

905 HARASSMENT

Effective Date: 10-1-2012 Revised Date: 12-20-2017

I. POLICY

Discriminatory, demeaning or abusive behavior based on race, sex, gender, sexual orientation, religion, national origin, age, or disability constitutes harassment when such behavior has the purpose or effect of substantially affecting the conditions of an individual's employment or access to learning or interferes with an individual's work performance or creates an intimidating, hostile or offensive University environment.

As an institution of higher learning founded on Christian principles, McMurry University has committed itself, unequivocally, to ensuring a working and educational environment in which each member of the campus community is treated with dignity and respect. Among these standards for conduct is our policy prohibiting harassment. Sexual harassment and sexual violence are forms of sex discrimination prohibited by Title IX. (*See the University's Sexual Misconduct and Interpersonal Violence Policy* for the University's provisions and procedures for allegations involving sexual misconduct and sexual violence, including sexual and gender-based harassment.)

II. SCOPE

This policy applies to all employees of the University, students, third parties, or visitors to the university.

III. DEFINITIONS

1. **Complainant/ Reporting Party**

The individual complaining of sexual misconduct or interpersonal violence is called the "complainant" or "reporting party" and those terms may be used interchangeably in this policy.

2. **Formal Complaint**

A formal complaint is submitted in writing. The respondent will know the identity of the complainant.

3. **Informal Complaint**

An informal complaint can be verbal or submitted in writing. The respondent may not know the identity of the complainant.

4. **Respondent**

The person alleged to have engaged in any prohibited actions is generally referred

to as the “respondent”.

5. **Alleged offender**

The person found responsible for violating this policy who is appealing the decision or investigative findings.

6. **Retaliation**

Retaliation is considered any adverse action by any student, faculty or staff member against another individual as a result of that individual’s exercise of rights under this *Harassment Policy* or the *Sexual Misconduct and Interpersonal Violence Policy*, including participation in a complaint and/or investigation of unlawful sexual misconduct, sexual harassment and/or assault or gender-based misconduct. Retaliation includes adverse actions intended to deter any individual from reporting complaints or participating in an investigation.

Retaliation is strictly prohibited by law and this policy. Any person who is found to have engaged in retaliation shall be subject to disciplinary action. Persons who believe that they have been retaliated against for making a complaint/report or for cooperating in an investigation or hearing should immediately contact the Director of Human Resources, Title IX Coordinator or Deputy Title IX Coordinator. A complaint filed in good faith under this policy shall not constitute retaliation.

IV. PROCEDURES

This procedure applies to violations under this *Harassment Policy* and the University’s *Sexual Misconduct and Interpersonal Violence Policy*.

It is hoped that these procedures will create an atmosphere in which individuals who believe that they are the victims of harassment are assured that their complaints will be dealt with fairly and effectively. It is more important still to create an atmosphere in which instances of harassment are discouraged. Toward this end, all members of the McMurry community should support the principle that harassment represents a failure in ethical behavior and that sexual exploitation of professional relations will never be condoned. To help in this endeavor, information and training will be provided on a regular basis through seminars, and meetings.

A. **Lodging a complaint or reporting possible violations.**

1. Any member of the McMurry University community who believes that he or she has been the victim of harassment as defined above or as defined in the *Sexual Violence and Interpersonal Violence Policy* should contact the Director of Human Resources¹ who has

¹ With respect to actions prohibited by the *Sexual Violence and Interpersonal Violence Policy*, this individual is the Title IX Coordinator or Deputy Title IX Coordinators. The Title IX Coordinator and Deputy Title IX Coordinators are trained on an annual basis on the issues regarding sexual misconduct and interpersonal violence, and are

been designated by the administration to handle complaints of sexual misconduct, discrimination and sexual harassment, and harassment relating to race, gender, sexual orientation, religion, national origin, age, or disability.

2. Individuals are encouraged to lodge a complaint as promptly as possible. The University encourages prompt reporting of all allegations of sexual misconduct, interpersonal violence and harassment, so that the University may respond promptly and equitably. The University does not limit the timeframe for reporting. If the person accused of the misconduct is no longer affiliated with the University at the time when the report is made, the University will still conduct an inquiry where appropriate for purposes of complying with the law and take steps to prevent the recurrence of such conduct, remedy the effects, and count the appropriate crime statistic for inclusion in the institution's Annual Security Report, where appropriate. Please note that delaying the report of a complaint may preclude recourse to legal procedures should an individual decide to pursue them at a later date.

3. The initial discussion between the complainant² and the Director of Human Resources, Title IX Coordinator or Deputy Title IX Coordinator will be kept confidential. Where the complainant requests that their identity not be shared with the respondent or that the University not pursue an investigation, the University must balance this request with the University's responsibility to provide a safe and non-discriminatory environment for all community members. The University reserves the right to investigate any complaint. Dissemination of information relating to the case will be limited, in order that the privacy of all individuals involved is safeguarded as fully as possible.

4. A complainant does not need to be a member of the University community to lodge a complaint.

5. The University may bring complaints against a student or employee and act as the complainant for purposes of this *Harassment Policy* or the *Sexual Misconduct and Interpersonal Violence Policy*.

B. Resolution Of An Informal Complaint

1. Promptly after a complaint is submitted, the Director of Human Resources or his/her designee will initiate whatever steps he or she deems appropriate to affect an informal resolution of the complaint acceptable to both parties. Informal complaints can trigger an investigation with the University acting as the complainant.

C. Lodging A Formal Complaint

knowledgeable on how to conduct an investigation and grievance process that protects the safety of the victim and promotes accountability and resolution.

² The individual complaining of sexual misconduct or interpersonal violence is called the "complainant" or "reporting party" and those terms may be used interchangeably in this policy. The person alleged to have engaged in any prohibited actions is generally referred to as the "respondent."

1. If the complainant, after an initial meeting with the Director of Human Resources, the Title IX Coordinator or the Deputy Title IX Coordinator, decides to proceed with a formal complaint, she or he will be asked to provide a written statement. However, the University does not require a written statement in order to proceed with an investigation.

2. Once a formal complaint has been received by the Director of Human Resources, Title IX Coordinator or Title IX Deputy Coordinators, an email will be sent to complainant and respondent, separately, with the following information: a description of the alleged violation(s); any written statement from complainant; a description of the applicable policies; a statement of the potential sanctions/responsive actions that could result; and a request for an investigative interview. The email will also include a copy of this *Harassment Policy* and the *Sexual Misconduct and Interpersonal Violence Policy*.

D. Procedures For Investigating A Formal Complaint

1. The Director of Human Resources (or Title IX or Deputy Title IX Coordinator or his/her designee) will conduct an initial assessment to determine if the complaint constitutes a potential violation of this *Harassment Policy* or the *Sexual Misconduct and Interpersonal Violence Policy*.

2. If the allegations do not constitute a violation, then the complaint will be dismissed, but may be referred to a different department or administrator for investigation under a separate University policy.

3. If the allegations constitute a violation of this *Harassment Policy* or the *Sexual Misconduct and Interpersonal Violence Policy*, then the University will conduct a fair, impartial, thorough, adequate, and reliable investigation. The University may employ an external investigator(s) if it determines it is appropriate.

4. Then, the University will determine and take all interim measures as appropriate and necessary, during the investigation, in response to an allegation in order to protect an individual's rights and personal safety, the safety of the University community, or to ensure the integrity of the investigation or adjudication process. These actions are designed to eliminate the harassment and prevent its recurrence.

a. These interim measures may include, but are not limited to no contact orders, changes in work location or other employment-based measures, changes in housing assignment for accused and/or complainant, academic accommodations, removal and/or barring from campus housing or grounds, social restriction and/or emotional support.

5. School personnel will determine if the University is required to contact law enforcement for actions prohibited by the *Sexual Misconduct and Interpersonal Violence Policy*.

6. A trained investigator(s) will conduct a fair, impartial and prompt investigation.

7. The University is committed to using a balanced and fair investigative process for all parties. In reaching an investigative finding, the University will use a “preponderance of the evidence” standard, *e.g.*, that it is “more likely than not” that a violation of this Policy has occurred.

8. The investigation will typically include interviewing all involved parties (the complainant, respondent, third party witnesses) and the collection of any documents or other evidence (such as photographs, emails, text messages) relevant to each allegation, including any relevant prior disciplinary records.

9. The University will use all reasonable and diligent efforts to investigate reported incidents and reach a resolution within sixty (60) calendar days of the date in which the complaint was filed, unless there are extenuating or unusual circumstances that prohibit the timeliness of the completion of the investigation. Timeframes for investigations may vary depending on the details of a case or if possible violations occur near, during, or after University holidays, breaks, or the end of an academic semester.

If there is an extenuating circumstance that prohibits the completion of an investigation within 60 calendar days, the University will inform the complainant and the respondent in writing of such delay.

10. The complainant and respondent each have the right to bring an advisor of choice to any meeting or proceeding in which they are required to attend. An advisor of choice can be anyone of the parties’ choosing (*e.g.*, a friend, parent, attorney, counselor, etc.). The advisor’s role is simply to provide support and shall not interfere with the meeting or speak on behalf of the party. Advisors cannot interrupt or unreasonably delay the meeting. Advisors who do not follow these rules will be asked to leave the meeting. The parties are required to provide timely notice to their advisors of scheduled meetings or proceedings as the University will not delay an interview or meeting due to the advisor’s schedule.

11. After the investigation is concluded, the Title IX Coordinator or Title IX Deputy Coordinator or his/her designee, will meet with the investigator to determine if the investigation is complete, or if more information is necessary. If the investigation is considered complete, the Title IX Coordinator or Deputy Coordinator or his/her designee will meet separately with the complainant and respondent (after the fact finding process is complete, but before any policy violation charges are made), and the parties will have an opportunity to present any new information or correct any factually incorrect information at this time. Should additional information be provided that the investigator deems relevant, the investigator will pursue the evidence to determine if it impacts the fact-finding.

12. Once no further investigation is necessary at the investigator’s discretion, then the investigator will provide a complete report to the Title IX Coordinator or Deputy Coordinator or his/her designee. The report will identify all allegations, and the investigator’s facts that support or do not support the allegations. Once sufficient evidence has been collected, depending on the circumstances, the Director of Human Resources, Title IX Coordinator, Deputy Title IX Coordinators or a designee will evaluate the evidence to make a determination regarding responsibility, based on the preponderance of the evidence standard, whether that there has been

a violation of this *Harassment Policy* or the *Sexual Misconduct and Interpersonal Violence Policy*.

13. If, after the investigation is concluded, the preponderance of the evidence indicates that it is *not* more likely than not that the respondent violated this *Harassment Policy* or the *Sexual Violence and Interpersonal Violence Policy*, then respondent will be found not responsible for a violation. If, after the investigation is concluded, the preponderance of the evidence indicates that it *is* more likely than not that the respondent violated this *Harassment Policy* or the *Sexual Violence and Interpersonal Violence Policy*, then respondent will be found responsible for a violation.

14. When a respondent is found responsible for a violation, the investigation report and conclusion of the Title IX Coordinator, Title IX Deputy Coordinator or his/her designee, will be submitted to the Dean of Students & Campus Life, Director of Human Resources, or other appropriate individual for determination of applicable sanctions.

15. The complainant and respondent will be notified of the outcome of the investigative findings and sanctions in writing. This Notification document shall include a brief summary of the investigative process and findings, the outcome of the investigation, and a notice of the right to appeal the investigatory findings, as discussed below. The parties may view the investigator's report in a confidential location.

16. Complainants are strongly encouraged to report all incidents under this *Harassment Policy* or the *Sexual Violence and Interpersonal Violence Policy*. Investigations are independent from any judicial or other administrative proceeding. Discipline may be instituted against a respondent who has also been charged in civil or criminal courts based on the same facts that constitutes the alleged violation of the Code of Student Conduct or other applicable University policy.

E. Appeals Process

The alleged offender has the right to submit an appeal of the investigative findings as set forth in the results Notification document. Appeals of a finding, if any, must be submitted in writing to the Title IX Coordinator or Designee within two (2) business days of the date of receipt of the written Notification. Appeals of any subsequent sanctions imposed shall be submitted to the Title IX Coordinator within two (2) business days of receipt of written sanctions determination.

When the Alleged Offender is a Student:

1. The appeal will be heard by a Grievance Review Committee.
2. A Grievance Review Committee shall be appointed by the President of the University and shall be composed of representation from McMurry University faculty, staff, administrators or students with three members in any combination as deemed appropriate.

3. Members of a Grievance Review Committee will meet within seven (7) working days to discuss the complaint. Unless the committee concludes that the complaint is without merit, the committee may conduct its own informal inquiry, call witnesses, and gather whatever information it deems necessary to assist it in reaching a determination as to the merits of the allegations. Once such a determination has been reached, it will be communicated in writing to the Title IX Coordinator or his/her designee within twenty-four (24) hours. A summary of the basis for the determination will be provided.

4. Dissatisfaction with the outcome of the investigation and resulting decisions are not grounds for appeal. An appeal may be based on limited grounds, and shall include only review of the verbatim record of the initial hearing (or investigation) and supporting documents for one or more of the following purposes:

To determine whether the original hearing was conducted fairly in light of the charges and evidence presented, and in conformity with prescribed procedures;

To determine whether the decision reached regarding the accused student was based on enough information, that is, whether the facts in the case were sufficient to establish that a violation of the Student Code of Conduct and/or Sexual Misconduct and Interpersonal Violence Policy or Harassment Policy has occurred;

To determine whether the sanctions imposed were appropriate for the violation of the Student Code of Conduct, Sexual Misconduct and Interpersonal Violence Policy or Harassment Policy that the student was found to have committed; and

To consider new information, sufficient to alter a decision or other relevant facts not brought out in the original hearing, because such evidence and/or facts were not known to the person appealing at the time of the original hearing.

5. A Grievance Review Committee can affirm the original findings, alter the findings, and/or alter the sanctions, depending on the basis of the requested appeal. Written confirmation of the decision will be provided by the Dean of Students & Campus Life to the alleged offender and the complainant.

6. Appeals of Grievance Review Committee decisions are heard by the University President. These appeals must be submitted in writing on the appropriate appeals form to the Title IX Coordinator or Designee within two (2) business days of the date of receipt of the written notification to be heard by the University President. Decisions made by the University President are final with no subsequent appeals.

When the Alleged Offender is an Employee:

1. The appeal will be heard by a Grievance Review Committee.

2. A Grievance Review Committee will be appointed by the President of the University and is comprised of three members with appropriate representation that recognize the employment status of those involved in the complaint.

3. Members of the Grievance Review Committee will meet within seven (7) working days to discuss the complaint. Unless the committee concludes that the complaint is without merit, the parties to the dispute will be invited to appear before the committee and to question any adverse witnesses. The committee may conduct its own informal inquiry, call witnesses, and gather whatever information it deems necessary to assist it in reaching a determination as to the merits of the allegations. Once such a determination has been reached, it will be communicated in writing to the Director of Human Resources and Title IX Coordinator or his/her designee within twenty-four (24) hours. The Title IX Coordinator and or his/her designee will notify the alleged offender and complainant concurrently about the summary of the basis for the determination.

4. If the committee's findings do not lead to a mutually acceptable resolution, or if the committee believes that reasonable cause exists for seeking sanctions or disciplinary actions against an alleged offender, they will forward their recommendation to the President. The President shall then proceed in the manner set forth in Employee Handbook, or Faculty Handbook for corrective action or disciplinary measures as he or she deems appropriate. Decisions made by University President are final with no subsequent appeals.

5. If the review committee finds that the complainant's allegations are false or if the committee believes that reasonable cause exists for seeking sanctions or disciplinary actions against the complainant, they will forward their recommendation to the President. The President shall then proceed in the manner set forth in the Employee Handbook, or Faculty Handbook for corrective action or disciplinary measures as he or she deems appropriate. Decisions made by University President are final with no subsequent appeals.

Communication of Results of Appeal

Absent extenuating circumstances, the Title IX Officer or his/her designees will simultaneously and in writing communicate the result of the appeal to the complainant and respondent within 30 calendar days from the date of the submission of all appeal documents by both parties. Appeal decisions are final.

V. SANCTIONS OR DISCIPLINARY ACTIONS

Sanctions may include remedial or corrective action as warranted, including but not limited to, extension of or expansion of any interim measures already in place.

The following list of possible sanctions is illustrative and not exhaustive. The University reserves the right to impose other reasonable sanctions or to combine sanctions as it deems appropriate. Depending on the status of the individual who is sanctioned, sanctions may include but are not limited to:

A. When Respondent is a Student:

1. **Continuation of Interim Measures, including No Contact Order:** The University may determine that interim measures, such as a No Contact Order, between the complainant and respondent will remain in place. These measures may also include but are not limited to changes in campus housing for accused and/or complainant, academic accommodations, removal and/or barring from campus housing or grounds, social restriction and/or emotional support.

2. **Loss of Privileges:** Loss of privileges involves the denial of the use of certain University facilities or the right to participate in certain activities or to exercise certain privileges for a designated time period.

3. **Educational Requirements/Referrals:** The University may impose counseling or substance assessments or other required educational sanctions.

4. **Conduct Probation:** An official warning that the student's conduct is in violation of McMurry University Student Code of Conduct, but is not sufficiently serious to warrant suspension or expulsion. A student on Conduct Probation is deemed "not in good standing" with the University. A student who is not in good standing is subject to the following restrictions:

i. Ineligibility to hold an office in any student or campus organization recognized by the University or to hold any elected or appointed office of the University.

ii. Ineligibility to represent the University to anyone outside the University community in any way, including representing the University in any official function, intercollegiate athletics or any forms of intercollegiate competition or representation.

iii. Additional restrictions or conditions also may be imposed, depending on the nature and seriousness of the misconduct.

5. **Interim Suspension:** In certain circumstances, the Dean of Students & Campus Life may impose a University or residence hall sanction or suspension prior to the hearing before a judicial body.

i. Interim suspension may be imposed only: a) to ensure the safety and well-being of members of the University community or preservation of University property; b) to ensure the student's own physical or emotional safety and well-being; c) if the student poses a possible threat of disruption of or interference with the normal operations of the University.

ii. During the interim suspension, students may be denied access to the residence halls and/or to the campus (including class) and/or all other University activities or privileges for which the student might otherwise be eligible, as the Dean of Students & Campus Life may determine to be appropriate.

6. **Suspension:** The separation of a student from the University for a specified time period, after which the student is eligible to return. Conditions for re-enrollment may be required and will be included in the notification of suspension. During the period of suspension, the student may not participate in University academic, co-curricular, or extra-curricular activities; may be banned from all property owned or operated by the University. Students who are suspended may not be on campus without specific, written permission from the Dean of Students & Campus Life. Suspension is for a designated period of time and includes the probability of more severe sanctions, including expulsion, if found responsible for violations of the Student Code.

7. **Expulsion:** Expulsion is the permanent separation of the student from the University. Students who have been expelled may not be present on campus without specific, written permission from the Dean of Students & Campus Life or his/her designee. Sanctions will be denoted in a student's educational record.

B. When Respondent is a University employee:

Respondent will be subject to the University's disciplinary policies and corrective actions for employees, including discipline and termination.

C. When Respondent is a visitor or not a member of the University community:

The University will take all appropriate corrective measures, including but not limited to prohibiting the Respondent from campus.