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

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

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

This policy covers misconduct between a student and another University student, staff or faculty regardless of whether the alleged misconduct occurred on- or off-campus or in online communications. In instances where misconduct is found to have occurred, the Title IX Coordinator, Deputy Coordinator(s) and vice president for Student Life will take appropriate steps to end such misconduct, prevent its recurrence, and remedy its effects.

DEFINITIONS

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

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

Non-Consensual Sexual Contact
Non-consensual sexual contact is any intentional sexual touching, however slight, with any object or part of the body, with another person without that person’s effective consent.
Effective Consent

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

Incapacitation

When incapacitated, an individual lacks the physical and/or mental ability to make informed, rational judgments (e.g., to understand “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 appear to be functional or coherent but still may not be able to make a rational decision or give effective consent.

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, students are strongly encouraged to err on the side of caution; when in doubt, assume the other person is incapacitated and therefore unable to give effective consent. Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual misconduct and does not diminish one’s responsibility to obtain informed and freely-given consent.

Sexual Exploitation

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

Sexual Harassment

Unlawful sexual harassment takes one of two forms: (1) quid pro quo harassment or (2) hostile environment harassment. Quid pro quo harassment typically involves an exchange of sexual favors for some benefit, and it most often occurs where there is a power differential (e.g., professor and student or boss and employee). Hostile environment harassment can occur when conduct is so severe and/or pervasive that it unreasonably interferes with or limits an individual’s ability to participate in or benefit from the academic, work or other services and activities or creates an intimidating, hostile or offensive work or academic environment. Both kinds of harassment are prohibited. 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 touching or physical contact
- Showing/displaying sexually suggestive, demeaning or objectifying objects, pictures or words
Unwelcome or inappropriate comments, questions or sexually suggestive jokes

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

- Submission to such conduct is made either explicitly or implicitly as a term or condition of an individual’s employment or academic success
- Submission to or rejection of such conduct is used, threatened or insinuated as the basis for decisions affecting employment, wages, promotion, assigned duties or academic standing of an individual
- 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 would cause a reasonable person to (a) fear for his or her safety or the safety of others or (b) suffer substantial emotional distress. Stalking behaviors include, but are not limited to, the following:

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

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

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

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

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

Domestic 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 cohabited 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.

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

- Physical abuse
- Pushing, shoving, slapping, punching, kicking or strangling
- Restraining, holding, tying down
- Leaving the victim in a dangerous place
- Emotional/psychological abuse
- Threats of harm and/or intimidation
- Physical or social isolation
- Sexual abuse or misconduct

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

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

**REMINDERS AND RESOURCES**

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

Medical assistance can be sought from any emergency room, such as the one located at Lakeland Medical Center, St. Joseph, Michigan. Sexual misconduct victims should not expect to be billed or to pay for the medical forensic exam. There are alternatives to your health care insurance being billed. Contact Michigan Crime Victim Services Commission for more information (517-333-SAFE).
In addition to the collection of evidence, hospital staff is able to check for other potential injuries and respond to the potential of pregnancy and sexually transmitted diseases.

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

Counselors, pastors and chaplains have confidentiality obligations that prohibit them from reporting and activating established University processes; therefore, while these individuals are able to provide confidentiality and important support for victims, they are not the designated individuals to whom formal or informal reports should be given (see below).

Victims of sexual misconduct, domestic violence, dating violence and stalking are encouraged to seek the assistance of trained counselors and support systems. On-campus services include:

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

Community services provided off-campus include:

- Samaritan Counseling Center, 1850 Colfax, Benton Harbor, Michigan (269-926-6199)
- 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)
- 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)

INITIATING A COMPLAINT

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

Provost Andrea Luxton is the Title IX Coordinator for Andrews University (269-471-3404). Inquiries and sex-based complaints including sexual misconduct, domestic violence, dating violence and stalking should be referred to designated University officials as follows:

Student Complaints Regarding Students
Title IX Deputy Coordinator for complaints regarding students, R. Deborah Weithers, associate dean for Student Life (269-471-6684)
Vice president for Student Life (269-471-2679)
Student Life deans (269-471-3215)
Residence hall deans (269-471-3390 or 269-471-3360)
Office of Campus Safety (269-471-3321)

Student Reports Regarding Faculty or Staff
Title IX Deputy Coordinator for student complaints regarding faculty or staff, Dennis Waite (269-208-2532)
Office of Human Resources (269-471-3302)
Office of Campus Safety (269-471-3321)

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

THE UNIVERSITY’S PROCESSES AND RESPONSE

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

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

Informal Consultations
- If the complainant desires an informal consultation, he/she should consult with one of the designated University officials listed above for the purpose of exploring whether or not to submit a formal complaint.
- The complainant may be reluctant to identify the accused; however, this will limit the University’s ability to investigate and respond.
- The complainant may request the University to address the situation through various interim measures, informal meetings or conversations for the purpose of facilitating emotional wellbeing, separation, as well as to gain understanding and education. The University will seriously consider any such request.

Formal Complaint Process
- If a student desires to make a formal report of alleged misconduct, the complaint should be submitted to a designated University official listed previously.
- The formal complaint should contain, at a minimum, a concise written
statement of the alleged violation and a
detailed statement of the facts supporting
the allegation as well as the names of any
witnesses.

- The Title IX Deputy Coordinator will review
the formal complaint and meet separately
with the complainant and the accused to
receive their formal statements and the
names of any witnesses, review University
policy and processes as well as identify
support systems.

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

Investigation

- The director of Campus Safety is generally
appointed to lead the investigation and
is usually assisted by the Deputy Coordi-
nator.

- The investigation will follow established
practices and paths in the trail of evidence
for the purpose of fact finding and
determining if there is a “preponderance
of evidence” that the alleged misconduct
(more likely than not) occurred.

- The investigator(s) will meet with the com-
plainant and the accused, as well as with
other witnesses, and review texts, emails,
communications and other documentary
evidence to gather facts.

- The investigator will provide a written
report and summary of the findings of the
investigation to the appropriate Title IX
Coordinators and the vice president for
Student Life.

- The vice president and Title IX Deputy Coor-
dinator will review the available evidence,
which includes the investigative report,
summary of the findings, and statements
from the complainant and the accused,
along with any other relevant information.

University Response

- The vice president will provide
the same opportunity for both the
complainant and the accused to have
formal and separate hearings with the
Student Life Deans Council.

- The Student Life Deans Council will
deliberate using the “preponderance
of evidence” standard to determine
if the accused student is “more likely
than not” found responsible, or not
responsible, for misconduct outlined
in this policy.

- If the accused is found responsible for
misconduct, the Student Life Deans
Council will determine what type of
disciplinary response is appropriate for
the level of misconduct.

STUDENT CONDUCT DISCIPLINARY RESPONSE

Any student responsible for misconduct
defined in this policy will be subject to dis-
ciplinary action that includes, but is not
limited to, verbal counsel, written warn-
ing, probation, suspension, dismissal,
mandatory education and other remedies
the University deems appropriate. The
Student Life Deans Council reserves the
right to broaden or lessen any range of
recommended responses relative to the
severity or pervasiveness of the behavior
in the case of mitigating circumstances as
well as to take into account any previous
or additional Code of Student Conduct
violations. The general range of recom-
manded responses are as follows:

Non-Consensual Sexual Penetration
and Non-Consensual Sexual Contact

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

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

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

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

ADDITIONAL INFORMATION AND RIGHTS

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

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

- **Notification of outcome**—Both the complainant and the accused have the right to be simultaneously informed, in writing, of the final outcome of the investigation of the complaint of misconduct and any applicable appeals or disciplinary actions.

- **Appeal**—Both the complainant and the accused have the right to appeal the outcome of complaints of misconduct and of any disciplinary actions. If the complainant or alleged victim is deceased as a result of such offense, the next of kin of such victim shall be treated as the accuser or alleged victim to receive information regarding the outcome or disciplinary disposition.

- **Accommodations**—Any complainant or victim of misconduct may request accommodations in academic or work settings, changes in living situations, “no contact” orders or other support systems designed to help the student cope with the situation and meet their responsibilities. Requests are not “guaranteed,” but the University will consider carefully any such requests.

- **Interim measures**—The University may also consider other appropriate interim measures including, but not limited to, housing and class reassignments, “no contact” orders, restrictions on academic or co-curricular activities, campus ban, etc., to facilitate the emotional and physical wellbeing of the parties involved, the broader community and/or the integrity of the investigative and resolution process. Interim measures are for a provisional period of time pending the outcome of an investigation or until a specified condition is met and is an action that does not assume the accused has been found responsible for the alleged misconduct.

- **No contact order**—Once a “no contact” order has been issued, the accused should not attempt in any way to contact or send a message to the complainant, and the complainant should not attempt in any way to contact or send a message to the accused.

- **Retaliation**—Retaliation harassment by anyone against someone who files a complaint or who participates in the investigation such as name-calling, taunting or other threatening behavior, is unacceptable, should be reported and will be treated as a separate and serious offense.

- **Influence of alcohol or drugs**—Being under the influence of alcohol or drugs is never a valid defense for the accused or the perpetrator of sexual misconduct, domestic violence, dating violence or stalking.

### Duration of University Processes

- If a criminal complaint has been lodged with local law enforcement by the complainant, the University’s investigation may be delayed temporarily, as requested by the criminal investigators. The University, however, may not wait on the outcome of the criminal processes and has a responsibility to begin its own investigation and to take any necessary interim protective measures.

- A typical investigation and response from the University may take up to 60 calendar days after the University has received notice of the misconduct. The timeframe may be extended for good cause such as University breaks, etc.

### Registered Sex Offender Policy Statement

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