



**Sexual and Gender-Based Harassment and Interpersonal Violence  
Policy**

*Applies to sexual and gender-based harassment, sexual assault, sexual  
exploitation, stalking, intimate partner violence, and retaliation*

**Effective: October 21, 2019**

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## 1. Overview

McMurry University is committed to providing a safe and non-discriminatory learning, living, and working environment for all members of the University community.

McMurry University does not discriminate on the basis of sex or gender in any of its education or employment programs and activities, and it does not tolerate discrimination or harassment on the basis of sex or gender. This policy prohibits sexual and gender-based harassment, sexual assault, sexual exploitation, stalking, intimate partner violence, and retaliation (collectively referred to in this policy as prohibited conduct). These forms of prohibited conduct are harmful to the well-being of our community and its members, the learning and working environment, and collegial relationships among our students, faculty, and staff.

All violations of prohibited conduct under this policy will result in discipline, including potential separation from the University. Some forms of prohibited conduct may also violate state and federal laws, and criminal prosecution may occur independently of any disciplinary action imposed by the University.

The University will comply with Title IX of the Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in the University's programs and activities; the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), as amended by the Violence Against Women Reauthorization Act of 2013 (VAWA); Title VII of the Civil Rights Act of 1964; Chapter 21 of the Texas Labor Code; Chapter 40, Section 819 of the Texas Administrative Code; and other applicable law.

This policy sets forth the procedures that will be used to investigate and respond to reports of prohibited conduct. The University will respond to reports about prohibited conduct with measures designed to eliminate the conduct, prevent its recurrence, and remedy any adverse effects of the conduct on individuals, members of the campus community, or University-related programs or activities. In addition, the University may implement interim measures prior to the conclusion of an investigation that are designed to provide a party with continued access to University programs and activities and protect individual and campus safety.

The University will make reasonable efforts to investigate and address reports of prohibited conduct, regardless of how the information was brought to the University's attention or the extent to which the complainant wishes to participate or be involved. See *Balancing Complainant Autonomy with University Responsibility to Investigate*.

The University will not pursue disciplinary action against a complainant, respondent, or witness for disclosure of personal consumption of alcohol or other drugs (underage or illegal) where the disclosure is made in connection with a good faith report or investigation of prohibited conduct and the personal consumption did not place the health or safety of any other person at risk.

All McMurry students and employees have access to Confidential Resources that they may use for support and guidance regardless of whether they make a report to the University or participate in a University investigation.

Retaliation against anyone who makes a good faith report under this policy, who opposes in a reasonable manner an act believed to constitute a violation of this policy, or because they have participated in a Title IX investigation, is prohibited. Concerns or questions about retaliation should be immediately reported to the University's Title IX Coordinator.

## 2. The University's Title IX Coordinator

The Title IX Coordinator coordinates the University's compliance with Title IX and related provisions of the Clery Act (as amended by VAWA). The Title IX Coordinator oversees the University's centralized response to all reports of prohibited conduct to ensure consistent implementation of this policy and compliance with federal and state law. The Title IX Coordinator and designated staff will, among other steps:

- Communicate with all members of the University community regarding applicable law and policy and provide information about how individuals may access reporting and support options.
- Review applicable University policies to ensure institutional compliance with applicable federal and state law.
- Monitor the University's administration of its own applicable policies, including record keeping, adherence to timeframes, and other procedural requirements.
- Conduct training regarding Title IX, related provisions of the Clery Act (as amended by VAWA), and prohibited conduct defined in this policy.
- Respond to any report regarding conduct that may violate this policy. In this capacity, the Title IX Coordinator shall oversee the investigation and resolution of such alleged misconduct, direct the provision of any remedial and protective measures (including oversight of the failure to abide by an interim protective measure), and monitor the administration of any request for review of the finding.

The Title IX Coordinator may delegate responsibilities under this policy to designated administrators or external professionals, who will have appropriate training and/or experience. When used in this policy, the term Title IX Coordinator may include a Deputy Title IX Coordinator or appropriate designee. The University has designated two individuals to share the Title IX Coordinator role. Title IX Coordinators' contact information is:

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Concerns about the University's application of Title IX and the Clery Act may be addressed to the University's Title IX Coordinator; the United States Department of Education, Clery Act Compliance Division (at [clery@ed.gov](mailto:clery@ed.gov)); the United States Department of Education, Office for Civil Rights (at [OCR@ed.gov](mailto:OCR@ed.gov) or 800-421-3481); and/or the Equal Employment Opportunity Commission (at [info@eeoc.gov](mailto:info@eeoc.gov) or 800-669-4000). Concerns related to employment or housing discrimination may also be addressed to the Texas Workforce Commission (at 888-452-2642 or

[www.twc.state.tx.us/programs/civil-rights-program-overview](http://www.twc.state.tx.us/programs/civil-rights-program-overview) ). The Title IX website is: <https://hr.mcm.edu/title-IX/title-IX/index.html>

### **3. Scope of this Policy**

This policy governs the conduct of McMurry University students, regardless of enrollment status; faculty; staff; and third parties (i.e., non-members of the University community, such as vendors, alumni/ae, and visitors).

Third parties are both protected by and subject to this policy. A third party may report potential policy violations committed by a member of the University community, and the University will take appropriate steps to investigate and respond to the conduct consistent with the authority granted by the University's jurisdiction, if any, over the respondent. A third party who is accused of violating University policy may be permanently barred from the University or subject to other restrictions for failing to comply with this policy and may not be granted the full rights and processes afforded to McMurry community members through the provisions of this policy.

This policy applies to conduct that occurs:

- on campus or University property;
- in the context of any University-related or sponsored education program or activity, regardless of the location (including travel, research, or internship programs);
- by a McMurry student, regardless of location, under the McMurry Student Handbook;
- by a McMurry employee, regardless of location;
- through the use of University-owned or provided technology resources; or
- when the conduct has a nexus to the University, such as continuing adverse effects or the creation or continuation of a hostile environment on campus.

For every report, the Title IX Coordinator will review the circumstances of the reported conduct to determine whether the University has jurisdiction or disciplinary authority over the respondent or the conduct. In exercising jurisdiction over a McMurry-affiliated respondent for reported conduct that occurs off campus and that has no nexus to the University or a University-related or sponsored education program or activity, the University's ability to investigate and impose disciplinary action may be limited by the amount of information available to the University through the exercise of reasonable diligence.

In instances where the University does not have disciplinary authority over the respondent, the University will still take reasonably-available steps to support a complainant through interim remedial measures and will assist a complainant in identifying external reporting mechanisms.

This policy uses the terms complainant, respondent, third party, and witness as follows:

- The term **complainant** refers to an individual who is reported to have experienced prohibited conduct, regardless of whether the individual makes a report or seeks disciplinary action.
- The term **respondent** refers to an individual who has been accused of prohibited conduct.
- The term **third party** refers to an individual who is not a University student, faculty member, or staff member (e.g., vendors, alumni/ae, or visitors).
- The term **witness** refers to an individual who may have information relevant to a report of prohibited conduct. A witness may be a student, an employee, or a third party.

#### 4. Coordination with Other Policies

This policy addresses discrimination on the basis of sex or gender as it relates to sexual and gender-based harassment and sexual assault, and other forms of interpersonal violence defined in more detail below. Other forms of sex discrimination (not based on harassment or violence), and discrimination and harassment based on race, color, nationality or ethnic origin, sex, age, or disability are governed by the University's Student Handbook, Faculty Handbook, and/or Employee Handbook.

In addition, the conduct of students, employees, and faculty is governed by the following:

- Student Handbook
  - Applies to all other forms of student misconduct (e.g., alcohol or other drug use, threats or physical abuse, possession of firearms, housing violations, etc.)
  - Overseen by the Dean of Students & Campus Life
- McMurry Employee Handbook
  - Set the standards of personal conduct for employees
  - Include the employee disciplinary and grievance policies
- McMurry Faculty Handbook
  - Sets the standards of personal conduct for faculty members
  - Includes the statement of academic freedom (See Academic Freedom and Professional Responsibility, below)
  - Outlines the grounds and procedures for dismissal of tenured and non-tenured faculty
- Sexual Abuse and Child Molestation Prevention Policy (Employee Handbook - 922)
  - Provides for the screening, selection, and assessment of personnel
  - Includes information about recognizing, responding to, and reporting inappropriate or suspicious behavior, suspected abuse, and minor-to-minor sexual abuse

Where conduct involves the potential violation of both this policy and another University policy, the University may choose to investigate other potential misconduct under the

procedures set forth in this policy, instead of the procedures ordinarily used to address potential violations of such other University policies, provided that it does not unduly delay a prompt or equitable resolution of the report.

## **5. Relationships with Individuals in Authority**

Under this policy sexual or romantic relationships are prohibited between:

- University employees and undergraduate students (not one's spouse);
- University employees and students whom the employee educates, advises, coaches, supervises, or evaluates, or whom the employee has previously educated, advised, coached, supervised, or evaluated, in any way; or
- University employees and any individual whom that person supervises or evaluates in anyway.

The Human Resources Director, Vice President for Academic Affairs, and/or appropriate Cabinet members will coordinate with Title IX Coordinator in enforcing violations. Because prohibited relationships often involve a power differential, the conduct may also constitute sexual harassment or other forms of prohibited conduct under this policy.

## **6. Academic Freedom**

The University is committed to the principles of free inquiry and expression. Vigorous discussion and debate are fundamental to this commitment, and this policy is not intended to restrict teaching methods or freedom of expression, nor will it be permitted to do so. This policy shall be interpreted and enforced in a manner consistent with the University's Faculty Handbook – Academic Freedom and Professional Responsibility.

Offensiveness of conduct, standing alone, is not sufficient for the conduct to constitute prohibited conduct. The conduct must be sufficiently severe, persistent, and/or pervasive to interfere with an individual's ability to participate in employment or educational programs and activities from both a subjective and objective perspective.

## **7. Prohibited Conduct**

In determining whether reported conduct violates this policy, the University will consider the totality of the facts and circumstances involved in the incident, including the nature of the reported conduct and the context in which it occurred. Individuals of any sex or gender can commit any of the prohibited conduct defined in this policy, and it can occur between individuals of the same sex/gender or different sexes/genders. It can occur between strangers or acquaintances, as well as persons involved in intimate, sexual, dating, domestic, or familial relationships. This policy prohibits the following forms of conduct, including attempts to commit the prohibited conduct listed below:



## A. Sexual Assault

The following behaviors constitute sexual assault:

**Non-Consensual Sexual Penetration:** Any act of vaginal or anal penetration, however slight, by a person's penis, finger, other body part, or an object, or, regardless of whether penetration occurs, any oral-genital contact, without consent.

**Non-Consensual Sexual Contact:** Any intentional touching of a person's breasts, buttocks, groin, genitals, or other intimate parts without consent. Touching may be over or under clothing and may include the respondent touching the complainant, the respondent making the complainant touch the respondent or another person, or the respondent making the complainant touch the complainant's own body.

## B. Sexual and Gender-Based Harassment

**Sexual Harassment:** Sexual harassment is any unwelcome sexual advance, request for sexual favors, and/or other verbal or physical conduct of a sexual nature when one of the conditions outlined in (1), (2), or (3), below, is present.

**Gender-Based Harassment:** Gender-based harassment includes harassment based on gender, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve contact of a sexual nature, when one of the conditions outlined in (1), (2), or (3), below, is present.

- (1) Submission to, or rejection of, such conduct is made implicitly or explicitly a term or condition of a person's instruction, academic standing, employment, or participation in any University program, activity, or benefit.
- (2) Submission to, or rejection of, such conduct by an individual is used as a basis for evaluation in making academic or personnel decisions.
- (3) Such conduct creates a hostile environment. A hostile environment exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from University-related educational, employment, campus, and/or residential experiences when viewed through both a subjective and objective standard.

A hostile environment can be created by persistent or pervasive conduct or by a single or isolated incident, if sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. A single incident of sexual assault, for example, may be sufficiently severe to constitute a hostile environment. In contrast, the perceived offensiveness of a single verbal or written expression, standing alone, is typically not sufficient to constitute a hostile environment.

Sexual harassment:

- May be blatant and intentional and involve an overt action, a threat or

reprisal, or may be subtle and indirect, with a coercive aspect that is unstated.

- Does NOT have to include intent to harm, be directed at a specific target, or involve repeated incidents.
- May be committed by anyone, regardless of gender, age, position, or authority. While there is often a power differential between two persons, perhaps due to differences in age, social, educational, or employment relationships, harassment can occur in any context.
- May be committed by a stranger, an acquaintance, or someone with whom the complainant has an intimate or sexual relationship.
- May be committed by or against an individual, organization, or group.
- May occur by or against an individual of any sex, gender identity, gender expression, or sexual orientation.
- May occur in the classroom, in the workplace, in residential settings, or in any other context.
- May be a one-time event or may be part of a pattern of behavior.
- May be committed in the presence of others or when the parties are alone.
- May affect the complainant and/or third parties who witness or observe harassment.

### C. Sexual Exploitation

**Sexual Exploitation:** Any act where one person violates the sexual privacy of another or takes unjust or abusive sexual advantage of another. Sexual exploitation may include:

- surreptitiously observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
- recording, photographing, transmitting, showing, viewing, streaming, or distributing intimate or sexual images, audio recordings, or sexual information without the knowledge and consent of all parties involved; or
- exposing one's genitals or inducing another to expose their own genitals in non-consensual circumstances.

### D. Intimate Partner Violence

**Intimate Partner Violence:** Any act of violence or threatened act of violence that occurs between individuals who are involved or have been involved in a sexual, dating, spousal, domestic, or other intimate relationship. Intimate partner violence may include any form of prohibited conduct under this policy, including sexual assault, stalking, and physical abuse (as defined below).

Physical abuse consists of threatening or causing physical harm to another or engaging in other conduct that threatens or endangers the health or safety of any person. Physical abuse will be addressed under this policy if it involves sexual or gender-based harassment, intimate partner violence, or is part of a course of conduct under the stalking definition.

As used in this policy, the definition of intimate partner violence is consistent with the definitions of dating violence and domestic violence set forth in the Clery Act (as amended by VAWA). When determining whether the reported conduct meets the Clery definition, whether there has been a domestic or dating relationship will be determined by a review of its length, type, and frequency of interaction.

#### **E. Stalking**

**Stalking:** A course of conduct directed at a specific person which would cause a reasonable person (under similar circumstances and with similar identities to the complainant) to feel fear, to experience substantial emotional distress, or to fear for their safety or the safety of a third person. For purposes of this definition, “course of conduct” means two or more acts, including, but not limited to, acts in which the alleged 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. These acts can include, but are not limited to, threats of harm to self, others, or property; pursuing or following; non-consensual (unwanted) communication by any means; unwanted gifts; trespassing; and surveillance or other related types of observation. Stalking also includes cyber-stalking through electronic media, like the internet, social networks, blogs, cell phones, or text messages. “Substantial emotional distress” means significant mental suffering or anguish, that may, but does not necessarily, require medical or other professional treatment or counseling.

#### **F. Retaliation**

**Retaliation:** This policy prohibits acts or words against an individual or group of individuals because they have been involved in a protected activity. Protected activity includes making a good faith report under this policy; filing an external complaint; and opposing in a reasonable manner and consistent with University policy an action reasonably believed to constitute a violation of this policy. Retaliation may also include acts or words against an individual or group of individuals because they have participated in proceedings under this policy. Retaliation can take many forms, including, but not limited to, adverse action or violence, threats, and intimidation that would discourage a reasonable person (under similar circumstances and with similar identities to the complainant) from engaging in protected activity. Actions in response to a good faith report or response under this policy are considered retaliatory if they have a materially adverse effect on the working, academic, or University-controlled living environment of an individual or if they hinder or prevent the individual from participating in proceedings under this policy or effectively carrying out their University responsibilities. All individuals and groups of individuals are prohibited from engaging in retaliation and will be held accountable under this policy.

Concerns or questions about retaliation should be immediately reported to the University's Title IX Coordinator.

#### **G. Complicity**

**Complicity:** Any act that knowingly aids, facilitates, promotes, or encourages the commission of prohibited conduct by another person.

## H. Prohibited Romantic and/or Sexual Conduct with Students or Supervisees

Consensual romantic and/or sexual relationships are prohibited between a student (not one's spouse) and any member of faculty or administrative staff who teaches, supervises, evaluates, or otherwise is in a position to exercise direct power or authority over the student. Efforts by members of the faculty or administrative staff to initiate these relationships is prohibited. In cases in doubt, advice and counsel should be sought from the Director of Human Resources, appropriate Cabinet member, and/or supervisor.

Consensual romantic and/or sexual relationships between a student (not one's spouse) and any member of the faculty or administrative staff who is not in a position to exercise direct power of authority over that student (e.g., when the student is in a different school or department) are in general inappropriate. Any member of the faculty or administrative staff who engages in such a relationship must accept responsibility for assuring that it does not result in a conflict of interest or the perception thereof or raise other issues of professional ethics. In cases in doubt, advice, and counsel should be sought from the Director of Human Resources, appropriate Cabinet member, and/or supervisor.

## I. Additional Guidance Regarding Consent and Incapacitation

The following definitions clarify key terminology as used throughout the policy.

**Consent:** Consent is the voluntary, informed, and freely given agreement, through words and/or actions, to participate in mutually agreed-upon acts. Consensual activity happens when each partner willingly and affirmatively chooses to participate.

In evaluating whether consent has been freely sought and given, the University will consider the presence of any force, threat of force, threats, or coercion; whether the complainant had the capacity to give consent; and, whether the communication (through words and/or actions) between the parties would be interpreted by a reasonable person (under similar circumstances and with similar identities) as a willingness to engage in a particular act.

Coercion is the use of an unreasonable amount of pressure to gain sexual access. Coercion is more than an effort to persuade, entice, or attract another person to engage in sexual contact. When a person makes clear that they do not wish to participate in a particular activity or communicates by words or actions a decision to stop or a decision not to go beyond a certain interaction, continued pressure can be coercive. In evaluating whether coercion was used, the University will consider: (i) the frequency of the application of the pressure, (ii) the intensity of the pressure, (iii) the degree of isolation of the person being pressured, and (iv) the duration of the pressure.

Consent cannot be obtained through physical force or where there is a reasonable belief of the threat of physical force, when one person overcomes the physical limitations of another person, or by taking advantage of another person's incapacitation.

Important points regarding consent include:

- Consent to one act does not constitute consent to another act.
- Consent on a prior occasion does not constitute consent on a subsequent occasion.
- Consent to an act with one person does not constitute consent to an act with any other person.
- The existence of a prior or current relationship does not, in itself, constitute consent; even in the context of a relationship, there must be mutual consent.
- Consent can be withdrawn or modified at any time, and the act must cease immediately once consent is withdrawn.
- Consent cannot be inferred from silence, passivity, or lack of resistance.

Under Texas law, individuals younger than 17 years of age are legally incapable of giving consent to sexual penetration or contact by an adult (someone 18 years of age or older) who is three or more years older than the individual.

**Incapacitation:** Incapacitation is the inability, temporarily or permanently, to give consent because the individual is mentally and/or physically helpless, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the activity is occurring. In addition, an individual is incapacitated if they demonstrate that they are unaware at the time of the incident of where they are, how they got there, or why or how they became engaged in an act.

The use of alcohol or other drugs can lower inhibitions and create an atmosphere of confusion about whether consent is effectively sought and freely given. When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. When drug use is involved, incapacitation is a state beyond being under the influence or impaired by use of the drug. Alcohol and other drugs impact each individual differently and determining whether an individual is incapacitated requires an individualized assessment.

The University does not expect community members to be medical experts in assessing incapacitation. Individuals should look for the common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation. A person's level of intoxication is not always demonstrated by objective signs; however, some signs of intoxication may include clumsiness, difficulty walking, poor judgment, difficulty concentrating, slurred speech, vomiting, combativeness, or emotional volatility. A person who is incapacitated may not be able to understand some or all of the following questions: "Do you know where you are?" "Do you know how you got here?" "Do you know what is happening?" "Do you know whom you are with?"

An individual's level of intoxication may change over a period of time based on a variety of subjective factors, including the amount of substance intake, speed of intake, body mass, and metabolism. Because the impact of alcohol and other drugs varies from person to person, the amount of alcohol and/or drugs a person consumes may not be sufficient, without other evidence, to prove that they were

incapacitated under this Policy.

Another effect of alcohol consumption can be memory impairment or forgetting entire or partial events (sometimes referred to as “black-out” or “brown-out”). A person may experience this symptom while appearing to be functioning “normally,” including communicating through actions or words that seem to express an interest in engaging in sexual conduct. Whether sexual conduct with a person who is “blacked-out” constitutes prohibited conduct depends on the presence or absence of the observable factors indicating that a person is also incapacitated, as described above. Total or partial loss of memory alone, may not be sufficient, without other evidence, to prove that a person was incapacitated under this Policy.

In evaluating consent in cases of reported incapacitation, the University asks two questions: (1) Did the respondent know that the complainant was incapacitated? and if not, (2) Should a sober, reasonable person in a similar set of circumstances as the respondent have known that the complainant was incapacitated? If the answer to either of these questions is “yes,” the complainant could not consent; and the conduct is likely a violation of this policy.

A respondent’s voluntary intoxication is never an excuse for or a defense to prohibited conduct, and it does not diminish the responsibility to determine that the other person has given consent and has the capacity to do so.

## **8. Confidentiality, Privacy, and Related Reporting Responsibilities**

Issues of privacy and confidentiality play important roles in this policy and may affect individuals differently. While they are closely related, the concepts of privacy and confidentiality are distinct terms that are defined below.

### **A. Confidentiality**

**Confidentiality** refers to the protections provided to information disclosed in legally-protected or privileged relationships under Texas state law, including licensed professional mental health counselors, licensed medical professionals, and ordained clergy. These confidential resources can engage in confidential communications under Texas law when the information is disclosed within the scope of the provision of professional services. When an individual shares information with a confidential resource (on campus or in the community) as a confidential communication in the course of a protected relationship, the confidential resource cannot disclose the information (including information about whether an individual has received services) to any third party without the individual's written permission or unless required by ethical or legal obligations that compel the professional to reveal such information. For example, information may be disclosed when the individual gives written consent for its disclosure, there is an imminent concern that the individual will likely cause serious physical harm to self or others, or the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18. A person’s medical and counseling records are privileged and confidential documents.

Confidential resources submit non-personally-identifying information about Clery-reportable crimes to Campus Security for purposes of anonymous statistical

reporting under the Clery Act.

## **B. Privacy**

**Privacy** refers to the discretion that will be exercised by the University in the course of any investigation or other processes under this policy. Information related to a report of prohibited conduct will be shared with a limited circle of University employees who need to know in order to assist in the assessment, investigation, and resolution of the report and related issues. University employees receive training in how to safeguard private information. The University will make reasonable efforts to investigate and address reports of prohibited conduct under this policy, and information may be disclosed to participants in an investigation as necessary to facilitate the thoroughness and integrity of the investigation. In all such proceedings, the University will take into consideration the privacy of the parties to the extent reasonably possible.

The privacy of student education records is governed by the Family Educational Rights and Privacy Act (FERPA). The privacy of an individual's medical and related records generally is governed by the Health Insurance Portability and Accountability Act (HIPAA) and Title 2, Chapter 81 and Title 4, Chapter 241, Subchapter G, of the Texas Health & Safety Code, and Chapter 144 of the Texas Civil Practice and Remedies Code, excepting health records protected by FERPA. Access to an employee's personnel records in Texas is governed by Chapter 103 of the Texas Labor Code.

## **C. Responsibility to Report**

It is important to understand the different responsibilities of McMurry employees. Every employee is designated as either a Confidential Resource or a Responsible Employee.

**Confidential Resource:** A Confidential Resource is any employee who is a licensed medical, clinical, or mental-health professional (e.g., physicians, nurses, physician's assistants, psychologists, psychiatrists, professional counselors, and social workers, and those performing services under their supervision), when acting in that professional role in the provision of services to a patient; and any employee providing administrative, operational, and/or related support for such health care providers in their performance of such services. The McMurry University Chaplain is also a Confidential Resource when acting within a ministerial or pastoral role in the provision of services to a student, faculty, or staff member.

Confidential Resources **will not disclose information** about prohibited conduct without the individual's permission or as set forth in Confidentiality (8. A., above). When individuals who otherwise may be Confidential Resources receive information outside of the provision of services to a patient or McMurry University Chaplain ministerial relationship, the Confidential Resource is required to share that information with the Title IX Coordinator.

**Responsible Employees:** With the exception of University employees designated as Confidential Resources, all other University employees, including faculty, instructors (including teachers of record), and staff, **are required to report**

**immediately** any information they know about suspected prohibited conduct or potential violations of this policy. These individuals are referred to as Responsible Employees. Student workers who have supervisory responsibility or responsibility for the welfare of other students are also considered Responsible Employees when they learn of potential violations of this policy in the scope of their employment. Student workers who are Responsible Employees include but are not limited to Resident Assistants, Peer Leaders, Orientation Leaders, and Student Government Officers.

Responsible Employees must report all known information, including the identities of the parties, the date, time and location, and any details about the reported incident to the Title IX Coordinator. The Title IX Coordinator will share all reports alleging Clery-reportable events with the McMurry University Campus Security to ensure a coordinated institutional response. Responsible Employees may provide support and assistance to a complainant, witness, or respondent; but they cannot promise confidentiality or withhold information about prohibited conduct. Failure by a Responsible Employee to report suspected prohibited conduct in a timely manner may subject them to appropriate discipline, including removal from a position or termination of employment.

Responsible Employees are not required to report information disclosed (1) at public awareness events (e.g., “Take Back the Night,” candlelight vigils, protests, “survivor speak-outs,” or other public forums in which students may disclose prohibited conduct; or (2) during an individual’s participation as a subject in an Institutional Review Board-approved human subjects research protocol (IRB Research). The University may provide information about Title IX rights and available University and community resources and support at public awareness events, and Institutional Review Boards may, in appropriate cases, require researchers to provide such information to all subjects of IRB Research.

A complainant may choose not to make a complaint or report in their own case, even if the complainant would otherwise have reporting obligations by virtue of being a faculty member, staff member, or student worker.

**Students:** With the exception of student workers who are designated as Responsible Employees, all other students **are encouraged to report** any suspected violation of this policy.

#### **D. Clery Act Reporting**

Pursuant to the Clery Act, the University includes statistics about certain offenses in its annual security report and provides those statistics to the United States Department of Education in a manner that does not include any personally identifying information about individuals involved in an incident. The Clery Act also requires the University to issue timely warnings to the University community about certain crimes that have been reported and may continue to pose a serious or continuing threat to campus safety. Consistent with the Clery Act, the University withholds the names and other personally identifying information of complainants when issuing timely warnings to the University community.



## 9. Resources and Reporting Options

All involved parties have many options, including seeking counseling or assistance from a Confidential Resource, making a report under this policy, and/or making a report to law enforcement. The University recognizes that deciding among these options can be difficult and is an intensely personal decision. Individuals are encouraged to seek assistance and to explore all potential reporting and support options.

### A. Emergency Resources and Law Enforcement

Emergency medical assistance and campus safety/law enforcement assistance are available both on and off campus. Individuals are encouraged to contact law enforcement and seek medical treatment as soon as possible following an incident that may pose a threat to safety or physical well-being or following a potential criminal offense.

To contact law enforcement:

**McMurry University Campus Security** (on campus), 24 hours a day  
2249 Sentinel Drive  
President Hall, North Wing  
325-793-4666

**Abilene Police Department** (off campus)  
4565 South First Street  
Abilene, TX 79604-0174  
325-673-8331  
**In an emergency, call 911.**

To access on-campus medical treatment, contact:

**McMurry University Health Services**  
Ronda Hoelscher, RN  
University Nurse  
President Hall South, Room 102  
325-793-4857

To access medical treatment (including Sexual Assault Forensic Exams) at local hospitals, contact:

**Hendrick Medical Center**  
1900 Pine St.  
Abilene, Texas 79601  
325-670-2000 (Main Number)  
325-670-2151 (Emergency Number)

**Hendrick Medical Plaza**  
5302 Buffalo Gap Road, Abilene  
325-307-6351 (Emergency Care Center – South)

### **Abilene Regional Medical Center**

6250 US-83  
Abilene, TX 79606  
[325-428-1000](tel:325-428-1000) (Main Number)  
[325-428-1270](tel:325-428-1270) (Emergency Number)

To access crisis counseling and other community resources, contact:

### **Regional Victims Crisis Center**

Abilene, TX 79604  
<http://regionalvictimcrisiscenter.org/contactus.html>  
325-677-7895 (8 am to 5 pm, then 24-hour crisis)

### **Oceans Behavioral Hospital of Abilene**

4225 Woods Place  
Abilene, TX 79601  
<https://oceanshealthcare.com/abilene>  
325-691-0030

## **B. Campus Confidential Resources**

Students can access confidential resources on campus through:

### **1. McMurry University Counseling Center**

President Hall South, Room 105  
Office: 325-793-4882 (Schedule an appointment or speak with counselor)  
<https://services.mcm.edu/counseling/index.html>

**Hours of Operation:** Monday - Friday: 8am-5pm (Closed during University holiday breaks) 8 a.m. until 5 p.m.

In case of a crisis, an individual may come by the Counseling Center during regular office hours. Students are advised to contact other available mental health resources when the Counseling Center is closed. In Abilene: If a student is having a psychological crisis and needs assistance, call the following numbers: 911 or a local hospital. See the University Counseling Center website for other resources.  
<https://services.mcm.edu/counseling/index.html>

### **2. McMurry University Health Services**

Ronda Hoelscher, R.N.  
University Nurse  
President Hall South, Room 102  
Phone: 325-793-4857  
<https://services.mcm.edu/health/>

**Hours of Operation:** Monday – Thursday: 8am - 4:30pm. Closed daily 12pm - 1pm for lunch. The University Clinic is closed Friday – Sunday.

### 3. **University Chaplain**

Rev. Marty Cash-Burless  
University Chaplain and Director of Religious & Spiritual Life  
Campus Center, Rm 107  
Abilene, Texas 79697  
325-793-4775

Julia Puac-Romero  
Assistant Chaplain  
Office of Religious & Spiritual Life  
Campus Center, Rm 104  
325-793-4992

<https://religious-life.mcm.edu/index.html>

## **C. Reporting Options**

The University encourages all individuals to report prohibited conduct or a potential violation of this policy to the Title IX Coordinator, the McMurry University Campus Security, and/or to local law enforcement. A complainant has the right to report, or decline to report, potential criminal conduct to law enforcement. Upon request, the University will assist a complainant in contacting law enforcement at any time. Under limited circumstances posing a threat to health or safety of any University community member, the University may independently notify law enforcement.

An individual may make a report to the University, to law enforcement, to neither, or to both. Campus Title IX processes and law enforcement investigations operate independently of one another, although the University will coordinate information with the law enforcement as appropriate. Anyone can make a report as follows:

- Make a report to the Title IX Coordinator in person, by telephone, or by email.
- If on campus, contact the McMurry University Campus Security for assistance in filing a criminal complaint and preserving physical evidence at 325-793-4666.
- If off campus, contact local law enforcement to file a criminal complaint by calling 911.

An individual may pursue some or all of these steps at the same time (e.g., one may simultaneously pursue a Title IX report and a criminal complaint). When initiating any of the above options, an individual does not need to know whether they wish to request any particular course of action nor how to label what happened. As part of a report to the Title IX Coordinator, an individual can also request interim measures and support.

### **1. Anonymous Reporting**

Anyone can make an anonymous report by submitting information by calling Campus Conduct Hotline 866-943-5787. Based on the nature of the information submitted, the University's ability to respond to an anonymous

report may be limited.

## **2. Requests for Anonymity**

Once a report has been shared with the Title IX Coordinator, a complainant may also directly request that their identity remain private (request for anonymity), that no investigation occur, or that no disciplinary action be taken. The University will carefully balance this request with the University's commitment to provide a non-discriminatory environment, and the respondent's right to have specific notice of the allegation(s) if the University were to take action that affects the respondent. In such circumstances, the Title IX Coordinator may arrange for preliminary fact-finding by an investigator to gain a better understanding of the context of the complaint or take other appropriate steps, including consulting with the University's threat assessment team. See Balancing Complainant Autonomy with University Responsibility to Investigate.

## **3. Amnesty**

The University wishes to encourage good faith reports of conduct prohibited under this policy. Therefore, the University will not pursue disciplinary action against a student enrolled at the University who makes a good faith report to the University as a complainant or a witness to an incident of prohibited conduct (including sexual and gender-based harassment, sexual assault, intimate partner violence or stalking) for a violation by the student of the University's Student Handbook. This amnesty applies only to conduct occurring at or near the time of the incident, regardless of the location at which the incident occurred or the outcome of the investigation. This includes amnesty for disclosure of personal consumption of alcohol or other drugs (underage or illegal) which would otherwise be a violation of the Student Handbook.

The University may investigate to determine whether a report of prohibited conduct was made in good faith. A student may not receive amnesty for reporting an incident involving their own commission or assistance in the commission of prohibited conduct. A student who makes a report but is later found responsible for prohibited conduct at or near the time of the incident, is not entitled to a determination that the report was made in good faith. Granting of amnesty is final and may not be revoked. Even when amnesty is extended, the University may initiate an assessment or educational discussion or pursue other non-disciplinary options regarding alcohol or other drug use.

## **4. Timeframe for Reporting**

Complainants and other reporting individuals are encouraged to report any violation of this policy as soon as possible in order to maximize the University's ability to respond promptly and effectively. There is no time limit for reporting. Reports under this policy may be made at any time without regard to how much time has elapsed since the incident(s) in question.

If the respondent is no longer a student or employee at the time of the complaint or report or if the respondent has withdrawn from classes, the University may not be able to take disciplinary action against the respondent. However, in such circumstances, the University may seek to meet its Title IX obligations by providing support for the complainant and taking steps to end the prohibited behavior, prevent its recurrence, and address its effects. The University may assist the complainant in identifying and contacting law enforcement and other external enforcement agencies.

#### **D. Other Community Resources**

Any individual may also access resources located in the local community. These organizations can provide crisis intervention services, counseling, medical attention, and assistance in dealing with the criminal justice system. If accessing these resources, individuals are encouraged to clarify whether the resources are confidential.

### **10. Interim Measures**

Upon receipt of a report of prohibited conduct, the University will provide reasonable and appropriate interim measures designed to preserve the parties' educational experiences; protect the parties during an investigation; address safety concerns for the broader University community; maintain the integrity of the investigative and/or resolution process; and deter retaliation. These measures may be **remedial** (measures designed to maintain continued access to educational opportunities) or **protective** (involving a restrictive action against a respondent).

Interim remedial measures may include:

- Access to counseling and medical services
- Assistance in obtaining a sexual assault forensic examination
- Assistance in arranging rescheduling of exams and assignments and extensions of deadlines
- Academic support
- Assistance in requesting long-term academic accommodations through the Disability Services Coordinator if the party qualifies as an individual with a disability
- Change in the party's class schedule, including the ability to transfer course sections or withdraw from a course
- Change in the party's University work schedule or job assignment
- Change in the party's campus housing
- Assistance navigating off-campus housing concerns
- Escort and other safety planning steps
- Imposition of a "no contact directive," an administrative remedy designed to curtail contact and communications between two or more individuals
- Voluntary or involuntary leave of absence
- Referral to resources that can assist in obtaining a protective order under Texas law
- Referral to resources that can assist with any financial aid, visa, or immigration concerns
- Any other remedial measure that can be used to achieve the goals of this policy.

Interim remedial measures are available to the parties regardless of whether the complainant pursues an investigation or seeks formal disciplinary action.

Interim protective measures may include:

- Change in the respondent's University work schedule or job assignment
- Respondent's exclusion from all or part of University housing
- Respondent's exclusion from specified activities or areas of campus
- Respondent's prohibition from participating in student activities or representing the University in any capacity such as playing on an official team; serving in student government; performing in an official band, ensemble, or production; or participating in a recognized student organization
- Interim suspension of Respondent, including removal from University housing
- Any other protective measure that can be used to achieve the goals of this policy.

The availability of remedial and protective measures will be determined by the specific circumstances of each report, and an individualized assessment of the circumstances of each case. Making every effort to avoid depriving all parties of their education, the University will consider a number of factors in determining which measures to take, including the needs of the student or employee seeking remedial and/or protective measures; the severity or pervasiveness of the alleged conduct; whether the complainant and the respondent share the same residence hall, academic course(s), or job location(s); and whether judicial measures have been imposed (e.g., protective orders). The University will work in good faith to implement the requirements of judicially-issued protective orders and similar orders, to the extent that doing so is within its authority.

The determination of whether to impose the interim protective measure of interim suspension will be made by the Title IX Coordinator in consultation with the Vice President for Student Affairs and Intercollegiate Athletics and members of the University's interim measures assessment team. A respondent may be suspended on an interim basis when the University has received information that indicates the continued presence of the respondent on campus will likely have a serious effect on the physical, mental, or emotional health, safety, or well-being of another person; when physical safety is seriously threatened; or when the ability of the University to carry out its operation is threatened or impaired. The decision to impose interim suspension may be made at any point in the process. If an interim suspension is imposed, the respondent will be provided an opportunity to meet with Title IX Coordinator to review the grounds for the interim suspension and present a response as soon as practicable.

The University will provide reasonable remedial and protective measures to third parties as appropriate and available, taking into account the role of the third party and the nature of any contractual relationship with the University.

Requests for interim measures may be made by either party to the Title IX Coordinator. The Title IX Coordinator is responsible for ensuring the implementation of interim measures and coordinating the University's response with the appropriate offices on campus. The Title IX Coordinator has the discretion to impose and/or modify any interim measure based on all available information and is available to meet with a complainant or respondent to address any concerns about the provision of interim measures. The University will maintain the privacy of any remedial and protective measures provided

under this policy to the extent practicable and will promptly address any violation of interim remedial or protective measures.

All individuals are encouraged to report to the Title IX Coordinator any concerns about the failure of another to abide by any restrictions imposed through an interim measure. In the event of an immediate health or safety concern, individuals should contact 911 or x4666 (on campus) immediately. The University will take immediate action to enforce a previously-implemented measure, which may include additional interim restrictions and/or disciplinary penalties for failing to abide by a University-imposed interim protective measure. In evaluating whether a party has violated the conditions of an interim measure, the Title IX Coordinator has the authority to conduct expedited fact-gathering (with appropriate notice and the opportunity to be heard), to impose separate disciplinary action for the violation based on the facts as gathered, and/or to incorporate the failure to comply with the interim measure into the underlying investigation and charges of prohibited conduct. Even if not charged separately, information about failure to abide by an interim measure may also be considered by the Review Panel in determining an appropriate sanction.

## **11. Overview of Resolution Options**

The University is committed to providing a prompt, thorough, equitable, and impartial resolution of all reported violations of this policy. The University uses two processes to resolve reports of prohibited conduct under this policy:

Disciplinary Resolution, which involves an investigation and adjudication, and, if appropriate, the imposition of sanctions, and Alternative Resolution, which includes informal or restorative options for resolving reports. The Title IX Coordinator will determine the appropriate resolution process after making an initial assessment of the reported information, considering the stated interests of the complainant and respondent, campus safety, and the University's obligation to maintain an environment free from harassment and discrimination.

The processes under this policy are separate and distinct from Texas' criminal process. Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. Neither a decision by law enforcement regarding prosecution nor the outcome of any criminal proceeding will be considered determinative of whether a violation of this policy has occurred.

### **A. Initial Assessment**

After receiving a report of prohibited conduct, the Title IX Coordinator will gather information about the reported conduct and respond to any immediate health or safety concerns raised by the report. The Title IX Coordinator will assess the complainant's safety and well-being, offer the University's immediate support and assistance, and assess the nature and circumstances of the report to determine whether the reported conduct raises a potential policy violation, whether the reported conduct is within the scope of this policy, and the appropriate manner of resolution under this policy. The Title IX Coordinator may consult with the University's interim measures assessment team, threat assessment group, or other University administrators as part of the initial assessment.

As part of the initial assessment, the Title IX Coordinator will:

- assess the nature and circumstances of the report, including whether it provides the names and/or any other information that identifies the complainant, the respondent, any witness, and/or any other individual with knowledge of the reported incident;
- address immediate physical safety and emotional well-being;
- notify the complainant of their right to contact (or decline to contact) law enforcement or seek a civil protection order;
- notify the complainant of the right to seek medical treatment;
- notify the complainant of the importance of preservation of evidence;
- communicate necessary details of the report to McMurry Campus Security to enter the report into the University's daily crime log if required by the Clery Act; the McMurry University Director of Security will assess the reported conduct and discern the need for a timely warning under the Clery Act;
- provide the complainant with written information about on- and off-campus resources; notify the complainant of the range of interim measures available, including the right to reasonable interim remedial measures regardless of whether they choose to participate in a University or law enforcement investigation;
- notify the complainant of the range of interim protective measures available if the University pursues an investigation;
- provide the complainant with an explanation of the procedural options, including Disciplinary Resolution and Alternative Resolution;
- discuss the complainant's expressed preference for manner of resolution and any barriers to proceeding (e.g., confidentiality concerns);
- notify the complainant of the right to be accompanied at any meeting by an advisor of choice;
- assess for any pattern of conduct by the respondent;
- explain the University's policy prohibiting retaliation, that the University will take prompt action when retaliation is reported, and how to report acts of retaliation; and
- determine age of the complainant; and if the complainant is a minor, or was a minor at the time of the alleged prohibited conduct, make the appropriate notifications under the Sexual Abuse and Child Molestation Prevention (Employee Handbook - 922).

When the Title IX Coordinator decides to initiate an investigation, impose interim protective measures, or take any other action that impacts a respondent, the Title IX Coordinator will also ensure that the respondent is notified and receives written information on available resources and options, consistent with the list outlined above, as applicable.



At the conclusion of the initial assessment, the University will proceed with one of the following options:

- (1) Proceed with an investigation under the Disciplinary Resolution process. This will occur when a complainant requests an investigation and the Title IX Coordinator determines it is appropriate; when the Title IX Coordinator determines that an investigation must be pursued even when a complainant requests that no investigation be pursued; or when Alternative Resolution is not appropriate or available.
- (2) Proceed with Alternative Resolution. This will always require the consent of the complainant. The consent of the respondent is also required when the form of resolution involves the respondent.
- (3) If outside the scope of this policy, refer the matter to another appropriate office or department for resolution under the relevant policy.
- (4) Close the report with the option to re-open it at another time if the complainant requests resolution or if the University subsequently determines there is a need to further investigate the alleged misconduct. This option could include notifying the respondent of the alleged misconduct. The level of detail shared will be at the discretion of the Title IX Coordinator. In these instances, the respondent will not be required to make a statement or accept/deny responsibility for the alleged conduct.

## **B. Balancing Complainant Autonomy with University Responsibility to Investigate**

In order to protect the safety of the campus community, the Title IX Coordinator may need to proceed with an investigation even if a complainant specifically requests that the matter not be pursued. The Title IX Coordinator may also initiate an investigation of potential violations of this policy even absent a formal report or identified complainant or respondent and even if a report has been withdrawn. In such a circumstance, the Title IX Coordinator will take into account the complainant's articulated concerns, the safety of the campus community, fairness to all individuals involved, and the University's obligations under Title IX.

A complainant may request that their name or other personally-identifiable information not be shared with a respondent, that no investigation be pursued, or that no disciplinary action be taken. In these instances, before taking any further investigative steps, a member of the Title IX Coordinator will discuss any concerns with the complainant and seek to address and remedy barriers to reporting and/or participation based upon concerns about retaliation or other lack of clarity in understanding procedural options and potential outcomes.

In reaching a determination on whether to honor a complainant's request that the matter not be pursued, the Title IX Coordinator will balance the complainant's request against the following factors:

- the totality of the known circumstances;
- the nature and scope of the alleged conduct, including whether the reported

behavior involves the use of a weapon;

- the respective ages and roles of the complainant and respondent;
- the risk posed to any individual or to the campus community by not proceeding, including the risk of additional violence;
- whether there have been other reports of other prohibited conduct or other misconduct by the respondent;
- whether the report reveals a pattern of misconduct related to prohibited conduct (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group;
- the complainant's interest in the University not pursuing an investigation or disciplinary action and the impact of such actions on the complainant;
- whether the University possesses other means to obtain relevant evidence;
- fairness considerations for both the complainant and the respondent;
- the University's obligation to provide a safe and non-discriminatory environment; and
- any other available and relevant information.

The Title IX Coordinator will consider what steps may be possible or appropriate when a respondent is unknown or the complainant requests anonymity, and what other measures or remedies might be considered to address any effects of the reported behavior on the campus community. The Title IX Coordinator will make a determination regarding the appropriate manner of resolution under the policy. The University will seek resolution consistent with the complainant's request, if it is possible to do so, based upon the facts and circumstances, while also protecting the health and safety of the complainant and the University community.

Where the Title IX Coordinator determines that a complainant's request(s) can be honored, the University may nevertheless take other appropriate steps to eliminate the reported conduct, prevent its recurrence, and remedy its effects on the complainant and the University community.

Those steps may include offering appropriate remedial measures to the complainant, providing targeted training and prevention programs, and/or providing or imposing other remedies. The Title IX Coordinator may also request that a report be re-opened and pursued under this policy if any new or additional information becomes available, and/or if the complainant decides that they would like Disciplinary Resolution to occur.

In those instances when the Title IX Coordinator determines that the University must proceed with an investigation despite the complainant's request that it not occur, the Title IX Coordinator will notify the complainant that the University intends to initiate an investigation. The complainant is not required to participate in the investigation or in any of the actions taken by the University.

The University's ability to investigate and respond fully to a report may be limited if the complainant requests anonymity or declines to participate in an investigation.

The University will, however, pursue other steps to limit the effects of the potential prohibited conduct and prevent its recurrence. In all cases, the final decision on whether, how, and to what extent the University will conduct an investigation and whether other interim remedial or protective measures will be taken in connection with a report of prohibited conduct will be made in a manner consistent with this policy.

### **C. Consolidation of Investigation**

The Title IX Coordinator has the discretion to consolidate multiple reports into a single investigation if evidence relevant to one incident might be relevant to the others. Consolidation might involve multiple complainants and a single respondent, multiple respondents, or conduct that is temporally or logically connected.

As noted in Coordination with Other Policies (4, above), the investigator may also investigate other forms of conduct that would be a potential violation of other University policies, and those forms of conduct may be resolved under this policy, instead of the procedures ordinarily used to address potential violations of such other University policies.

### **D. Safeguarding the Privacy of Complainants and Respondents**

Individuals involved in proceedings under this policy are encouraged to exercise discretion in sharing information in order to safeguard the integrity of the process and to avoid the appearance of retaliation. While discretion regarding the process is important, complainants and respondents are not restricted from discussing and sharing information with others who may support or assist them during the process. All parties, however, are encouraged to maintain the privacy of FERPA-protected and/or sensitive information gathered or learned in the process.

### **E. Advisor**

Throughout any investigation or resolution, each party has the right to consult with an advisor of their choosing. The advisor may be any person, including an attorney. The parties may be accompanied by their respective advisor at any meeting or proceeding related to the investigation or resolution of a report under this policy. While the advisor may provide support and advice to the parties at any meeting and/or proceeding, the institution may establish restrictions regarding the extent to which the advisor may participate in the proceedings. Advisors may not speak on behalf of the parties or otherwise participate in, or in any manner delay, disrupt, or interfere with meetings and/or proceedings. Generally, the Title IX Coordinator and investigator will communicate directly with the complainant or respondent, and any communications with an advisor may only occur after a FERPA waiver has been executed. An advisor should plan to make themselves reasonably available, and the University will not unduly delay the scheduling of meetings or proceedings based on the advisor's unavailability.

## **12. Alternative Resolution**

Alternative Resolution is a voluntary and remedies-based resolution designed to eliminate the prohibited conduct, prevent its recurrence, and remedy its effects in a manner that meets the needs of the parties while still maintaining the safety of the campus community.

Where an initial assessment concludes that Alternative Resolution may be appropriate, the University will consider and implement interim remedial measures as outlined above.

Other potential remedies include targeted or broad-based educational programming or training, supported direct conversation or interaction with the respondent, and/or indirect action by the Title IX Coordinator. Depending on the form of Alternative Resolution used, it may be possible for a complainant to maintain anonymity. The University will not compel a party to engage in mediation, or to participate in any particular form of Alternative Resolution. The decision to pursue Alternative Resolution will be made when the University has sufficient information about the nature and scope of the conduct, which may occur at any time.

Participation in Alternative Resolution is voluntary, and either party can request to end Alternative Resolution at any time. Additionally, the Title IX Coordinator can end Alternative Resolution if the Coordinator determines it is no longer the appropriate avenue for resolution for a given report. If Alternative Resolution is stopped prior to completion, information that is shared with or documented by the facilitator of the Alternative Resolution will not be shared with the investigator if Disciplinary Resolution is initiated. A party's willingness to participate in Alternative Resolution will not be considered as evidence in Disciplinary Resolution.

The Title IX Coordinator will maintain records of all reports and conduct referred for Alternative Resolution, which will typically be completed within 60 calendar days of the initial report. Participation in Alternative Resolution does not constitute a responsible finding of a policy violation and therefore is not reflected on a student's disciplinary record. However, if the respondent is found responsible for any violations of this policy in the future, information regarding the prior report processed through Alternative Resolution may be used in the sanctioning phase for the subsequent report, provided that the respondent is granted the opportunity to address the prior report as well.

While the University will seek to honor confidentiality of the parties' communications with the facilitator during the Alternative Resolution process to the extent necessary to facilitate the resolution, the University may be required to produce records created during this process in response to a judicial subpoena or a FERPA educational record request.

### **13. Disciplinary Resolution When the Respondent is a Student**

During the disciplinary resolution process, both parties have equal rights, including the opportunity to receive a written notice of investigation; to participate in the investigation; to review and present information and evidence; to be accompanied by an advisor of their choice to any meeting; to timely and equal access to information that will be used in disciplinary proceedings; to timely notice of meetings at which their presence will be requested or required; to simultaneous written notice of the outcome, rationale, and, as appropriate, the sanction; and to seek review of the finding.

#### **A. Timeframe for Investigation and Resolution**

The University will seek to complete the fact-gathering portion of the investigation in approximately 60 calendar days following the issuance of the notice of the investigation. In some instances, the notice of investigation may be issued the same date as the date of the report of the incident; in other instances, based on information gathered in the initial assessment, the notice of investigation may be

issued at a later date. This policy designates reasonably prompt timeframes for the major stages of the investigation and resolution process (typically set forth in business days), but the University may extend any timeframe in this policy for good cause. An extension may be required for good cause to ensure the integrity and thoroughness of the investigation; to comply with a request by law enforcement; in response to the unavailability of the parties or witnesses; or for other legitimate reasons, such as intervening breaks in the University calendar, University finals periods, the complexity of the investigation, the volume of information or length of the written record, and/or the severity and extent of the alleged misconduct. While requests for delays by the parties may be considered, the University cannot unduly or unreasonably delay the prompt resolution of a report under this policy.

Reasonable requests for delays by the parties will serve to extend the 60-calendar-day time period for investigation of the report. The Title IX Coordinator, in consultation with the investigator, has the authority to determine whether an extension is required or warranted by the circumstances. The University will notify the parties in writing of any extension of the timeframes for good cause and the reason for the extension.

Although cooperation with law enforcement may require the University to suspend the fact-finding portion of a Title IX investigation temporarily, the University will promptly resume its Title IX investigation as soon as it is notified by the law enforcement agency that the agency has completed the evidence-gathering process. The University will not, however, wait for the conclusion of a criminal proceeding to begin its own investigation and, if needed, will take immediate steps to provide appropriate interim remedial measures.

Investigations will proceed according to the timeframes in this policy to the extent possible during the summer and at other times when classes at the University are not in session. The Title IX Team will work with the parties to balance the need for promptness and the preference for in-person meetings regarding the investigation.

Timeframes for all phases of the disciplinary process, including the investigation, any related disciplinary proceedings, and any related review of the finding, apply equally to both complainant and respondent.

## **B. Expectations for the Parties; Cooperation with Investigation and Resolution Procedures**

All University community members are expected to provide truthful information in any report or proceeding under this policy. Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in connection with an incident of prohibited conduct is prohibited and subject to disciplinary sanctions. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are not later substantiated or no policy violation is found to have occurred.

McMurry University expects all members of the University community to cooperate fully with the investigation and resolution procedures. It is understood that there may be circumstances in which a complainant or respondent wishes to limit their

participation, and the University will respect the choice of the complainant or respondent as to how to engage in proceedings under this policy. The University may, however, move forward with an investigation and disciplinary action without the participation of a party or parties.

The University also recognizes that witnesses may be reluctant to participate in the process; nevertheless, any student or member of the faculty or staff who refuses to cooperate in an investigation may be subject to sanction. Refusal to cooperate includes, but is not limited to, delaying or failing to acknowledge requests from University officials for information, delaying or failing to make oneself available for meetings with University officials, and/or providing information to University officials the individual knows to be untruthful.

If a complainant or respondent chooses not to answer any or all questions, or otherwise participate in an investigation for any reason, the University will continue its process; and the University will issue any discipline or sanctions, as appropriate. The University will not draw any adverse inference from a complainant's or respondent's decision not to participate in the investigation or any form of resolution under this policy; however, the complainant or respondent should be aware that declining to participate in the investigation may impact the timing and outcome of the case.

At any time, the University may place an administrative hold on the respondent's University transcript, or defer or withhold the award of the respondent's degree. If a respondent withdraws while the investigation is pending, the University will proceed with the Disciplinary Resolution process despite the respondent's withdrawal. Further, the University will place an administrative hold on the respondent's transcript pending the completion of the Disciplinary Resolution process.

### **C. Investigation**

When the Title IX Coordinator determines a report warrants further investigation or it is appropriate for the Disciplinary Process to proceed, the Title IX Coordinator will appoint one or more investigators to conduct a prompt, thorough, fair, and impartial investigation. The investigator may be a University employee and/or an experienced external investigator. Any investigator used by the University will receive annual training on the issues related to sexual and gender-based harassment, sexual assault, dating violence, domestic violence, and stalking, and on how to conduct an investigation that is fair and impartial, provides parties with notice and a meaningful opportunity to be heard, and protects the safety of complainants while promoting accountability. The investigator(s) will be impartial and free from conflict of interest or bias.

**Notice of Investigation:** When the Title IX Coordinator has sufficient information regarding the alleged prohibited conduct, the Title IX Coordinator will notify the complainant and the respondent, in writing, of the following information: (1) the names of the complainant and the respondent; (2) the date, time (if known), location, and nature of the reported conduct; (3) the reported policy violation(s); (4) the name of the investigator; (5) information about the parties' respective rights

and responsibilities; (6) the prohibition against retaliation; (7) the importance of preserving any potentially relevant evidence in any format; (8) how to challenge participation by the investigator on the basis of a conflict of interest or bias; and (9) a copy of this policy. If the investigation reveals the existence of additional or different potential policy violations, including a violation of an interim measure, the Title IX Coordinator will issue an amended notice of investigation.

**Overview:** During an investigation, the investigator will seek to meet separately with the complainant, respondent, and relevant witnesses. Witnesses are individuals who may have information relevant to the incident, including individuals who may have observed the acts in question, may be able to provide contextual information, or may have other information related to the incident, the disclosure, or related matters. As noted above, this policy prohibits attempts to commit prohibited conduct. In assessing whether an individual attempted to commit prohibited conduct, the investigator will consider elements such as circumstances and context of the encounter, statements made by the parties and the actions of the parties.

Witnesses may not participate solely to speak about an individual's character. Where witnesses are interviewed as part of the investigation, the name of the witness and the information gathered in the interviews will be shared with the parties at the conclusion of the investigation. The investigator will also gather other relevant information or evidence, including documents, photographs, communications between the parties, medical records (subject to the consent of the applicable person), and other information, including electronic records, as appropriate.

The investigator, not the parties, is responsible for gathering relevant evidence to the extent reasonably possible. Both the complainant and the respondent are encouraged, however, to submit any information they believe may be relevant, and both the complainant and respondent will be asked to identify witnesses and provide other relevant information, such as documents, communications, photographs, and other evidence. Both parties are encouraged to provide all relevant information as promptly as possible to facilitate prompt resolution. In the event that a party declines to provide material information, the University's ability to gather and consider all facts may be impacted.

The investigator may also consider information publicly available from social media or other online sources that comes to the attention of the investigator. The Title IX Team does not actively monitor social media or online sources, however, and as with all potentially relevant information, the complainant, respondent, or witness should bring online information to the attention of the investigator.

Similarly, the parties should bring any new or evolving evidence, such as harassing or retaliatory conduct, to the attention of the investigator. The investigator may consider such information in the investigation and will also share any information about retaliation or violation of the terms of an interim measure with the Title IX Coordinator for further action through expedited fact-gathering and resolution.

The investigator may visit relevant sites or locations and record observations through written, photographic, or other means. In some cases, the investigator may

consult medical, forensic, technological, or other experts when expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation. The University will not consider polygraph results. In general, a person's medical and counseling records are confidential and not accessible to the investigator unless the person voluntarily chooses to share those records with the investigator. In those instances, the relevant information from the records must be shared with the other party; it should be noted, however, that certain irrelevant information may be redacted from such records, as appropriate.

The investigator will review all information identified or provided by the parties and will determine the appropriateness, relevance, and probative value of the information developed or received during the investigation. In general, the investigator will not consider statements of personal opinion or statements as to any party's general reputation for any character trait. All information considered relevant by the investigator will be provided to the parties for their review and comment, as described in this policy. Information received by the investigator that is not determined to be relevant will be excluded.

The investigator will provide periodic updates to the parties about the status of the investigation, with a goal to complete the fact-gathering portion of the investigation within approximately 60 calendar days.

**Prior or Subsequent Conduct of the Respondent:** Prior or subsequent conduct of the respondent may be considered in determining pattern, knowledge, intent, motive, or absence of mistake. For example, evidence of a pattern of prohibited conduct by the respondent, either before or after the incident in question, regardless of whether there has been a prior finding of a policy violation, may be deemed relevant to the determination of responsibility for the prohibited conduct under investigation. The determination of relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of similar prohibited conduct. The investigator will determine the relevance of this information and both parties will be informed if evidence of prior or subsequent conduct is deemed relevant.

**Prior Sexual History:** The sexual history of the complainant or respondent will never be used to prove character or reputation. Evidence related to the prior sexual history of the parties is generally not used in determining whether a violation of this policy has occurred and will only be considered under limited circumstances. For example, if consent is at issue, the sexual history between the parties may be relevant to determine the nature and manner of communications between the parties, which may inform the determination of whether consent was sought and reasonably appeared to have been given during the incident in question. As set forth in the consent definition, even in the context of a relationship, consent to one sexual act does not constitute consent to another sexual act, and consent on one occasion does not constitute consent on a subsequent occasion. In addition, prior sexual history may be relevant to explain injury, to provide proof of a pattern, or to address another specific issue raised in the investigation. The investigator will determine the relevance of this information and both parties will be informed if evidence of prior sexual history is deemed relevant.



**Coordination with Law Enforcement:** If there is a concurrent criminal investigation, the University may contact the law enforcement agency that is conducting any investigation to inform that agency that a University investigation is also in progress, to attempt to ascertain the status of the criminal investigation, and to determine the extent to which any evidence collected by law enforcement may be available to the University in its investigation.

**Review of Preliminary Investigative Report:** At the conclusion of the fact-gathering portion of the investigation, the investigator will prepare a preliminary investigative report that provides the complainant and the respondent equal and timely access to information that will be used in determining whether there was a policy violation. The preliminary investigative report and accompanying documents will be made available to the complainant and the respondent to review. Upon notice of the availability of the preliminary investigative report, each party will have five business days to (1) meet again with the investigator, (2) provide written comment or feedback on the facts as gathered, (3) submit additional information, (4) suggest questions to be asked (at the discretion of the investigator(s)) of the other party and/or witnesses, and/or (5) identify additional witnesses or request the collection of other information by the investigator. If either party provides a written response or makes a request for additional information, the content will be shared with the other party and incorporated as appropriate in the final investigative report. The parties are expected to submit all information relevant to the investigation prior to the preparation of the preliminary investigate report. However, each party shall have one opportunity to submit additional information after reviewing the preliminary report. Any information gathered through additional investigation steps will be shared with both parties, and, as appropriate, the parties may have the opportunity for further response if sufficient new information has been gathered. If additional review is granted, each party will have three business days to review any additional information and any further comment by the parties will be limited to responding to the new information only. As necessary, the investigator will designate reasonably prompt timeframes to ensure a timely completion of the process while also providing an adequate opportunity for both sides to respond thoroughly to the information gathered during the investigation. In the absence of good cause, information discoverable through the exercise of due diligence that is not provided to the investigator prior to review of the preliminary investigative report or in the one opportunity to submit additional information after the preliminary report was reviewed will not be considered in the determination of responsibility for a violation of the policy.

**Standard of Proof:** The investigator will make a finding, by a preponderance of the evidence, whether there is sufficient evidence to support a finding of policy violation. A finding of responsibility based on a preponderance of the evidence means that based on all relevant evidence and reasonable inferences from the evidence, the greater weight of information indicates that it was more likely than not the alleged policy violation occurred.

**Final Investigative Report:** Unless there are significant additional investigative steps requested by the parties or identified by the investigator, within ten business days of receipt and consideration of additional comments, questions, and/or

information from the parties, the investigator will prepare a final investigative report, which will include a determination as to whether there is sufficient information, by a preponderance of the evidence, to support a finding of responsibility for a violation of the policy. Both parties will receive simultaneous written notification of the investigative finding, the rationale, and the ability to contest the investigative finding.

#### **D. Expedited Fact-Gathering**

Expedited fact-gathering may be utilized in cases where the respondent accepts responsibility for prohibited conduct, where the only allegation is one or more violations of a University-issued No Contact Directive, or where otherwise appropriate. Expedited fact-gathering will include, at a minimum, appropriate notice to all parties and the opportunity to be heard.

At the conclusion of the expedited fact-gathering, the Title IX Coordinator will resolve the matter through alternative resolution, issue or modify interim measures, or refer the matter to the Review Panel to determine the appropriate sanction(s).

#### **E. Review of Finding**

Either party may contest the investigative finding by asserting that (1) there was a material procedural error that substantially impacted the outcome and/or (2) the investigative finding, applying a preponderance of the evidence standard, was not supported by substantial evidence. To contest the finding, the complainant or respondent must submit a written statement to the Title IX Coordinator within five business days explaining why the party contests the finding(s). Each party will have the opportunity to review and respond in writing to the other party's request for review of the finding; any response must be submitted within three business days and will be shared with the other party for review only. The Title IX Coordinator will provide the final investigative report, together with any statements by the parties, to the Review Panel for further proceedings as outlined below:

- If either party contests the investigative finding, the Review Panel will hold a hearing to determine: (1) whether there was a material procedural error that substantially impacted the outcome and/or (2) whether the investigative finding, applying a preponderance of the evidence standard, was not supported by substantial evidence. If an investigative finding of responsibility is upheld, the Review Panel will determine the appropriate sanction.
- A finding, applying a preponderance of the evidence standard, is supported by substantial evidence when the record as a whole may be accepted by a reasonable mind as adequate to support the finding. The panel may not substitute its judgment for the final determination contained in the investigative finding solely on the ground that the panel believes a contrary determination is more reasonable than the determination made in the investigative finding.
- If neither party contests a finding that the respondent violated this policy, the Review Panel will hold a hearing solely to determine the appropriate sanction.
- If neither party contests a finding that there was insufficient evidence to

support a finding that the respondent violated this policy, the investigative finding becomes final.

The hearing will typically be scheduled within ten business days of the receipt of any request for review (and response) by the parties, although this time frame may be adjusted for good cause or as necessary for the orderly scheduling of the hearing.

#### **F. Impact and Mitigation Statements**

Where there is an investigative finding of responsibility on one or more of the policy violations, either or both parties may submit a statement for consideration by the Review Panel in determining an appropriate sanction. The complainant may submit a written or verbal statement describing the impact of the prohibited conduct on the complainant and expressing a preference about the sanction(s) to be imposed. The respondent may submit a written or verbal statement explaining any factors that the respondent believes should mitigate or otherwise be considered in determining the sanctions(s) imposed. The Title IX Coordinator will ensure that each of the parties has an opportunity to review and/or hear any statement submitted by the other party.

#### **G. Review Panel**

**Composition:** The Review Panel will consist of three individual members drawn from a standing pool of panelists. The Review Panel may consist of faculty, staff, or external professionals and will be appointed by the University President or designee. Students may not serve as members of the Review Panel. All members of the Review Panel will receive annual training on issues related to sexual and gender-based harassment, sexual assault, dating violence, domestic violence, and stalking and on how to conduct a hearing that is fair and impartial and provides parties with notice and a meaningful opportunity to be heard. Members of the Review Panel will be impartial and free from conflict of interest or actual bias. Parties will be notified of the identities of the panelists selected for their Hearing, and parties will have an opportunity to challenge participation by the panelists on the basis of a conflict of interest or actual bias. Parties and their advisors are prohibited from contacting panelists for any reason prior to the full conclusion of the resolution process. In addition, parties and their advisors are prohibited from contacting panelists about the resolution process after its completion.

**Standard of Review:** If either party contests the investigative finding, the Review Panel will determine: (1) whether there was a material procedural error that substantially impacted the outcome and/or (2) whether the investigative finding, applying a preponderance of the evidence standard, was not supported by substantial evidence. The review is narrowly tailored to these stated bases.

**Hearing:** The hearing is an opportunity for the parties to address the Review Panel in person. The parties may address any information in the final investigative report, supplemental statements submitted in response to the final investigative report, or impact and mitigation statements. Each party has the opportunity to be heard and to respond to any questions of the Review Panel. The parties may not directly

question one another, although they may proffer questions for the Review Panel, who may choose, in their discretion, to pose appropriate and relevant questions.

The Review Panel has the discretion to determine the specific hearing format. Both the complainant and the respondent have a right to be present at the hearing, but neither party is required to participate in the hearing in order for the hearing to proceed. Either party may request alternative methods for participating in the hearing that do not require physical proximity to the other party, including participating through electronic means.

Although as a general rule the University will expect that the complainant will participate in the hearing, the Review Panel may proceed without the complainant after considering the complainant's stated reason for not participating, the seriousness of the alleged harassment, the age of the complainant, whether there have been multiple complaints or reports of harassment against the respondent, and the sufficiency of the information the respondent has received about the complainant and the reported misconduct.

**Determination by the Review Panel:** Where either of the parties has contested the finding(s) of responsibility, the Review Panel will, at the conclusion of the hearing, determine, by majority vote, (1) whether there was a material procedural error that substantially impacted the outcome and/or (2) whether the investigative finding, applying a preponderance of the evidence standard, was not supported by substantial evidence. If either ground is substantiated, the Review Panel may remand the matter to the Title IX Coordinator with instructions for further investigation or other action. The instructions may include guidance regarding the scope of information to be further investigated and any appropriate stipulations, including the appointment of a new investigator.

If the Review Panel affirms the investigative finding of a policy violation, the Review Panel will then determine, by majority vote, the appropriate sanction(s) for the prohibited conduct.

If the Review Panel affirms the investigator's finding that there was insufficient evidence to support a finding that the respondent violated this policy, the matter will be considered resolved; and the investigation will be closed. Appropriate remedial measures (including but not limited to no contact directives issued to both parties) may, however, remain in effect.

Where possible, the parties will receive immediate notification of the Review Panel's determination. Written notice of the outcome, sanction (if appropriate), and rationale for each will typically be provided within ten business days of the hearing.

## **H. Imposition of Sanction**

Where there is a finding of responsibility, the Review Panel may impose one or more sanctions. Sanctions may include any of the sanctions that are listed below or set forth for violations of the University's Student Handbook.

This policy prohibits a broad range of conduct, all of which is serious in nature. In

keeping with the University's commitment to foster an environment that is safe, inclusive, and free from discrimination and harassment, the Review Panel has great latitude in the imposition of sanctions tailored to the facts and circumstances of each report, the impact of the conduct on the complainant and surrounding community, and accountability for the respondent. The imposition of sanctions is designed to eliminate prohibited conduct, prevent its recurrence, and remedy its effects, while supporting the University's educational mission and federal obligations. Sanctions may include educational, restorative, rehabilitative, and punitive components. Some conduct, however, is so egregious in nature, harmful to the individuals involved, or so detrimental to the educational process that it requires severe sanctions, including suspension or expulsion.

The Review Panel may solicit information from the complainant, the respondent, and any other McMurry administrator who can provide information relevant to a determination regarding potential sanctions. The Review Panel may also review any impact or mitigation statement submitted by the complainant or respondent.

In determining the appropriate sanction, the Review Panel may consider factors including but not limited to the following:

- the nature and violence of the conduct at issue;
- the impact of the conduct on the complainant;
- the impact or implications of the conduct on the community or the University;
- prior misconduct by the respondent, including the respondent's relevant prior discipline or criminal history (if available);
- whether the respondent has accepted responsibility for the conduct;
- maintenance of a safe and respectful environment conducive to learning and protection of the University community; and
- any other mitigating, aggravating, or compelling circumstances in order to reach a just and appropriate resolution in each case.

Sanctions may be imposed individually or in combination. For violations of this policy, the following sanctions, listed in ascending order of severity, may be imposed:

**Warning:** A formal admonition, which appears in an individual's disciplinary record at the University.

**Disciplinary Probation:** A more serious admonition may be assigned for a definite period of time. Findings of misconduct that resulted in disciplinary probation may be considered in determining subsequent sanctions, even if the probation period has ended. Any future violation may be grounds for more severe sanctions, including suspension, suspension with conditions, or, in especially serious cases, expulsion from the University.

**Restitution:** Requirement to reimburse or otherwise compensate another and/or the University for damage or loss of property resulting from a student's misconduct. Common assessment or group billing may be made to students in a residence hall

for damages occurring in common areas shared by groups of residents (determinations about whether and to what extent that will occur are made by the University's residence life administrators, not through the procedures provided in the Student Conduct Code).

**Residential Restrictions or Removal:** Restriction or removal from residence halls as designated in the written notification. The housing deposit will not be refunded to a student who is evicted from the residence halls.

**Facilities Restrictions or Removal:** Restriction or removal from campus facilities as designated in the written notification.

**Withholding of Degree:** In cases involving seniors or graduate students in their final semester, the University may withhold a student's McMurry degree for a specified period of time. This penalty is imposed instead of suspension at the end of senior year or final year of graduate study when all other degree requirements have been met. Degrees may also be withheld indefinitely when all other degree requirements have been met. The sanction of withholding a degree may also occur if an expulsion-level offense occurs after all other degree requirements have been met but before the degree is conferred.

**Suspension:** Student status at the University may be terminated for a specified period of time.

**Suspension with Conditions:** Student status at the University may be terminated for at least the period of time specified by the suspension, with the suspension to continue until certain conditions, stipulated by the officer or panel applying this penalty, have been fulfilled. These conditions may include, but are not limited to, restitution of damages and formal apology.

**Expulsion:** This is permanent termination of student status at the University, without any opportunity for readmission. Relevant information remains in the student's disciplinary record at the University and may be disclosed by the University when the student consents in writing or as otherwise required or permitted by law.

*The following outcomes may accompany the preceding sanctions, as appropriate:*

**Community Service:** Community service up to 10 hours per week may be added to disciplinary probation for a portion or duration of the probationary period or following a warning.

**Restriction of Access to Space, Resources, and Activities:** When appropriate, restrictions may be placed on access to space and/or resources or on participation in activities so as to limit opportunities for contact between the parties.

**Educational Programs:** In addition to any of the sanctions listed above, a student may be required to participate in educational programs.

**No Contact Directives:** No contact directives may be imposed as an

administrative matter (but not necessarily a sanction) when the University determines that doing so is in the best interests of an affected individual or individuals, and/or the best interests of the University.

The fact that these additional outcomes are listed here as examples does not limit the University's ability to issue interim or administrative measures such as restriction of access to space, resources and activities, and/or no contact directives at its discretion even where no policy violation has been investigated or charged, and/or where no policy violation has been found.

## **I. Other Information About Sanctions**

Sanctions will be imposed immediately. In cases adjudicated prior to the last day of classes, if the final sanction is separation from the University (i.e., suspension, suspension with conditions, or expulsion), the granting of credit for the semester and/or the awarding of a degree will be at the discretion of the Review Panel. The imposition of a sanction or sanctions by the Review Panel is final and is not subject to further review.

A student who is suspended or expelled for a violation of this policy will have the notation "Ineligible to Reenroll" placed on his or her academic transcript. On request by the student, the University may remove the notation from the academic transcript if (1) the student is eligible to reenroll, or (2) the University determines that good cause exists to remove the notation. Such requests should be directed to the Title IX Coordinator in writing. The removal of the notation from the academic transcript shall not require the University to make any modification to the student's disciplinary records at the University.

## **J. Additional Remedies**

Regardless of the outcome, the Review Panel may recommend additional remedies for the complainant to address the effects of the conduct on the complainant, restore the complainant's access to University programs and activities, and restore to the complainant, to the extent possible, benefits and opportunities lost as a result of the alleged prohibited conduct. The Review Panel may also identify remedies to address the effects of the conduct on the University community.

The Title IX Coordinator will review the remedies recommended by the Review Panel and will consider the appropriateness of continuing interim remedial or protective measures on an ongoing basis. Extended protective measures may be included in the sanctions.

## **K. Notice of Outcome**

Both the complainant and respondent will receive a written notice of outcome that documents the Review Panel's finding, the sanction (if appropriate, see below) and the rationale for each. The University will seek to issue a final notice of outcome no later than 90 calendar days from the date of the notice of investigation.

In cases involving allegations of crimes of violence under this policy (non-

consensual sexual penetration, non-consensual sexual contact, stalking, and intimate partner violence), the complainant will receive written notice of the imposed sanction(s). Additionally, in cases that do not involve allegations of crimes of violence, the complainant will receive written notice of any sanction(s) that are directly related to his/her educational experience (e.g., continued no contact directive, changes in the respondent's on-campus housing assignment or work schedule, etc.).

The Title IX Coordinator will also notify relevant administrative and academic units, including the Financial Aid Office, the Registrar, Human Resources Director, the McMurry University Campus Security, and Dean of Students & Campus Life as appropriate and necessary to ensure that sanctions and remedies are put into effect immediately.

The Title IX Coordinator will maintain records of all reports, Disciplinary Resolution, Alternative Resolution, and steps taken to eliminate prohibited conduct, prevent its recurrence, and address its effects. Findings of responsibility will also be included in a student's disciplinary record maintained by the Dean of Students & Campus Life.

#### **L. Extraordinary Relief**

The University recognizes that under extraordinary circumstances, a complainant or respondent may identify newly discovered and dispositive information that was not previously available during the investigation through the exercise of due diligence. The Title IX Coordinator or designee has the discretion to review this information. If it is determined that the information could not reasonably have been discovered prior to the resolution of the report, the information would substantially affect the finding or sanction, and compelling justification exists for its consideration, the Title IX Coordinator may review the investigative finding or outcome and refer the matter for additional action in furtherance of this policy.

#### **M. Administrative Measures**

Regardless of whether a policy violation is found to have occurred in a particular case, the University may implement non-punitive, non-disciplinary administrative measure such as, for example, no contact directives and/or reasonable restrictions from certain University premises, at any time after a matter is reported, if the University determines that doing so is in the best interests of a party, both parties and/or the University.

### **14. Disciplinary Resolution When the Respondent is an Employee**

#### **A. Investigation**

When the Title IX Coordinator receives a report that a member of the faculty or staff violated this policy, the Title IX Coordinator will work with the Vice President for Academic Affairs and/or Human Resources Director to investigate in a manner consistent with McMurry personnel policies and all applicable law.

The Title IX Coordinator will have the authority to exercise oversight of the investigation and resolution and will ensure that the procedures followed are



consistent with the requirements of Title IX and VAWA and the principles set forth in this policy. The Title IX Coordinator will ensure that any procedures used to investigate and resolve reports against faculty or staff will include, at a minimum, written notice of the report, the opportunity to present information, the opportunity to respond to the report, timely and equal access to information and, an equitable opportunity to participate in the investigation and resolution process, and written notice of the outcome, the sanction (if appropriate) and the rationale.

## **B. Review of Finding**

Either party may contest the investigative finding by asserting that (1) there was a material procedural error that substantially impacted the outcome and/or (2) the investigative finding, applying a preponderance of the evidence standard, was not supported by substantial evidence. To contest the finding, the complainant or respondent must submit a written statement to the Title IX Coordinator within five business days explaining why the party contests the finding(s). Each party will have the opportunity to review and respond in writing to the other party's request for review of the finding; any response must be submitted within three business days and will be shared with the other party for review only. The Title IX Coordinator will provide the final investigative report, together with any statements by the parties, to the Review Panel for further proceedings as outlined below:

- If either party contests the investigative finding, the Review Panel will hold a hearing to determine: (1) whether there was a material procedural error that substantially impacted the outcome and/or (2) whether the investigative finding, applying a preponderance of the evidence standard, was not supported by substantial evidence. If an investigative finding of responsibility is upheld, the Review Panel will determine the appropriate sanction.
- A finding, applying a preponderance of the evidence standard, is supported by substantial evidence when the record as a whole may be accepted by a reasonable mind as adequate to support the finding. The panel may not substitute its judgment for the final determination contained in the investigative finding solely on the ground that the panel believes a contrary determination is more reasonable than the determination made in the investigative finding.
- If neither party contests a finding that the respondent violated this policy, the Review Panel will hold a hearing solely to determine the appropriate sanction.
- If neither party contests a finding that there was insufficient evidence to support a finding that the respondent violated this policy, the investigative finding becomes final.

The hearing will typically be scheduled within ten business days of the receipt of any request for review (and response) by the parties, although this time frame may be adjusted for good cause or as necessary for the orderly scheduling of the hearing.

## **C. Impact and Mitigation Statements**

Where there is an investigative finding of responsibility on one or more of the policy

violations, either or both parties may submit a statement for consideration by the Review Panel in determining an appropriate sanction. The complainant may submit a written or verbal statement describing the impact of the prohibited conduct on the complainant and expressing a preference about the sanction(s) to be imposed. The respondent may submit a written or verbal statement explaining any factors that the respondent believes should mitigate or otherwise be considered in determining the sanctions(s) imposed. The Title IX Coordinator will ensure that each of the parties has an opportunity to review and/or hear any statement submitted by the other party.

#### **D. Review Panel**

**Composition:** The Review Panel will consist of three individual members drawn from a standing pool of panelists. The Review Panel may consist of faculty, staff, or external professionals will be appointed by the University President or designee. Students may not serve as members of the Review Panel. All members of the Review Panel will receive annual training on issues related to sexual and gender-based harassment, sexual assault, dating violence, domestic violence, and stalking and on how to conduct a hearing that is fair and impartial and provides parties with notice and a meaningful opportunity to be heard. Members of the Review Panel will be impartial and free from conflict of interest or actual bias. Parties will be notified of the identities of the panelists selected for their Hearing, and parties will have an opportunity to challenge participation by the panelists on the basis of a conflict of interest or actual bias. Parties and their advisors are prohibited from contacting panelists for any reason prior to the full conclusion of the resolution process. In addition, parties and their advisors are prohibited from contacting panelists about the resolution process after its completion.

**Standard of Review:** If either party contests the investigative finding, the Review Panel will determine: (1) whether there was a material procedural error that substantially impacted the outcome and/or (2) whether the investigative finding, applying a preponderance of the evidence standard, was not supported by substantial evidence. The review is narrowly tailored to these stated bases.

**Hearing:** The hearing is an opportunity for the parties to address the Review Panel in person. The parties may address any information in the final investigative report, supplemental statements submitted in response to the final investigative report, or impact and mitigation statements. Each party has the opportunity to be heard and to respond to any questions of the Review Panel. The parties may not directly question one another, although they may proffer questions for the Review Panel, who may choose, in their discretion, to pose appropriate and relevant questions.

The Review Panel has the discretion to determine the specific hearing format. Both the complainant and the respondent have a right to be present at the hearing, but neither party is required to participate in the hearing in order for the hearing to proceed. Either party may request alternative methods for participating in the hearing that do not require physical proximity to the other party, including participating through electronic means.

Although as a general rule the University will expect that the complainant will

participate in the hearing, the Review Panel may proceed without the complainant after considering the complainant's stated reason for not participating, the seriousness of the alleged harassment, the age of the complainant, whether there have been multiple complaints or reports of harassment against the respondent, and the sufficiency of the information the respondent has received about the complainant and the reported misconduct.

**Determination by the Review Panel:** Where either of the parties has contested the finding(s) of responsibility, the Review Panel will, at the conclusion of the hearing, determine, by majority vote, (1) whether there was a material procedural error that substantially impacted the outcome and/or (2) whether the investigative finding, applying a preponderance of the evidence standard, was not supported by substantial evidence. If either ground is substantiated, the Review Panel may remand the matter to the Title IX Coordinator with instructions for further investigation or other action. The instructions may include guidance regarding the scope of information to be further investigated and any appropriate stipulations, including the appointment of a new investigator.

If the Review Panel affirms the investigative finding of a policy violation, the Review Panel will then determine, by majority vote, the appropriate sanction(s) for the prohibited conduct.

If the Review Panel affirms the investigator's finding that there was insufficient evidence to support a finding that the respondent violated this policy, the matter will be considered resolved; and the investigation will be closed. Appropriate remedial measures (including but not limited to no contact directives issued to both parties) may, however, remain in effect.

Where possible, the parties will receive immediate notification of the Review Panel's determination. Written notice of the outcome, sanction (if appropriate), and rationale for each will typically be provided within ten business days of the hearing.

## **E. Sanctions**

Where there is a finding of responsibility, the Review Panel may impose one or more sanctions. Sanctions may include any of the sanctions that are listed below or set forth for violations of the University's Faculty and/or Employee Handbook.

This policy prohibits a broad range of conduct, all of which is serious in nature. In keeping with the University's commitment to foster an environment that is safe, inclusive, and free from discrimination and harassment, the Review Panel has great latitude in the imposition of sanctions tailored to the facts and circumstances of each report, the impact of the conduct on the complainant and surrounding community, and accountability for the respondent. The imposition of sanctions is designed to eliminate prohibited conduct, prevent its recurrence, and remedy its effects, while supporting the University's educational mission and federal obligations. Some conduct, however, is so egregious in nature, harmful to the individuals involved, or so detrimental to the educational process that it requires severe sanctions, including suspension or expulsion.

The Review Panel may solicit information from the complainant, the respondent, and any other McMurry administrator who can provide information relevant to a determination regarding potential sanctions.

The Review Panel may also review any impact or mitigation statement submitted by the complainant or respondent.

In determining the appropriate sanction, the Review Panel may consider factors including but not limited to the following:

- the nature and violence of the conduct at issue;
- the impact of the conduct on the complainant;
- the impact or implications of the conduct on the community or the University;
- prior misconduct by the respondent, including the respondent's relevant prior discipline or criminal history (if available);
- whether the respondent has accepted responsibility for the conduct;
- maintenance of a safe and respectful environment conducive to learning and protection of the University community; and
- any other mitigating, aggravating, or compelling circumstances in order to reach a just and appropriate resolution in each case.

Sanctions may be imposed individually or in combination and may include counseling or training, written warning, financial penalty, unpaid leave of absence, suspension, demotion, reassignment of duties, or termination.

Sanctions will be communicated to the parties, as appropriate, in writing by the Review Panel in consultation with the Vice President for Academic Affairs and/or the Human Resources Director or designee. In all cases involving sex discrimination or sexual misconduct, the file will be archived by the Title IX Coordinator.

## **15. Violations of Law**

Conduct that violates this policy also may violate the laws of the local jurisdiction in which the incident occurred and subject a respondent to criminal prosecution by the presiding authority. More information about violations of Texas criminal law can be found in the [University's Annual Fire Safety and Security Report](#). Conduct that violates this policy also may subject a respondent to civil liability.

Students and employees studying, working, or engaging in other activities at locations outside of Texas are governed by the applicable laws regarding sexual assault and other criminal offenses implicated by this policy. Where the University has jurisdiction to investigate and address reported conduct that would constitute conduct prohibited by this policy, the definitions and standards in this policy will apply for purposes of University discipline, regardless of the definitions of various crimes used in the laws of the locality where the conduct reportedly occurred.

## **16. Prevention and Awareness Programs**

The University is committed to the prevention of prohibited conduct through regular and ongoing education and awareness programs. Incoming students and new employees receive primary prevention and awareness programming and returning students and current employees receive ongoing training and related programs. The University provides coordinated programming and training through multiple areas.

## **17. Annual Review**

This policy is maintained by the Title IX Coordinator. The University will review this policy on at least an annual basis. The review will capture evolving legal requirements, evaluate the supports and resources available to the parties, and assess the effectiveness of the resolution processes (including the fairness of the process, the time needed to complete the process, and the sanctions and remedies imposed). The review may incorporate feedback from parties and an aggregate view of reports, resolution, and climate.