, as well as with other witnesses, and review texts, emails, communications and other documentary evidence to gather facts.
- Both the reporting party and the respondent have the right to the same opportunities to present their account

of events and to identify witnesses who may have relevant information.

- An investigative summary will be provided both to the reporting party and to the respondent.
- Both parties will have the opportunity to review the summary and to provide a written response including questions they would like to be addressed to the other party before a final determination is made. The parties will not be simultaneously present in any proceeding and thus any such questions would be posed by a third party.
- The investigative report is provided to the Title IX Coordinator who will review the report and direct the report to the appropriate Conduct Panel.
- If the respondent accepts responsibility for the specific charges, he/she may provide the Conduct Panel body with a written acceptance of the facts of the allegation. In such cases the Title IX Coordinator may direct the Conduct Panel to convene solely to determine appropriate sanctions.

## UNIVERSITY DETERMINATION AND OUTCOMES

- The appropriate Conduct Panel convenes to review the evidence developed during the investigation and to meet with the investigators as needed.
- The Student Life Deans Council or a smaller pool of trained members of the Council handles the deliberative processes for students facing allegations. Title IX Misconduct cases are chaired by the assistant vice president for Campus & Student Life.
- A Title IX administrative panel handles the processes for faculty or staff facing Title IX Misconduct allegations. The Conduct Panel is chaired by the director of Human Resources. The panel will be selected from a pool of trained faculty, staff, or administrators. Both the reporting party and the respondent will have the same opportunity to have formal and separate hearings as part

of the investigative process and before the Conduct Panel. Note: Although neither party is required to appear for a hearing, to ensure fundamental fairness parties are expected to respond to questions posed by the other party.

- The Conduct Panel will deliberate using the “preponderance of evidence” standard of proof to determine by majority vote whether “more likely than not” the respondent is responsible or not responsible for committing Misconduct as outlined in this policy. Note: This is a lesser standard of proof than the “beyond a reasonable doubt” standard used in the criminal justice system.
- A determination by the conduct panel that the respondent is “not responsible” does not necessarily mean the alleged Misconduct did not happen or that the conduct was appropriate. Rather, it may mean that there was insufficient evidence to reach a determination of responsibility for a violation of the alleged Title IX Misconduct. It may also mean that the conduct was inappropriate within the general codes of student, faculty, or staff conduct.
- Even when there is a determination that the respondent is “not responsible,” the Title IX Coordinator and/or Conduct Panel may, nevertheless, refer the case to the Student Life Deans Council to be reviewed for a potential response for inappropriate conduct or a general violation of the Code of Student Conduct. In cases where the respondent is a faculty or staff, the case may be referred to Human Resources to be reviewed for a potential response for inappropriate conduct or a general violation of the working policy.
- If and after there has been a determination of responsibility and before imposing disciplinary action the Conduct Panel may consider any impact statement submitted by the reporting party and mitigation statement submitted by the respondent.
- Any student, faculty or staff member 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 Conduct Panel 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 Misconduct or other violations of the Code of Student Conduct, “Working Policy” or “Employee Handbook.”
- The general range of recommended responses for students is as follows:

#### *Non-Consensual Sexual Penetration*

The disciplinary response will likely range from suspension to dismissal depending on the severity of the incident.

#### *Non-Consensual Sexual Contact*

The disciplinary response will likely range from probation to dismissal, depending on the severity of the incident.

#### *Sexual Exploitation or Harassment*

The disciplinary response will likely range from warning to dismissal, depending on the severity of the incident.

#### *Domestic Violence, Dating Violence or Stalking*

The disciplinary response will likely range from warning to dismissal, depending on the severity of the incident.

- **Notification of Outcome**—The chair of the Conduct Panel will issue a written outcome letter to the respondent and the Title IX Senior Deputy Coordinator will issue a written outcome letter to the reporting party. Both the reporting party and the respondent have the right to receive the outcome, in writing, without undue delay between the notifications to the parties and usually within two business days of the end of the process.

## Release of Documents

Under federal privacy laws the investigative summary, written statements from both parties, and any documents prepared by the University, constitute education records which may not be disclosed outside of University processes except as may be authorized by law. As such, both parties are instructed not to re-disclose written documents they receive from the University. However, the University does not impose any restrictions on the parties regarding verbal re-disclosure of the incident, their participation, or the final outcome letter.

## APPEAL PROCESS

Both the reporting party and the respondent have the same opportunity to request consideration to appeal the outcome or findings of the allegation of Misconduct and of any disciplinary actions.

The limited grounds on which the University will consider granting a request for an appeal are one or more of the following:

- ***New Information of a Substantive Nature:*** New and relevant information that was unknown or unavailable at the time the decision was made that could have significantly impacted the original findings or the outcome. A summary of such new information should be included in the request.
- ***Substantive Procedure Error:*** The original processes had a significant or relevant procedural error that may have impacted fundamental fairness.
- ***Substantive Disproportionate Response:*** The University response was clearly disproportionate to the established range of consequences for the violation.

A formal request for an appeal should be directed to the Title IX Coordinator within three business days of receiving notice of the decision. The request for an appeal must consist of a concise written statement outlining the grounds for the appeal as described above. The Title IX Coordinator will review

the request and will notify the person of the University response to the request as well as provide information regarding the appeal process if the appeal process is granted. The University typically implements the original University response or sanction during the appeal process.

Student requests for an appeal will generally be directed to a sub-committee of the Conduct Appeals Committee, which will be comprised of faculty and staff. The assistant vice president for Campus & Student Life serves as the ex-officio secretary and non-voting member.

Faculty or staff requests for an appeal will generally be directed to a subcommittee of the Conduct Appeals Committee, which will be comprised of faculty and staff. The director of Human Resources serves as the ex-officio secretary and non-voting member.

Given that in most cases the reporting party and the respondent have already had a face-to-face hearing with the investigative processes and/or the judicial body, the appeal process does not provide a second opportunity for a face-to-face hearing nor does it provide a rehearing of the facts or a repeat of the investigative processes. The appeal is generally limited to review of a written appeal or other relevant documents.

The scope of the authority of the Conduct Appeals Committee is to determine (1) if the Conduct Panel determinations were reasonable in light of the evidence, (2) if the procedures afforded fundamental fairness, and (3) if the disciplinary response was within the established range and consistent with University protocols. The role of the Appeals Committee is not to substitute judgment for the original decision—the Committee will remain focused on the specified grounds for the appeal.

In cases where there is new or relevant information of a substantive nature, the appeal request may be returned to the original Conduct Panel for review.

The Conduct Appeals Committee can uphold the original decision, alter the original decision, and/or alter the University response.

The decision of the Conduct Appeals Committee will be final (except that, in cases of (a) dismissal or (b) termination, the respondent may request an additional review with the Office of the Provost and the responding faculty or staff may request an additional review with the Office of the President).

### **Amnesty, Bystander Engagement and Good Faith Reports**

The welfare of every member of 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, relationship violence, stalking, and discrimination based on sex. The University believes that bystanders (others nearby) can play a key role in the prevention of Misconduct. Thus, the University encourages members of our community to offer help to others in need.

In an effort to remove fears and obstacles to reporting, the University does not apply disciplinary action to student victims or student witnesses of Misconduct who, in the process of making a good-faith report regarding Misconduct, voluntarily report their own violation(s) of the Code of Student Conduct (such as being in proximity to alcohol, alcohol consumption, curfew violations, etc.) related to the specific reported incident. To foster healing and growth, the reporting party and any witnesses making good faith reports may be asked to engage in educational opportunities.

### **False Report**

The University also prohibits members of the community from knowingly filing a false report or making misrepresentations of sexual misconduct, relationship violence, stalking, and discrimination based on sex. However, a report made in good faith is not considered false merely because the evidence does not ultimately support the allegation of Misconduct. Acts of knowingly filing false reports are, by themselves, cause for disciplinary action.

### **Duration of University Processes**

- If a criminal complaint has been lodged with local law enforcement by the reporting party, 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 in a timely manner and to take any necessary interim protective measures.
- A typical investigation and response from the University usually takes up to 60 calendar days after the University has received formal notice of the Misconduct. The timeframe may take longer and be extended for good cause such as the complexities of a case, the scope of the investigation, to account for University breaks, or to accommodate the availability of participants or witnesses, etc.

### **Registered Sex Offender Policy Statement**

In accordance with the Campus Sex Crimes Prevention Act of 2000, information regarding registered sex offenders is provided by the State of Michigan to the public as well as the campus community. All sex offenders are required to register in the state of Michigan and to provide notice to each institution of higher education in Michigan at which the person is employed, carries a vocation, or is a student. The Michigan Public Sexual Offender Registry can be reviewed at [http://www.michigan.gov/msp/0,4643,7-123-1878\\_24961--,00.html](http://www.michigan.gov/msp/0,4643,7-123-1878_24961--,00.html).

All sex offenders are required to deliver written notice of their status as a sex offender to Andrews University no later than sixty (60) calendar days prior to their enrollment in, employment with, volunteering at, attending public programs at, or residence at Andrews University.

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