

Munson-Williams-Proctor Arts Institute
August 2015
SEX DISCRIMINATION, SEXUAL HARASSMENT & SEXUAL MISCONDUCT POLICY

INTRODUCTION

Munson-Williams-Proctor Arts Institute’s mission is to educate students to become creative, responsible professionals who will contribute fully to society. The Institute upholds values and standards that support that mission and holds high expectations regarding the conduct of students, faculty, staff, and administrators.

The health, safety, and well-being of all members of the Munson-Williams-Proctor Arts Institute community are the Institute’s primary concerns. In furtherance of the mission of the Institute, and in accordance with Title IX of the Education Amendments of 1972 (“Title IX”) and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”), as amended by the Violence Against Women Act/Campus Sexual Violence Act (“Campus SaVE Act”), the Institute is committed to maintaining a community free from all forms of sex discrimination, sexual harassment and sexual violence, including sexual assault, sexual exploitation, dating violence, domestic violence, and stalking. Persons found in violation of this policy will be subject to appropriate disciplinary action, up to and including termination of employment of employees and suspension or expulsion of students.

Questions regarding Title IX and the Campus SaVE Act may be referred to the Institute’s Title IX Coordinator. The Institute’s designated Title IX Coordinator is:
Jeanette R. Breish, Human Resources Manager/Title IX Coordinator
Human Resources Office, 1212 State Street, Utica, New York 13502
315-797-0000, ext 2108 jbreish@mwpai.edu

SCOPE OF POLICY

This policy applies to all MWPAL students, faculty, and employees, and applies regardless of an individual’s sex, race, color, religion, age, national origin, disability, sexual orientation, gender identity/gender expression, familial status, pregnancy, military status, criminal conviction, predisposing genetic characteristics, domestic violence victim status, or other protected status.

This policy applies to conduct that takes place on Institute property and in connection with any program or activity sponsored by the Institute, regardless of where it occurs. Additionally, off-campus conduct may violate this policy if the conduct creates a threatening or uncomfortable environment on MWPAL’s campus or within a MWPAL program, or if the incident causes concern for the safety or security of MWPAL’s campus. Non-community members (e.g., alumni, family or friends of students, vendors, etc.) visiting campus, participating in a program or activity or interacting with Institute community members are expected to abide by the behavioral expectations in this policy.

This policy is intended to (i) set forth the available resources and reporting options for victims of sexual misconduct; (ii) specify and define prohibited conduct; (iii) describe the Institute’s procedures for responding to complaints of sexual misconduct, including the investigation,

hearing, and sanctions process; and (iv) describe programs implemented by the Institute to educate and increase awareness among the Institute community regarding sexual misconduct.

DEFINITIONS WITHIN THE POLICY

“Affirmative Consent” is a knowing, voluntary and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant’s sex, sexual orientation, gender identity, or gender expression. All references to “consent” in this policy will mean affirmative consent as defined in this policy.

Affirmative consent to engage in one form of sexual contact (such as kissing or fondling) does not imply consent to other forms of sexual activity (such as intercourse). Past consent to engage in sexual activity cannot be presumed to be consent to sexual activity in the future with the same or a different person. A current or previous dating relationship is not sufficient to constitute consent. Consent cannot be obtained from sexual coercion, force, intimidating behavior or threats. Certain conditions prevent a person from being able to consent. Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation can be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if the individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs or other intoxicants may be incapacitated and therefore unable to consent. Consent is required regardless of whether the initiator is under the influence of alcohol or other drugs.

As noted above, silence or lack of resistance alone is not deemed affirmative consent and should never be the basis for continued sexual activity. A person can withdraw consent at any time during sexual activity by expressing in words or actions that they no longer want the act to continue; when consent is withdrawn or can no longer be given, the other person must stop immediately.

Sexual relationships between faculty and students and staff and students are problematic due to the inherent power differential. Therefore, sexual or romantic relationships between faculty and students and between staff and students are absolutely prohibited.

“Complainant” means the individual making the allegation(s) of sex discrimination, sexual harassment, sexual misconduct or other violation of this policy. That person is usually, but not always, the person who made the initial report to the Institute.

“Dating Violence” refers to a pattern of violent behavior that is committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the Complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of

interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual, physical, or psychological abuse, or the threat of such abuse.

“Domestic Violence” means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of New York, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of New York.

“Respondent” means the individual alleged to have committed acts constituting sex discrimination, sexual harassment, sexual misconduct or other violation of this policy.

“Retaliation” means taking any adverse action or attempting to take adverse action, including intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual's report of a violation of this policy or participation in an investigation or proceeding related to an alleged violation of this policy.

“Sex Discrimination” is an act that disadvantages a person and that occurs because of the affected individual's gender, sexual orientation, gender identity, or gender expression. Examples of sex discrimination include, but are not limited to, denying a student a research opportunity because of the student's gender; giving a student a lower grade than they deserved because of the student's gender; denying an employee a raise or promotion because of the employee's gender.

“Sexual Assault” is, consistent with federal law, defined by the Institute as including:

“Non-consensual sexual intercourse.” Sexual assault of this type can include the following:

- Rape: penetration, however slight, of the vagina or anus with any body part or object or oral penetration by a sex organ of another person, without affirmative consent or by force or where the victim is incapable of affirmative consent due to mental or physical incapacity.
- Statutory Rape: non-forcible sexual intercourse with a person who is under the statutory age of consent. In New York, that statutory age of consent is 17 years old.

“Non-consensual sexual contact” means any intentional touching, however slight, for purposes of sexual gratification or with sexual intent, of any private body part of another person without affirmative consent. Intentional sexual contact includes contact with the breasts, buttocks, or groin, or touching another with any of these body parts or forcing another person to touch any of these private body parts.

“Sexual Coercion” is the application of unreasonable pressure, including emotionally or physically manipulative actions or statements, or direct or implied threats, in order to compel the person to engage in sexual activity.

“Sexual Exploitation” occurs when, without affirmative consent, a person takes sexual advantage of another. Sexual Exploitation includes, without limitation, causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over that person; causing the prostitution of another person; acts of incest, electronically recording, photographing, or transmitting intimate or sexual utterances, sounds or images of another person without the individual’s affirmative consent; allowing third parties to observe sexual acts without the consent of all involved; engaging in voyeurism; distributing intimate or sexual information about another person without that person’s consent; engaging in consensual sexual activity with another person while knowingly infected with HIV or some other sexually transmitted disease without informing the other person of such infection, and/or exposing one’s genitals in non-consensual circumstances.

“Sexual Harassment” means unwelcome conduct, based on sex or on gender stereotypes that a reasonable person would find intimidating, hostile or offensive. Sexual harassment may include, for example, repeatedly subjecting a person to unwelcome sexual attention or sexual advances, requesting sexual favors, exposing a person to unwanted sexually graphic conversation and/or pictures that do not serve an academic purpose, punishing a refusal to comply with a sexual based request, conditioning a benefit on submitting to sexual advances, engaging in inappropriate or unnecessary touching or rubbing against another, making sexually suggestive or degrading jokes or comments. A “hostile environment” is created when the offensive behavior reaches a level of severity or pervasiveness such that it interferes with an individual’s ability to participate in the Institute’s programs (i.e., to work and to learn) when judged against a reasonable person standard. However, MWPAI encourages individuals experiencing or witnessing sexually offensive behavior to make a report as early as possible so as to have the situation corrected before it reaches the level of a hostile environment. Individuals with a concern need not worry about whether the behavior is sufficiently serious to constitute a hostile environment. MWPAI may, and in the appropriate circumstances will, take action to respond to offensive behavior even if the behavior does not rise to the level of a hostile environment within the meaning of the law.

MWPAI also prohibits “quid pro quo” sexual harassment, which means “this for that” harassment. It is a violation of this policy for any person to condition any benefit on submission to sexual activity. No person should believe that any other person – regardless of their position of authority – has a right to require sexual activity in exchange for any benefit or advantage.

A determination of whether sexual harassment has occurred depends on the totality of the circumstances, including the seriousness or severity of the incident, whether the conduct was an isolated incident or repeated, whether it was threatening or merely annoying, the relationship of the individuals involved in the communication or incident, the context in which the incident or interaction occurred, and the intent of the individual who engaged in the allegedly offensive conduct, and its effect or impact on the individual and the community.

“Sexual Misconduct” refers generically to the categories of sex-related behaviors prohibited by this policy, including sex discrimination, sexual harassment, sexual assault, sexual exploitation, dating violence, domestic violence, and stalking. Sexual misconduct can occur between strangers, acquaintances, or people who know each other well, including those who are involved in an intimate or sexual relationship, and can be committed by anyone regardless of gender, sexual orientation, gender identity or gender expression. Sexual misconduct may occur between members of the same or opposite sex and in heterosexual and homosexual relationships. While certain forms of sexual misconduct can constitute a criminal offense under New York State law, a person’s conduct may violate this policy even if it does not violate State law.

“Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress. For purpose of this definition:

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

“Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

“Reasonable person” means a person under similar circumstances and with similar identities to the victim.

RESOURCES AND REPORTING OPTIONS FOR VICTIMS OF SEXUAL MISCONDUCT

Any Institute community member who has been the victim of sexual misconduct has the right to make a report to Campus Security or one of the Responsible Administrators listed below, local law enforcement, and/or the New York State Police, or choose not to report. If reported to the Institute under this policy, a reporting individual will be protected from retaliation and will receive appropriate assistance and resources from the Institute. A Students’ Bill of Rights for cases involving sexual assault, domestic violence, dating violence or stalking is attached at the end of this policy. An additional Statement of Rights for any individual reporting a sexual assault, domestic violence, dating violence or stalking is also attached at the end of this policy.

Immediate Medical Assistance and Counseling

If you or someone you know is or may be the victim of any form of sexual misconduct, the Institute strongly urges you to seek immediate assistance. Assistance is available 24 hours a day, 7 days a week, from local police, emergency assistance and MWPAl’s Campus Security.

Confidential Resources

A victim is encouraged to seek support for his/her emotional and physical needs. A person seeking confidential emotional or medical care may contact the following resources:

Confidential Campus Resources

MWPAI Counselor
Meeting House
1124 State St. (2nd Floor)
Utica, NY 13502
315-797-0000 Ext. 2012

MWPAI Health Center
Student Center
501 Kirkland St. (Lower Level)
Utica, NY 13502
(315) 797-0000 Ext. 2230

These counseling and health services are available to MWPAI students free of charge.

Professional, licensed counselors whose official responsibilities include providing mental-health counseling to Institute students, including those who act in that role under the supervision of a licensed counselor, are not required to report any information about an incident of sexual misconduct to the Title IX Coordinator without a victim's permission. State law requires professional counselors to report: (i) when a patient is likely to engage in conduct that would result in serious harm to the patient or to others; or (ii) if there is reasonable cause to suspect that a minor has been sexually abused.

Off-Campus Confidential Resources

In addition, there are off campus, community confidential resources that are available. Reports to these resources will not constitute a report to the Institute and will not result in the Institute taking any action against the accused. These resources, which may or may not charge service fees, include:

- YWCA of the Mohawk Valley - (24 hours per day/7 days per week); Rape Crisis/Domestic and Sexual Violence Hotline (315) 797-7740
- NYS Domestic Violence Hotline
1-800-942-6906
- St. Elizabeth Medical Center
2209 Genesee Street, Utica, NY 13501
315-801-8100
- St. Luke's Medical Center
1656 Champlin Ave, Utica, New York 13501
315-624-6000

If you have been physically injured or sexually assaulted, the Institute strongly encourages you to obtain a medical examination to determine the extent of your injuries. In addition, the hospital,

with your permission, will collect physical evidence in a sexual offense evidence collection kit. Your consent to the completion of a sexual offense evidence collection kit does not obligate you to pursue criminal charges with the police; it is a way to preserve evidence should you choose to pursue criminal charges at a later time. Hospitals are required by law to preserve such evidence for a minimum of 30 days. If you choose to seek medical assistance it is important that you do not bathe, wash, shower, douche, brush your teeth, comb your hair, change your clothes, or clean up so that no evidence of the attack is destroyed. A specially trained nurse or physician will interview you about the circumstances of your assault.

Law Enforcement Notification

If you are the victim of a crime, the Institute strongly encourages you to promptly report the incident to the police. Campus Security and other Institute representatives, indicated below, are available to assist you in notifying law enforcement of an incident of sexual misconduct. You also have the right to choose not to report to local law enforcement. In criminal cases, timing is a critical factor in collecting and preserving evidence. To preserve evidence, it is best that you not change your clothes, shower or even brush your hair, as physical evidence may be lost.

The Utica Police Department, which can be reached at (315) 735-3301, can assist in filing a criminal complaint and in securing appropriate examination, including by a Sexual Assault Nurse Examiner. The New York State Police Sexual Assault Hotline, which can be reached at 1-(844) 845-7269, may also be of assistance in reporting an incident to law enforcement. In addition, an individual making a report to local law enforcement may also be able to obtain services through the New York State Office for Victim Services. The OVS funds local Victim Assistance Programs which will, among other things, offer a crime victim advocate that can provide direct assistance to victims and their families as they navigate the criminal justice process.

Sexual misconduct may constitute a violation of both law and Institute policy. The Institute encourages individuals to report alleged sexual misconduct promptly to local law enforcement agencies. Criminal investigations may be useful in the gathering of relevant evidence, particularly forensic evidence. The standards for finding a violation of criminal law are different from the standards for finding a violation of this policy. Therefore, criminal investigations or reports are not determinative of whether sexual misconduct, for purposes of the policy, has occurred. In other words, conduct may constitute sexual misconduct under this policy even if law enforcement agencies lack sufficient evidence of a crime and decline to prosecute.

The filing of a complaint of sexual misconduct under this policy is independent of any criminal investigation or proceeding. The criminal process and the Institute's disciplinary processes are not mutually exclusive or dependent on each other. A person may pursue either a criminal complaint or Institute complaint or both. Any internal investigation and/or hearing process conducted by MWPAI will be conducted concurrently with any criminal justice investigation and proceeding. However, in some cases the Institute may temporarily delay its investigation to enable law enforcement to gather evidence and to engage in a preliminary investigation. Such

delays will not last more than 10 days except when law enforcement authorities specifically request and justify a longer delay.

Additionally, orders of protection and other forms of legal protection may be available to individuals who have experienced or are threatened with violence by a MWPAl community member or other person. In appropriate circumstances, an order of protection may be available that restricts the offender's right to enter the Institute's property, and MWPAl will abide by a lawfully issued order of protection. Institute officials will, upon request, provide reasonable assistance to any member of the campus community in obtaining an order of protection or, if outside of New York State, an equivalent protective or restraining order, including providing that person with:

- a copy of an order of protection or equivalent when received by the Institute and providing that person with an opportunity to meet or speak with an Institute representative, or other appropriate individual, who can explain the order and answer questions about it, including information from the order about the other person's responsibility to stay away from the protected person or persons;
- an explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension; and
- assistance in contacting local law enforcement to effect an arrest for violating such an order of protection.

Sex Offenses under New York law are described in Sections 130.00 to 130.96 of the New York State penal Code, available at <http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>

MWPAl'S Non-Confidential Resources

The Institute is committed to providing a prompt, fair, and impartial investigation and resolution to all allegations of sexual misconduct. Therefore, the Institute also encourages the reporting of sexual misconduct to an Institute representative in a timely manner. The following offices and individuals have been trained to receive and respond to alleged violations of this policy:

- Jeanette Breish, Human Resources Manager/Title IX Coordinator, (315) 797-0000 (ext. 2108) or jbreish@mwpai.edu
- William Quirk, Director Security and Safety, (315) 797-0000 (ext 2126) or wquirk@mwpai.edu
- Ken Marchione, Dean, School of Art and Design, (315) 797-0000 (ext. 2284) or kmarchi@mwpai.edu

Certain Institute employees are considered "responsible employees" who, once they are made aware of an incident of sexual misconduct, have a duty to report that information to the Title IX Coordinator. A responsible employee must report all relevant details about the alleged sexual misconduct shared by the victim to the Title IX Coordinator. These employees, as well as the Responsible Administrators listed above, are not confidential resources. However, even Institute offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information relayed to a non-confidential resource will be relayed

on a need-to-know basis and only as necessary for the Institute to investigate and/or seek a resolution.

If a report is made to anyone other than the Responsible Administrators listed above, the Complainant risks the possibility that the information will not come to the attention of the proper MWPAL officials and may, therefore, not be acted upon.

Confidentiality

If a Complainant reports an incident of sexual misconduct to a Responsible Administrator or other non-confidential Institute employee, but requests that no investigation into the incident be conducted or disciplinary action taken, the Institute will weigh that request against MWPAL's obligation to provide a safe, nondiscriminatory environment for all members of the campus community, including the Complainant. MWPAL endeavors to comply with Complainant's wishes with respect to whether responsive action is taken. However, that is not always possible.

If a Complainant requests that no action be taken against the accused, (i.e., no investigation or disciplinary action), the Title IX Coordinator will consult with appropriate administrators and employees in order to consider Complainant's request. The Title IX Coordinator will consider a range of factors, including, but not limited to, the following:

- The seriousness of the offense;
- Whether there have been other sexual misconduct complaints about the same Respondent;
- Whether the Respondent has a history of violent behavior or is a repeat offender;
- Whether the Respondent threatened further sexual misconduct or other violence against the Complainant or others;
- Whether the sexual misconduct was committed by multiple perpetrators;
- Whether the Complainant's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group;
- Whether the alleged sexual misconduct was perpetrated with a weapon;
- Whether the Complainant is a minor;
- Whether the Institute has other means to obtain relevant evidence (e.g., security cameras or personal, physical evidence);
- Whether circumstances otherwise suggest an ongoing or future risk to the campus community or the Complainant.

A decision will be made and shared with the Complainant. If, after considering these factors, the Institute determines that it is able to respect the Complainant's request that no responsive action be taken, the Institute will nevertheless take all reasonable steps to respond to the complaint consistent with the Complainant's confidentiality request, and will determine whether interim measures are appropriate or necessary. The Institute will also consider broader remedial action, such as increased monitoring, supervision of security at locations where the reported sexual misconduct occurred, increasing training, education and prevention efforts, and conducting climate surveys.

Similarly, a Complainant may desire to have investigatory and/or disciplinary action taken, but may wish to have his/her identity as the Complainant kept confidential. Depending on the circumstances, this may or may not be possible. If any number of people could have reported the incident or if MWPAI possesses other means to obtain evidence (such as security footage), it may be possible for the Complainant's identity to remain confidential and not shared with Respondent. However, in other cases, it may not be possible to proceed with investigatory or disciplinary action without revealing the identity of the Complainant. If MWPAI honors such a request, the Complainant must understand that the Institute's ability to effectively investigate the incident and pursue disciplinary action against the accused may be limited. The Institute may not be able to honor a Complainant's request for confidentiality when doing so would jeopardize the Institute's responsibility to provide a safe, non-discriminatory environment. The Institute has designated the Title IX Coordinator to evaluate requests for confidentiality. If the Institute determines that it must disclose the Complainant's identity to the Respondent, the Institute will promptly inform the Complainant.

Ultimately, MWPAI retains the right to act upon any information that comes to its attention.

Interim Measures and Accommodations

Interim measures and accommodations may be taken by MWPAI to immediately respond to a situation. The Title IX Coordinator will initiate an appropriate inquiry and take immediate protective measures to support and protect the Complainant and/or the MWPAI community, including taking appropriate interim steps before the final outcome of the investigation and hearing, if any. Accordingly, after the intake meeting, the Title IX Coordinator may impose a "no-contact" order, which typically will include a directive that the parties refrain from having contact with one another, directly or through proxies, whether in person or via electronic means, pending the fact-finding and, if applicable, the adjudication. The Title IX Coordinator may also take any further protective measures that he/she deems appropriate, including, but not limited to, directing appropriate officials to alter an individual's academic, transportation, housing, and/or employment arrangements, implementing an interim suspension or other appropriate measures.

In addition, any member of the MWPAI community who has been the victim of sexual misconduct may submit a request to the Title IX Coordinator that the Institute take interim measures and/or make accommodations, including, but not limited to, changes in academic, living, transportation, or working situations or the issuance of a no-contact order. The Institute will grant such interim measures and accommodations, provided they are reasonable and available, regardless of whether the victim chooses to proceed with formal resolution process and/or report the incident to local law enforcement. The Institute will provide information about any interim measures and/or accommodations to only those having a need to know such information in order to implement them.

Upon request, the Complainant or Respondent may request a prompt review of the need for and terms of any protective measures and accommodations imposed or requested that directly

affects him/her, including the potential addition, modification or elimination of those measures. Such a request may be made by submitting a written request for review to the Title IX Coordinator, providing the basis for that request and any evidence in support of the request. Upon receipt of such a request, the Title IX Coordinator will inform the other party of the request and allow the other party to respond, including submitting evidence if desired. The Title IX Coordinator may, in his/her discretion, modify or suspend the protective measures or accommodations on a temporary basis while the parties are submitting their information and responses. The Title IX Coordinator will respond to any such requests as soon as possible, but generally no later than one calendar week of the request and the parties' submission of any evidence.

Violation(s) of the Title IX Coordinator's directives and/or a no-contact order will constitute a violation of this policy that may lead to additional disciplinary action.

Advisors

In any investigatory meeting or disciplinary hearing held under this policy, the Complainant and Respondent have the right to be accompanied by an adviser of their own choosing (at the party's own expense if the advisor is a paid advisor). The advisor's role is to support the Complainant or Respondent throughout the process and aid in his/her understanding of the investigatory and/or disciplinary hearing process. The advisor cannot be a witness in the proceedings. The advisor may talk quietly with the party, but may not participate in the interview or be disruptive to the meeting. The parties are required to speak on their own behalf. The advisor is not to address the Investigator(s), Adjudicator or Appeals Officer(s), except to ask for a short recess if one of the parties requires some time to compose him/herself or collect his/her thoughts. The Institute has the right at all times to determine what constitutes appropriate behavior on the part of an advisor and violators of these expectations will be asked to leave the proceeding. Investigations and/or disciplinary proceedings will not be delayed based on the availability of a party's desired advisor. Absent extenuating circumstances, witnesses and others involved in the investigation or hearing are not entitled to have an advisor.

Reports of Sexual Misconduct from Others or Anonymous Sources

If the Institute receives a report of alleged sexual misconduct by someone other than the victim (e.g., by a friend or roommate, resident assistants, etc.), the Institute's Title IX Coordinator will promptly notify the victim, and inform the victim of the available resources and assistance. The Institute will accept anonymous reports. However, due to the nature of anonymous reports, MWPAI's ability to take responsive action may be limited.

Time for Reporting

There is no time limit for reporting sexual misconduct. However, the passage of time may make effective responsive action difficult. Further, if the Respondent is no longer a member of the MWPAI community, the Institute's ability to respond may be limited. Therefore, any member of the campus community who believes that he or she has been a victim of sexual misconduct is

encouraged to report the incident immediately in order to maximize the Institute's ability to obtain evidence, conduct a thorough investigation and take corrective actions.

INVESTIGATORY AND ADJUDICATORY PROCEDURES FOR RESPONDING TO A COMPLAINT OF SEXUAL MISCONDUCT

The Institute is committed to providing a prompt, fair, and impartial investigation and resolution to all allegations of sex discrimination, sexual harassment, sexual assault, domestic/dating violence, stalking and any other form of sexual misconduct.

Initial Steps

Intake Meeting with Complainant

Upon notice of any allegation of sexual misconduct, the Title IX Coordinator will schedule an individual intake meeting with the Complainant as soon as practical. At the intake meeting, the Title IX Coordinator will provide the Complainant with a general understanding of this policy, and identify forms of support or immediate assistance available to the Complainant (e.g., referrals to appropriate law enforcement agencies; referrals for medical treatment at local hospitals and trauma centers). The Title IX Coordinator will also provide the Complainant with a copy of this policy. The intake meeting may also involve a discussion of any interim measures or accommodations that may be appropriate concerning the Complainant's academic schedule, Institute housing, and/or Institute employment arrangements.

At the initial intake meeting, the Title IX Coordinator will seek to determine how the Complainant wishes to proceed, (i.e., whether the Complainant wishes to pursue Formal Resolution, Informal Resolution (not available for complaints of sexual violence), or does not wish to pursue resolution of any kind). If the Complainant wishes to proceed with either Formal Resolution or Informal Resolution, the Title IX Coordinator will encourage the Complainant to promptly submit a written statement of his/her narrative of the incident.

Fact-Finding/Investigation

If a report appears to allege a plausible violation of this policy, MWPAI will conduct an investigation. An investigation may occur because the Complainant wishes to proceed with a complaint through Formal Resolution or because the Institute determines that this is necessary despite the wishes of the Complainant.

The Title IX Coordinator will promptly appoint a trained Investigator to conduct the investigation. In unusual cases, the Title IX Coordinator may conduct the investigatory phase or MWPAI may engage an outside Investigator. The Title IX Coordinator will provide the Investigator with the names of the Complainant and Respondent as well as the date, location, and nature of the alleged sexual misconduct.

Fact-finding will generally commence within one business day of the Title IX Coordinator's appointment of the Investigator. The purpose of fact-finding is to gather any and all information

related to a report of sexual misconduct. The Complainant and Respondent shall receive notice referencing the specific provision(s) of this policy alleged to have been violated and the possible sanctions. This notice shall also include the date, time, location and factual allegations concerning the alleged violation.

The Complainant and Respondent will be given an equal opportunity to present separately information in the context of the investigation. The Investigator will meet individually with parties involved, and may interview witnesses and collect and review such evidence as the Investigator deems necessary or helpful to his or her investigation into the alleged sexual misconduct, including written statements from the parties involved.

Both the Complainant and Respondent shall have the right to have their own prior sexual history with persons other than the other party or their own mental health diagnosis and/or treatment excluded from admittance in any investigatory and disciplinary proceeding held under this policy.

The Institute endeavors to complete the investigatory phase within 30 days, but this timeframe may be extended if necessary under the circumstances.

Once the investigation is complete, the Investigator will provide a written report containing a summary of the facts discovered during the investigation and an assessment of the credibility of the Complainant, Respondent, and/or witnesses (as relevant). The investigatory report will be submitted to the Title IX Coordinator.

Formal Resolution

At the conclusion of the investigation, the Title IX Coordinator will appoint a trained Adjudicator from a pool of specially trained officials taking into account the circumstances of the case, including the status of the Respondent as a student, faculty member, employee or non-community member.

The Title IX Coordinator will send the Complainant and Respondent written notification of the identity of the Adjudicator. A party wishing to challenge the participation of the Adjudicator must notify the Title IX Coordinator, in writing, within two business days of receipt of the notice of the Adjudicator, stating the specific reason(s) for the party's objection. The Title IX Coordinator will determine, in his/her discretion, whether the party's challenge to the Adjudicator has merit and, if so, will assign a new Adjudicator.

Party's Submissions

Both the Complainant and Respondent will be provided with the same opportunity to share information with the Adjudicator, including the right to submit a written statement to the Adjudicator for consideration and/or to meet individually with the Adjudicator to provide any other relevant evidence. In addition, both parties will have an opportunity to provide the Adjudicator with a list of any additional witnesses who were not interviewed as part of the

investigation and whom they wish to be interviewed by the Adjudicator and copies of any documents or other materials they deem relevant. The Adjudicator will provide each party with a copy of the list of witnesses and identification of documents or other information submitted by the other party.

Conduct of the Hearing

The hearing will be conducted as follows:

- The Adjudicator will review the investigatory report and may, if deemed necessary, communicate with the Investigator and/or any party or witness directly as part of the hearing process.
- The Adjudicator is not bound by the Investigator's report; rather, it is advisory.
- The Adjudicator may request additional investigation by the Investigator.
- Both the Complainant and the Respondent may have an advisor, of their own choosing, present to support and accompany them during hearing and appeal stages of the Formal Resolution process. An advisor may not direct questions to the Adjudicator or witnesses at the hearing, but may consult with the party that he or she is assisting. The Adjudicator will not allow an advisor's presence to inhibit the parties' sharing of information or the conduct of the hearing.
- At no time will the Complainant and Respondent be questioned at the same time or be permitted to question each other.

The parties, upon submission of a written request to the Title IX Coordinator, may be permitted to review on campus information in the case file, subject to redaction permitted and/or required by law.

Upon the conclusion of the hearing process, both the Complainant and Respondent shall have access to a full and fair record of the hearing. The record of the Adjudicator's hearing shall be protected from public release until a final determination is made. A final determination is made under this policy when no appeal of the decision of the Adjudicator is sought, or in the event of an appeal, when the decision of the Appeals Officer(s) is communicated to the Complainant and Respondent. Any public release of the full and fair record of the hearing shall be made in accordance with MWPAI policy and federal and state laws.

Determination In all investigations into alleged sexual misconduct, the Institute will evaluate evidence under a "**preponderance of the evidence**" standard. A preponderance of the evidence means that information shows it is "**more likely than not**" that the Respondent violated this policy.

Sanction

The sanction(s) for a violation of this policy will be based on a consideration of all of the circumstances, including the severity of the conduct and the Respondent's disciplinary history. The range of sanctions imposed may include, but are not limited to, any one or more of the following:

- Reprimand or warning
- Change in academic schedule
- Disciplinary probation
- Revocation of honors or awards
- Restricting the Respondent's access to Institute facilities or activities
- Community service
- Issuing a "no-contact" order to the Respondent or requiring that such an order remain in place
- Loss of attendance and/or participation privileges for social functions or Institute programs
- Change or removal of housing assignment and/or housing privileges
- Letter of reprimand
- Change of job assignment and/or work location
- Suspension (limited time or indefinite)
- Demotion or reduction in pay
- Expulsion
- Revocation of degree

If the Adjudicator concludes that the Respondent is responsible for a violation of this policy, based on a preponderance of the evidence, both the Complainant and Respondent shall have the opportunity to submit a written impact statement to the Adjudicator prior to a determination of an appropriate sanction(s). In making a determination regarding sanctions, the Adjudicator may consider the parties' impact statements, if any, and may also consult with the Title IX Coordinator and other appropriate MWPAI officials. The Respondent's disciplinary history, including, but not limited to, past findings of domestic violence, dating violence, stalking or sexual assault, may be considered for purposes of determining an appropriate sanction.

A final determination letter will be issued to the Respondent and the Complainant. Both parties, concurrently, will receive a copy of this determination letter to the extent permitted by law. The determination letter will include the following information: (i) the name of the Respondent; (ii) whether the Respondent has been found responsible or not responsible for specific violation(s) of this policy; (iii) factual findings supporting the determination; (iv) the sanction imposed, if any; (v) the rationale for the decision and sanction; (vi) a notation regarding the right to appeal.

MWPAI may proceed with a complaint, including an investigation and through to a disciplinary outcome, even if the Complainant and/or Respondent elect not to participate.

For those crimes of violence that MWPAl is required by federal law to include in its Annual Security Report, the transcripts of students found responsible after a hearing and appeal, if any, shall include the following notation:

- Suspended after a finding of responsibility for a code of conduct violation;
- Expelled after a finding of responsibility for a code of conduct violation; or
- Withdrew with conduct charges pending

Transcript notations for suspensions may be removed at the discretion of the Institute, but no earlier than one year after the conclusion of the suspension. Transcript notations for expulsion shall not be removed.

Appeal

The Complainant and Respondent, if a student, faculty member or employee, may file an appeal of the determination of the Adjudicator. When a party requests an appeal, the other party will be notified.

A party has four grounds under which to appeal the Institute's determination: (i) the Adjudicator committed procedural errors that had a direct impact on the decision, (ii) there is new evidence that has come to light that could have a direct impact on the outcome and which was not reasonably available before or during the investigation and/or hearing before the Adjudicator, (iii) failure to apply a preponderance of the evidence standard; or (iv) a claim that the sanctions are not consistent with past practices or the severity of the alleged sexual misconduct.

Sanctions imposed by the Adjudicator will remain in effect until any timely appeal of the decision is resolved, unless the Title IX Coordinator decides otherwise. Interim measures will remain in effect until the appeal is resolved.

The procedure to file an appeal is as follows:

1. A party wishing to appeal the determination of responsibility and/or the sanction must file a notice of intent to appeal within five business days of the date the party receives the decision letter. The intention to file an appeal must be submitted in writing (either email or hard-copy) to the Title IX Coordinator. This notice of intent to appeal must contain the party's grounds for the appeal.
2. The Title IX Coordinator will appoint an Appeals Officer or, if the Respondent is a student of MWPAl, a panel of up to three (3) Appeals Officers. No Appeals Officer shall have a conflict of interest.
3. The Appeals Officer(s)' entire review process will be based on the party's written request for appeal and MWPAl's record of the case. The Appeals Officer(s) will have access to the investigatory report, the Adjudicator's decision and may, if the Appeals Officer(s) deem it necessary, communicate with the Investigator, the Adjudicator, and/or any party or witness directly as part of the appeals process. However, appeals are not intended to be full re-hearings of the complaint. In most cases, appeals will be considered upon a

review of the written documentation or record of the Investigator and/or Adjudicator, and any pertinent documentation regarding the grounds for appeal.

4. The Appeals Officer(s) may affirm the Adjudicator's decision, alter the Adjudicator's decision (with respect to a finding of responsibility and/or sanctions), or return the case to the Investigator for further investigation.
5. A preponderance of the evidence standard will be applied on appeal.
6. The Appeals Officer(s) will make a final determination on the appeal. The Appeals Officer(s) will normally render a decision regarding the appeal within 20 calendar days of the request for appeal.
7. Both the Complainant and Respondent will be notified in writing, concurrently, of the decision on appeal. The Appeals Officer(s)' decision will be final and binding.

Informal Resolution

A Complainant who wishes to file a formal complaint but who does not wish to pursue Formal Resolution may request a less formal proceeding, known as "Informal Resolution." The Informal Resolution procedure is not available for complaints of sexual violence or stalking. Informal resolution must be agreed upon by both parties, and the Title IX Coordinator must agree that information resolution is appropriate.

An informal resolution usually takes the form of mediation in which a designated third-party explores whether the parties can agree on a result. Informal Resolution provides an opportunity for the Complainant to confront the Respondent in the presence of, and facilitated by, a presiding officer or mediator, and to communicate his or her feelings and perceptions regarding the incident, the impact of the incident, and his or her wishes and expectations regarding protection in the future. The parties will not, however, be required to meet together as part of the Informal Resolution. In either event, the Respondent will have an opportunity to respond. The Complainant and the Respondent each may bring an advisor to the Informal Resolution. Advisors are subject to the same restrictions set forth for advisors in Formal Resolution, outlined above.

The Complainant, Respondent and/or Institute may, at any time, elect to end the informal resolution process and initiate Formal Resolution instead. In order to promote honest, direct communication, information disclosed during Informal Resolution must remain private, except where disclosure may be required by law or authorized in connection with duties on behalf of the Institute.

TIME FRAME FOR RESOLUTION

MWPAI seeks to resolve every report of sexual misconduct within 60 calendar days of the initial complaint, excluding any appeal. The time frames included in this policy may vary depending on the details of the complaint and, in some cases, extenuating circumstances that may require an

extension of the time frames. Extenuating circumstances may include the time of the academic year (e.g., during Institute breaks or final exams), the number of witnesses involved, the availability of the parties or witnesses, the effect of a concurrent criminal investigation by local law enforcement, or other unforeseen circumstances. In the event that the investigation and resolution exceed this time frame, MWPAI will notify the Complainant and Respondent of the reason(s) for the delay and the expected adjustment in the time frame.

PREVENTION AND AWARENESS EDUCATION PROGRAMS

Creating a safe and respectful environment is the responsibility of all members of the Institute community. To promote and maintain this environment, the Institute engages in comprehensive educational programming to prevent sexual misconduct, including sexual harassment, domestic violence, dating violence, sexual assault, stalking, and retaliation. The Institute provides primary prevention and awareness programs for all incoming students and employees, and ongoing prevention and awareness campaigns for all students and employees. If a victim discloses actions constituting a violation of this policy through a public awareness event, such as “Take Back the Night” or a candlelight vigil, the Institute is not obligated to begin an investigation. The Institute may, however, use the information to inform the need for additional education and prevention efforts.

AMNESTY

The health and safety of every student at MWPAI is of utmost importance. The Institute realizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. MWPAI strongly encourages students to report domestic violence, dating violence, stalking or sexual assault to MWPAI officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking or sexual assault to Institute officials or law enforcement will not be subject to MWPAI's code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking or sexual assault.

ANTI-RETALIATION

MWPAI prohibits retaliation against any person who reports sex discrimination, sexual harassment, sexual assault or any other form of sexual misconduct or participates in the investigation of any alleged violation of this policy, including testifying as a witness. Retaliation should be reported promptly to the MWPAI's Title IX Coordinator. Reports of retaliation will be investigated in accordance with the appropriate Institute policy, and such conduct may result in disciplinary action independent of the sanction(s) or interim measures imposed in response to the underlying allegations of sexual misconduct.

DESIGNATION OF AUTHORITY

Any person assigned a role pursuant to this policy may designate their authority to another appropriate person to avoid conflicts of interest or in other circumstances, as deemed necessary.

COORDINATION WITH OTHER POLICIES

A particular situation may potentially invoke one or more Institute policies or processes. The Institute reserves the right to determine the most applicable policy or process and to utilize that policy or process.

CLERY ACT COMPLIANCE

The Institute is required to include for statistical reporting purposes the occurrence of certain incidents in its Annual Security Report (ASR). Names of individuals involved in incidents are not reported or disclosed in ASRs. In the case of an emergency or ongoing dangerous situation, MWPAI will issue a timely warning to the campus. In such circumstances, the name of the alleged perpetrator may be disclosed to the community, but the name of the Complainant will not be disclosed.

TRAINING

Responsible administrators, persons assigned as investigators, and individuals appointed to adjudicate alleged violations of this policy will receive annual training on relevant topics, including discrimination, harassment, stalking, domestic violence, dating violence, sexual misconduct and how to conduct investigations and disciplinary proceedings that protect the safety and respectful treatment of all parties and promote accountability to the MWPAI community.

ADMINISTRATION OF THIS POLICY

The Institute's Title IX Coordinator is responsible to ensure compliance with this policy. Any questions or concerns about the administration of this policy should be directed to the Title IX Coordinator, Jeanette R. Breish, 315-797-0000, ext 2108 or jbreish@mwpai.edu. Inquiries and complaints may be made externally to the U.S. Department of Education, Office for Civil Rights, 400 Maryland Avenue, SW, Washington, DC 20202-1100.

STUDENTS' BILL OF RIGHTS
IN CASES INVOLVING SEXUAL ASSAULT,
DOMESTIC/DATING VIOLENCE, AND STALKING

All students have the right to:

- Make a report to local law enforcement and/or state Police;
- Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
- Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by MWPAI;
- Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- Be treated with dignity and to receive from the Institute courteous, fair, and respectful health care and counseling services, where available;
- Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
- Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
- Be protected from retaliation by MWPAI, any student, the accused and/or the Respondent, and/or their friends, family and acquaintances within the jurisdiction of MWPAI;
- Access to at least one level of appeal of a determination;
- Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or Respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
- Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of MWPAI.

**STATEMENT OF RIGHTS IN CASES INVOLVING SEXUAL
ASSAULT, DOMESTIC/DATING VIOLENCE AND STALKING**

Anyone reporting an incident of sexual assault, domestic or dating violence or stalking has the right to:

- A. Notify Campus Security, Local Law Enforcement or the New York State Police.
- B. Emergency access to a Title IX Coordinator or other appropriate official trained in interviewing victims of sexual assault who shall be available upon the first instance of disclosure by a reporting individual and who can provide information, including:
 - 1) options to proceed, including the right to make a report to Campus Security (reports to Campus Security are reported to the Title IX Coordinator), Local Law Enforcement, and/or the New York State Police or choose not to report; to report the incident to MWPAI; to be protected by the Institute from retaliation for reporting an incident; and to receive assistance and resources from the Institute, as set out in MWPAI's Sexual Misconduct Policy.
 - 2) where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible;
 - 3) that the criminal justice process utilizes different standards of proof and evidence than the Institute's misconduct procedures and that any questions about whether a specific incident violated the penal law should be addressed to law enforcement or to the district attorney;
 - 4) whether the person they are reporting to is authorized to offer the confidentiality or privacy; and
 - 5) any other reporting options.
- C. If they are a student, to contact the Institute's Health Services and/or Counseling Center, where they may be offered confidential resources pursuant to applicable laws and can be assisted in obtaining services for reporting individuals; or to contact non-Institute confidential resources, including the New York State Office of Victim Services at 1-800-247-8035 or <https://ovs.ny.gov>.
- D. Disclose confidentially the incident and obtain services from the state or local government;
- E. Disclose the incident to the Institute's Responsible Employees who can offer privacy or, in appropriate cases determined by the Title IX Coordinator, confidentiality, subject the Institute's Sexual Misconduct Policy, and can assist in obtaining resources for reporting individuals;
- F. File a report of sexual assault, domestic violence, dating violence, and/or stalking and consult the Title IX Coordinator and other appropriate Institute personnel for information and assistance. Reports shall be investigated in accordance with MWPAI policy. A reporting individual's identity shall remain private if that is what the reporting individual wishes, however privacy is not the same as confidentiality and private information can be shared as necessary to implement and fulfill the Institute's obligations under the law and its policies and procedures;
- G. Disclose, if the accused is an employee of the institution, the incident to Human Resources or to request that a confidential or private employee assist in reporting to Human Resources; and

- H. Receive assistance from appropriate MWPAI representatives if interested in initiating legal proceedings in family court or civil court, such assistance to consist of facilitation in contacting appropriate local agencies who can provide direct assistance with court proceedings.
- I. Withdraw a complaint or involvement from the Institute's processes at any time, with the understanding that in appropriate cases, MWPAI may nonetheless be required to proceed even if the reporting individual does not wish to do so.