

Title IX Policy and Resources

Sexual Harassment: Sexual Assault, Quid Pro Quo Harassment, Hostile Environment Harassment, Relationship Violence, Stalking, and Sexual Exploitation

Title IX prohibits discrimination on the basis of sex (gender) in educational programs and activities that receive federal assistance. The Department of Education has interpreted discrimination on the basis of sex to include Sexual Harassment as defined below. When the University has actual knowledge of Sexual Harassment in an education program or activity against a person in the United States, it must respond promptly in a manner that is not deliberately indifferent. The University's response would be considered "deliberately indifferent" only if its response to Sexual Harassment is clearly unreasonable in light of the known circumstances.

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 Harassment. For the purposes of this policy the collective term, Sexual Harassment, will be used to include sexual assault, quid pro quo harassment, hostile environment harassment, relationship violence, stalking, and sexual exploitation. Sexual Harassment in any form, regardless of gender identity or sexual orientation, 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 Sexual Harassment is in violation of the Code of Student Conduct. Any faculty or staff who is found responsible for committing Sexual Harassment 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 (VAWA) expects that universities have

procedures in place to respond to matters of Sexual Harassment, relationship violence, and stalking.

JURISDICTION

This policy governs Sexual Harassment directed against persons in the United States, including a University student, student employee, faculty or staff, by a member of the University community, if the alleged Sexual Harassment is reported in a formal written complaint **and** occurred in an educational program or activity as to which the University has substantial control over the respondent as well as the context in which the act occurred.

The University will respond to Sexual Harassment 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.

University Community: The University community includes students, student employees, faculty, staff, appointees, volunteers, non-employee clients, supplier/contractors, and visitors.

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 within the U.S.: Off-campus violations may pose a disruption or threat to the educational environment. Examples of off-campus Sexual Harassment that may occur where the University has substantial control include conduct that:

- 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)
- Involves students in the United States enrolled in the University's School of Distance Education & International Partnerships or other off-campus educational programs

Online: Violations can occur in a variety of forums on the Internet. 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. The University will have jurisdiction where the University has substantial control over the respondent and the online environment in which the act occurred.

In instances where Sexual Harassment is found by the Decision-Maker Panel to have occurred, the University will take appropriate action, up to and including separation from the University with the goal to end such Sexual Harassment, prevent its recurrence and remedy its effects. Third parties who engage in Sexual Harassment may have their relationship with the University terminated and/or their privileges of being on University premises withdrawn.

Allegations of misconduct that do not fall within the University's Title IX jurisdiction, may still be subject to the processes contained in the University's Code of Student Conduct or its Working Policy or Employee Handbook.

DESCRIPTIONS OF SEXUAL HARASSMENT

SEXUAL HARASSMENT

Sexual Harassment is any sexual assault, quid pro quo harassment, hostile environment harassment, relationship violence, stalking, and sexual exploitation that occurs without the effective consent of all individuals involved.

SEXUAL ASSAULT

Non-Consensual Fondling: The touching of the private body parts of another person (buttocks, groin, breasts) for the purpose of sexual gratification, forcibly and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances where the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Sex Offenses, Forcible: Any sexual act directed against another person, without the consent of the complainant including instances where the complainant is incapable of giving consent.

- **Forcible Rape:** Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the complainant.
- **Forcible Sodomy:** Oral or anal sexual intercourse with another person, forcibly and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances where the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- **Sexual Assault with an Object:** To use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances where the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Sex Offenses, Nonforcible: Nonforcible sexual intercourse.

- **Incest:** Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by state law.

- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent (16 years old in the state of Michigan). This offense only applies if conduct is “consensual” with minor. If forced or against will of victim, revert to Forcible Rape definition.

QUID PRO QUO 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.

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

The definition of “hostile environment harassment” differs under Title IX (discrimination in education) and Title VII (discrimination in employment).

Under Title IX, **hostile environment harassment** occurs when sexual or gender-based conduct is sufficiently **severe and pervasive and objectively offensive** that it effectively denies equal access to an educational program or activity, as determined by a reasonable person.

Under Title VII, **hostile environment harassment** occurs when sexual or gender-based conduct is sufficiently **severe or pervasive or objectively offensive** that it alters the terms and condition of employment, as determined by a reasonable person.

An isolated incident typically will not amount to hostile environment harassment under Title IX, but it may violate another aspect of the Code of Student Conduct.

The following is a non-exhaustive set of behaviors which may constitute unwelcome conduct on the basis of sex:

- 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
- Sex stereotyping

Other unwanted verbal, written, visual, online 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 their responsibilities in the University environment

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 is 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 Sexual Harassment

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
- Unwelcome 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.

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; 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.

DEFINITIONS

COMPLAINANT

A complainant is anyone (a) who is alleged to be the victim of Sexual Harassment as defined by this policy. and (b) who, at the time of filing a formal complaint, is participating in or attempting to participate in an education program or activity of the school with which the formal complaint

is filed. Note that anyone who shares a report about alleged Sexual Harassment impacting another person is considered a third-party reporter—not a complainant.

RESPONDENT

The respondent is any member of the University Community who is reported and alleged to have engaged in conduct that could constitute Sexual Harassment within the University's jurisdiction or conduct that occurred in an educational program or activity where the University has substantial control over the respondent as well as the context in which the act occurred.

UNIVERSITY COMMUNITY

The University Community includes students, student employees, faculty, staff, appointees, volunteers, supplier/contractors, and visitors.

STUDENT

For Title IX processes, a student is an individual to whom an offer of admission has been extended, paid an acceptance fee, registered for classes, or otherwise entered into another agreement with the University to take instruction. Student status lasts until an individual graduate, is permanently dismissed, or is not in attendance for two complete, consecutive terms, and includes those with a continuing educational relationship with the University.

ACTUAL KNOWLEDGE

Actual knowledge is when the University's Title IX Coordinator or a designated University officer with the authority to institute corrective disciplinary action (as specified in the chart below) receives a report or notice of allegations of Sexual Harassment. The University response begins when actual knowledge of an alleged Sexual Harassment has been reported to a designated University official.

REPORT

A report is an allegation of Sexual Harassment, which can be made by anyone including students, employees, University Community member, or other individual who is directly involved in, observes, or reasonably believe that Sexual Harassment may have occurred. A person making a report of alleged Sexual Harassment impacting another person is considered a third-party reporter.

FORMAL COMPLAINT

A formal complaint is a complaint filed in writing by the complainant or by the Title IX Coordinator that triggers the University's full investigation and hearing processes under Title IX.

DECISION-MAKER PANEL

A Decision-Maker Panel is composed of 3 members and an appointed chairperson who review the case, provide any hearing, make a determination of responsibility and determine any correction disciplinary actions which take place as part of the formal resolution process.

EFFECTIVE CONSENT

It is important not to make assumptions about whether another party or 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 threat, force, threat of force, 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 drug use, etc.)—see “incapacitation” definition below.
- Consent can be communicated by words or can be manifested through action.
- Consent 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, combativeness, 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 valid defense to an allegation.**

- 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 Harassment 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 complainant should seek immediate medical attention before washing themselves or clothing. If clothes have been removed, place each item separately in paper bags. The complainant 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 complainant.

The University will seriously consider requests for confidentiality and will attempt to limit the number of individuals who may learn about an allegation of Sexual Harassment. The University, however, cannot guarantee confidentiality in all matters. 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 to protect the safety of the campus and provide fundamentally fair processes. To comply with certain federal laws, the University is required to report statistics regarding Sexual Harassment 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 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 University official to whom reports or formal complaints should be given (see chart below).

Professional Counseling and Support Resources

A person reporting Sexual Harassment is encouraged to seek the assistance of trained professional support systems. Students are encouraged to seek professional support from on-campus resources that include campus chaplains and counselors 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 Center for Faith Engagement, Campus Center, 269-471-3211)

Off-campus community services (for self-pay) for students, 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
- 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@fjcsjc.org
- The National Domestic Violence Hotline (1-800-799-SAFE)
- Hinman Counseling Services, 640 St. Joseph Ave. Berrien Springs, MI 49103 (269-471-5968)
- Life Coach Psychology, 300 W. Ferry St. Berrien Springs, MI 49103 (269-815-5331)
- To Her Credit (navigating financial help when leaving an abusive relationship)
<https://www.creditcards.com/credit-card-news/leaving-abusive-relationship-financial-help/>

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 Harassment, sexual assault, 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 Sexual Harassment

The University response begins when a designated University official receives notice or actual knowledge of alleged Sexual Harassment. University proceedings will seek to provide a prompt, fair and impartial consultation, investigation and response by officials who receive annual training.

REPORTING

INITIATING A REPORT

Anyone may make a report of allegations of Sexual Harassment, including students, employees, parents, or any individual who is directly involved in, observes, or reasonably believes that Sexual Harassment may have occurred. A report is not the same as a formal complaint (see below).

The University encourages complainants and witnesses to report any violations of this policy to a designated University official with authority to implement corrective action (as identified in the chart below).

Reports of allegations of Sexual Harassment become actual knowledge when they are received by a designated University official. Reports to a designated University official trigger the University's response and are what give the University the opportunity to begin an initial assessment process.

Reports also provide the University with an opportunity to ensure that appropriate supportive measures and resources are provided for the complainant and the respondent even if an informal resolution process is selected. At the same time, before a complainant 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 required to retain confidentiality and not trigger a report to the Title IX office.

EMPLOYEES DUTY TO REPORT

With the exception of professional counselors and chaplains (hired or appointed by the University to provide counseling and pastoral care) **all other faculty and staff** are required to report allegations of Sexual Harassment to a designated Title IX University official below.

In K–12 schools, as well as for minors at the University level, all faculty and staff, **as well as counselors and pastors**, are mandatory reporters in cases involving minors. Faculty and staff are not required to report information regarding Sexual Harassment in circumstances where a survivor speaks-out at a public event or when the individual participates in an approved human subject research protocol.

DESIGNATED UNIVERSITY OFFICIALS WITH AUTHORITY TO IMPLEMENT CORRECTIVE DISCIPLINARY ACTION

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

Reports or inquiries regarding Sexual Harassment (which include sexual assault, quid pro quo harassment, hostile environment harassment, relationship violence, stalking, and sexual exploitation) can be made in-person, mail, email or phone to the Title IX Coordinator or to one or more of the designated University officials in the chart below:

Reporter	Reporting	Should Report To
Student, faculty or staff	Alleged by a student toward another student	<i>Title IX Senior Deputy Coordinator and Deputy Coordinator for Students, Alyssa Palmer, associate dean for Campus & Student Life, 269-471-6684, alyssap@andrews.edu, Campus Center, Student Life</i>
Student, faculty or staff	Alleged 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 Campus & Student Life, 269-471-6684, alyssap@andrews.edu, Campus Center, Student Life</i>
Student, faculty or staff	Alleged 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 Campus & 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>
Student, faculty or staff	Alleged 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>
Student, faculty or staff	Alleged 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>

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

Sexual Harassment may also be criminal. In keeping with the goal to stop the harassment, prevent its recurrence, and remedy its effects, the University encourages the complainant to seriously consider reporting the allegation(s) to local law enforcement. Upon a request from the complainant, 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. The complainant, generally, also has the right to decline to make a formal report to law enforcement and campus authorities.

SUPPORTIVE INTERIM MEASURES

As reasonably available, the University will offer to parties impacted by Sexual Harassment, interim supportive measures it deems appropriate.

- **Supportive Measures**—These measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party but and while protecting the safety of all parties.
- A Title IX official will conduct an individualized assessment and will review requests from both the complainant and respondent to determine appropriate supportive measures whether or not a Formal Complaint is filed.
- Requests are not "guaranteed," but the University will carefully consider any such requests.
- Supportive measures may include, but are not limited to:
 - "No Contact" orders or other mutual restrictions;
 - Referral to campus resources for counseling, health services, disability services (free of charge for students);
 - Referral to community resources;
 - Academic support and other course-related adjustments;
 - Modification of work or class schedules;
 - Change in work, committee or housing locations;
 - Change related to co-curricular activities;
 - Change in reporting relationship;
 - Consideration of leave requests;
 - Interim measures are for a provisional period of time pending the outcome of an investigation or until a specified condition is met.
- **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 wellbeing may request a No Contact Order (NCO), which will be made mutual. The goal of the mutual NCO is to restrict contact between the parties without requiring either party to forgo educational activities.

- A mutual No Contact Order, once issued, generally directs each party to refrain from all forms of contact with the other party 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, and will remain in effect, at the discretion of Campus & 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 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" and will become part of an individual's conduct record.
- Requests for a NCO or reports of violations should be directed to the director of Human Resources (faculty/staff) and to the Senior Deputy Title IX Coordinator (for students) during regular business hours and to Campus Safety (269-471-3321) on weekends or after hours.

REMEDIAL MEASURES

When the University is unable to proceed with the investigative resolution process, such as the lack of information in the report or a request by the complainant that an investigation not move forward, the University may take other remedial measures as appropriate to remedy the effects of the alleged Sexual Harassment and/or prevent its recurrence.

- Remedial measures may also be implemented when it is determined that inappropriate conduct occurred, but that the conduct did not rise to the level of a Title IX policy violation.
- Remedial measures may include and are not limited to:
 - Providing education or training;
 - Increasing security in a designated space;
 - Changing policy or procedure; and
 - Conducting University climate checks.

INTERIM EMERGENCY REMOVAL PROVISION

- An individual can be removed from the education programs or activities (including an interim campus ban) prior to the determination and outcome of a formal complaint but only after an individualized safety and risk assessment determines that the individual poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations.

- The individual will be given notice as well as an opportunity to challenge the action immediately following the removal.
- Employee respondents can be placed on administrative leaves during the investigative period.
- These interim actions do not assume the respondent will be found responsible for the alleged Sexual Harassment.

RETALIATION

- Retaliation is prohibited by University policy and law.
- Retaliation is any adverse action taken against a person who makes an allegation, files a report, serves as a witness, or participates in an investigation.
- Adverse actions may include name-calling, taunting or other threatening behavior.
- Retaliation against an individual for alleging a violation of Title IX, supporting a party bringing a complaint, or assisting in providing information relevant to a Title IX allegation is a serious violation of University policy as well as this Sexual Harassment policy and any offender will be subject to disciplinary action.
- An allegation of retaliation should be reported to a Title IX Coordinator or official.

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 nearby can play a key role in the prevention of Sexual Harassment. Thus, the University encourages members of our community to take responsibility by reporting allegations and participating in University processes.

Although the University cannot provide anonymity for witnesses, in an effort to remove fears and obstacles to reporting and participating in the process, the University does not apply disciplinary action to student victims or student witnesses of Sexual Harassment who, in the process of making a good-faith report, 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, those 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 Harassment. However, a report made in good faith is not considered false merely because there is insufficient evidence to support the allegation. Acts of knowingly filing false reports are, by themselves, cause for corrective disciplinary action.

FORMAL AND INFORMAL RESOLUTION

FORMAL RESOLUTION PROCESS

- The University's formal resolution process is triggered upon receipt of a formal complaint. A formal complaint may be filed by a complainant or signed by the Title IX Coordinator.
 - **Formal complaint filed by complainant**—is a written document filed by a complainant alleging Sexual Harassment against a respondent and requesting that the school investigate the allegation(s).
 - **Formal complaint signed by Title IX Coordinator**—is a written document signed by the Title IX Coordinator, which may occur especially in cases that involve pattern, predation, threats or violence.
- Because the University recognizes that such conduct includes an attack on an individual's dignity and self-determination rights, as far as possible the University will attempt to let the complainant select the process for addressing their allegations. However, the Title IX Coordinator may sign a formal complaint to initiate an investigation over the wishes of the complainant to protect the campus community.
- **Complaint Filing Requirements**—A complainant who desires to make a formal complaint of alleged Sexual Harassment must submit the complaint in writing to a designated University official with authority to implement corrective action (as identified in the chart above).
 - The formal complaint must (1) contain a concise written statement of the alleged violation; (2) be made by a person who (a) experienced the alleged conduct and (b) is participating or attempting to participate in a program or activity of the University; (3) be a document that is physically or digitally signed or otherwise indicates that the complainant is the person filing; (4) be made against a respondent (as defined above); (5) request an investigation; and (6) may include the names of any witnesses with relevant information to the allegations.
 - The complainant may be reluctant to identify the respondent; however, this will limit the University's ability to investigate and respond.
- **Dismissal Evaluation**—When a formal complaint is received, the Title IX Coordinator will review the formal complaint to evaluate whether it is subject to dismissal under the Dismissal Procedures contained in this policy (see below).
- **Case Awareness and Written Notice**—If the formal complaint is not dismissed, the appropriate Title IX Deputy Coordinator will meet separately with the complainant and the respondent to provide written notice of the allegations and the University's formal and informal resolution processes, utilizing the Title IX Case Awareness Form.
- **Presumption of Non-Responsibility**—The respondent will be presumed to be not responsible for the alleged conduct unless and until a finding of responsibility is made at the conclusion of the resolution process.
- **Respondent's Written Response to Complaint**—The respondent will be given an opportunity to provide a written response to the allegations in the formal complaint and provide the names of any witnesses with relevant information to the allegations.

- **ADA or Disability**—If the complainant or the respondent has a qualified disability, they should provide documentation to the Office of Disability at 269-471-3227. They should also notify the Title IX Deputy Coordinator during the Case Awareness aspect of the process regarding any requests for accommodations that may be appropriate to the disability.
- **Advisor/Support Person**—Both the complainant and the respondent have the right to have a single designated advisor or support person of their choice or through appointment by the University, to support them and be present with them throughout the formal resolution process (including any appeal process). The advisor/support person chosen by a party may be, but is not required to be, an attorney. Each party's advisor/support person (if any) will be given written notice of the time, date, location, participants and purpose of all hearings, investigative interviews or other meetings, with sufficient time to allow for preparation. No advisor/support person for either party will be permitted to speak during any University proceeding, except that an advisor/support person is permitted to ask relevant cross-examination questions and follow-up questions at the live hearing with the Conduct Panel on behalf of the party they are supporting.
- **Equitable Treatment**—Complainants and respondents are treated equitably. This means that no formal disciplinary sanctions will be imposed against any respondent unless and until the grievance process has been completed and the respondent has been found responsible. Likewise, complainants will be provided notice of the remedies or outcomes after a determination of responsibility for Sexual Harassment has been made against the respondent.

DISMISSAL OF A FORMAL COMPLAINT

- A formal complaint may be subject to a **mandatory** dismissal. After conducting an initial assessment of the allegations set forth in a formal complaint, the Title IX Coordinator and/or Title IX Deputy Coordinator are/is required to review and dismiss the formal complaint in the following situations: (1) where the allegation(s), if proven to be true, would not constitute Sexual Harassment as defined in this policy; (2) if the alleged conduct did not occur in an education program or activity of the University; or (3) if the alleged Sexual Harassment was inflicted upon a person outside the United States.
- A formal complaint may also be subject to a **discretionary** dismissal. The University may, in its discretion, dismiss a formal complaint or allegations therein in the following situations: (1) if the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein, (2) if the respondent is no longer enrolled or employed by the University, or (3) if specific circumstances prevent the University from gathering sufficient evidence to reach a determination.
- If the University activates a mandatory or discretionary dismissal, both parties will be notified in writing of the dismissal of the formal complaint, the reason(s) therefore, and their right to appeal the dismissal of the complaint.

- Allegations that are dismissed under Title IX may still be addressed with supportive measures.
- Even when a formal complaint is dismissed and an investigation is not warranted under Title IX, the Title IX Coordinator may, nevertheless, offer informal resolution processes and may refer the case directly to the Student Life Deans Council to be reviewed for inappropriate conduct or a general violation of the Code of Student Conduct and corrective disciplinary action. In cases where the respondent is a faculty, staff or student employee, the case may be referred to Human Resources to be reviewed for inappropriate conduct and a general violation of the University’s “Working Policy.” and corrective disciplinary action.

INFORMAL RESOLUTION PROCESSES

- Informal processes are available only after a formal complaint has been signed and submitted by the complainant.
- Upon the voluntary, written consent of both parties, the University will facilitate an informal resolution that does not involve a full investigation, hearing and determination.
- The informal resolution process is typically completed in 20–30 days.
- Informal processes are not available in cases regarding allegations of the misconduct of a faculty or staff respondent and a student complainant.
- Informal resolution processes provide both parties with the opportunity to develop a mutually agreed-upon resolution that may include acknowledgements and commitments to remedy the situation.
- The mutually agreed-upon measures may include, but are not limited to:
 - providing information, education, or training;
 - no contact orders, proximity separations;
 - counseling sessions;
 - informal meetings with facilitated dialogue or mediation with both parties present or more indirectly with separate meetings;
 - a facilitated accountability plan between the respondent and a designated University faculty or staff member; or
 - corrective disciplinary measures agreed upon by both parties.
- Corrective disciplinary actions are typically recorded in the respondent’s educational or personnel record as a conduct violation, while resolutions void of disciplinary action are not included in the respondent’s record. The University reserves the right, however, to record such actions in an educational or personnel record depending on the nature and severity of the conduct involved.
- At any time prior to agreeing and signing the resolution agreement, either party may withdraw from the informal resolution process and resume the formal resolution process. However, an informal resolution agreement is final when it is signed by both parties.

INVESTIGATION AND HEARING

INVESTIGATION OF FORMAL COMPLAINTS

- The respondent will be presumed to be not responsible for the alleged conduct unless and until a finding of responsibility is made at the conclusion of the resolution process.
- 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 regarding the alleged Sexual Harassment.
- The investigator(s) will meet in separate settings with the complainant and the respondent, as well as with other witnesses, and review texts, emails, communications and other documentary evidence to gather facts.
- Both the complainant and the respondent have the right to the same opportunities to present their account of events, identify witnesses who may have relevant information and provide other inculpatory and exculpatory evidence.
- Both parties have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint.
- Before completing the investigative report, the appropriate Title IX Deputy Coordinator will send to each party and the party's advisor (if any) such directly-related evidence in an electronic format or a hard copy, and the parties will be given at least 10 calendar days to submit a written response (the **"Evidence Response Period"**).
- The investigator(s) will consider both responses prior to completing the investigative report.
- Notwithstanding the foregoing provision, the University cannot access, consider, disclose or otherwise use any party's record that is protected by a legally-recognized privilege (e.g., attorney-client, physician-patient, psychologist-patient, clergy-parishioner, etc.) unless that party (or that minor party's parent) has voluntarily provided written consent to do so.
- After the Evidence Response Period has passed, an investigative summary describing the relevant evidence, will be created and, at least 10 calendar days before the hearing (or other appropriate proceeding to determine responsibility), sent to each party and each party's advisor/support person (if any) in an electronic format or hard copy for their review and to prepare their written response (the **"Investigative Summary Response Period"**).
- The final investigative report, directly-related evidence, and written responses from both parties will be provided to the Title IX Coordinator who will review and then direct such materials to the appropriate Decision-Maker Panel.
- If the respondent accepts responsibility for the specific allegations, they may provide the Panel with a written acceptance of the facts of the allegation. In such cases where

the respondent accepts responsibility, the Title IX Coordinator may direct the Panel to convene solely to determine appropriate corrective disciplinary action.

UNIVERSITY HEARING

- To resolve formal complaints involving University students, a live hearing to determine responsibility will be held after the Investigative Response Period has ended. At the University's discretion, formal complaints involving K–12 students may, but need not, be resolved through a hearing process.
- A three-person panel, called the Decision-Maker Panel, will be convened for live hearings to serve as the decision-makers in determining the question of responsibility for Sexual Harassment as well as determining any corrective action. A fourth person will be assigned to chair the Panel and will be non-voting.
- The makeup of the Decision-Maker Panel will vary, depending on whether the respondent is a student or a University employee.
 - If the respondent is a student, the Panel will be selected from the members of the Student Life Deans Council. This Panel will be chaired by the assistant vice president for Campus & Student Life.
 - If the respondent is a University staff or faculty member, a Panel will be selected from a pool of trained faculty, staff or administrators. This Panel will be chaired by the director of Human Resources.
- The Decision-Maker Panel will presume the respondent is not responsible for the alleged conduct unless and until a finding of responsibility is made at the conclusion of the resolution process.
- The Panel will objectively review the investigative report, all relevant evidence—both inculpatory and exculpatory—developed during the investigation, and the parties' written responses.
- The Panel will also provide a hearing for the parties before making any determination regarding responsibility or corrective disciplinary actions.
- Both the complainant and the respondent will have the same opportunity to participate in the live hearing with the Panel.
- All parties and witnesses will appear at the live hearing virtually while located in separate rooms, with technology to see and hear each other.
- The live hearing portion of the process will be recorded. During the live hearing, both parties will have an equal opportunity to pose cross-examination questions and limited follow-up questions, deemed relevant in advance by the chair, that their *advisor/support person may ask* to the other party or any witness. Such questions must be asked directly, orally and in real time. At no time will a party personally be permitted to ask questions to the other party or any witness. Except when asking cross-examination questions during a live hearing, neither party's advisor/support person is permitted to speak during a University proceeding.
- If any party plans to appear at the hearing without his or her own advisor/support person, the University will assign (at no cost) a non-attorney advisor/support person of the University's choice to conduct cross-examination on behalf of such party.

- A party may not dismiss an assigned advisor during the hearing, but if the party correctly asserts that the advisor is refusing to conduct cross examination on the party's behalf, the University will provide the party an advisor to perform that function, whether that means counseling the assigned advisor to perform the requested role or pausing the hearing to assign a different advisor.
- If a party or witness does not submit to questions at the live hearing, the Decision-maker Panel must not rely on any statement of that party or witness in reaching a determination regarding responsibility. However, the Panel cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or unwillingness to answer questions.
- If, at any point during the hearing, the Decision-Maker Panel determines that unresolved issues exist that could be clarified through additional investigation time, the Panel may suspend the hearing and reconvene it in a timely manner that accommodates further investigation.

DETERMINATION AND OUTCOME

DETERMINATION OF RESPONSIBILITY

- Following the hearing, the Decision-Maker Panel will deliberate using the "preponderance of evidence standard" to determine by majority vote whether "more likely than not" the respondent is responsible or not responsible for committing Sexual Harassment as outlined in this policy. Note: This is a lesser standard of evidence than the "beyond a reasonable doubt" standard used in the criminal justice system. The "preponderance of evidence standard" will be applied to all Title IX cases, including those involving a respondent who is a University faculty or staff member.
- If and after there has been a determination of responsibility and before imposing corrective disciplinary action, the Panel may consider any impact statement submitted by the complainant and mitigation statement submitted by the respondent.
- A determination by the Panel that the respondent is "not responsible" does not necessarily mean the alleged incident 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 Sexual Harassment. It may also mean that the conduct was inappropriate and a violation of 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 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. If the respondent is a faculty, staff or student employee, 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" or "Employee Handbook."
- Once a respondent is found responsible, the Panel's imposed response may be disciplinary, punitive and burdensome to the respondent.

CORRECTIVE DISCIPLINARY ACTION AND OUTCOME

- Any student, faculty or staff member who is found responsible for Sexual Harassment defined in this policy will be subject to corrective 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 Decision-Maker Panel reserves the right to determine what type of disciplinary response is appropriate for the level of Sexual Harassment as well as to broaden or lessen the responses relative to the nature of the behavior. Mitigating or aggravating circumstances, if they exist, may also be considered.
- The chair of the Panel will issue to both parties a written outcome letter that includes; allegation(s), procedural steps taken, determination of responsibility, rationale supporting the determination, corrective disciplinary actions and appeal processes.
- The outcome letter will be provided to both parties as simultaneously as possible.
- If a request for an appeal is filed, the determination of responsibility and any corrective disciplinary actions will become final on the date the results of the appeal are sent to the parties. If no appeal is filed, the determination of responsibility will become final the day after the deadline for filing an appeal.
- When the University makes a finding of responsibility or a policy violation, it will take steps, whether individual or systemic, to stop the alleged Sexual Harassment, prevent its recurrence, and remedy the effects on the complainant and others, as appropriate.

APPEAL PROCESS

Both the complainant and the respondent have the same right to appeal from a determination regarding responsibility and from the dismissal of a formal complaint or any allegations therein on the grounds below. The limited bases to activate an appeal process are one or more of the following:

- *Procedural Irregularity*: The original processes had a procedural irregularity that affected the outcome of the matter.
- *New Evidence*: New and relevant evidence that (a) was not reasonably available at the time the determination regarding responsibility or dismissal was made and (b) such new evidence could affect the outcome of the matter. A summary of such new information should be included in the request.
- *Conflict of Interest*: The Title IX Coordinator, investigators or decision-makers had a conflict of interest or bias for or against complainants or respondents generally or for or against the individual claimant or respondent that affected the outcome of the matter.

A formal request for an appeal should be directed to the Title IX Coordinator within three business days of receiving written notice of the decision. The appeal must contain a concise written statement outlining the grounds for the appeal as described above. The Title IX officer will provide a copy of the written appeal to the other party. Both parties will be given a reasonable and equal opportunity to submit a written statement in support of, or challenging, the outcome.

The determination as to if there are grounds for an appeal will not be decided by the (1) Decision-Maker Panel that reached the determination for the dismissal of the formal complaint or regarding responsibility for the allegations, (2) the investigator(s) or (3) by the Title IX Coordinator. Rather, the appeal will generally be directed to a new panel of three members. An additional, nonvoting person will be appointed to chair the panel. The Conduct Appeals Panel will be selected from a trained pool of conduct and appeals panel members.

Given that in most cases the complainant 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 the review of a written appeal or other relevant documents in the context of the stated grounds.

The Conduct Appeals Panel will issue a determination and rationale as to if the appeal identified one or more valid grounds (described above) to facilitate the appeal process. The chair of the Appeals Panel will issue a written determination and rationale regarding if the appeals process will be granted or denied, as simultaneously as possible to both parties.

If grounds for an appeal is granted, the case will be returned for further proceedings to the original Decision-Maker Panel; provided, however, that if there has been a finding of bias on the part of an original member of the Panel, the case will be given to a newly-constituted Decision-Maker Panel. Following the granting of the appeal, the original or new Decision-Maker Panel can uphold the original decision, alter the original decision and/or alter the Panel's response or disciplinary action.

The decision of the Appeals Panel will be final; provided, however, that in cases involving a faculty or staff, or a student's permanent dismissal from the University, both the complainant and the respondent will have an equal opportunity to request an additional review with the Office of the President.

ADDITIONAL INFORMATION

RELEASE OF DOCUMENTS AND DISCLOSURE

Under federal privacy laws any documents prepared by the University, such as the investigative summary or report (which includes written statements and responses from both parties) 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 case (including verbal disclosure of the content of the investigative report), their participation in the process or the contents of the final outcome letter. Parties are advised to seek legal advice as to whether or not such verbal disclosure might subject them to liability for defamation.

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 in a timely manner and to take any necessary interim supportive and protective measures.
- A typical investigation and response from the University may take approximately 60-90 business days after the Title IX Coordinator has received a written formal complaint.
- In some cases, the timeframe may be delayed and extended for good cause. These reasons include, but are not limited to, the complexities of a case, the scope of the investigation, to account for University breaks, concurrent law enforcement activity, the need for language assistance or disability accommodation, the need to troubleshoot technology issues, or to accommodate the availability of participants or witnesses.

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 https://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.