



MCKENDREE UNIVERSITY INTERIM SEXUAL  
HARASSMENT POLICY  
TITLE IX

# SEXUAL HARASSMENT POLICY & PROCEDURES

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## POLICY STATEMENT

McKendree University is committed to providing a learning, working, and living environment that promotes integrity, civility, and mutual respect in an environment free of discrimination on the basis of sex in its programs and activities. The University considers sex discrimination in all its forms to be a serious offense.

Sexual Harassment, whether verbal, physical, visual, or digital, is a form of prohibited sex discrimination.

## SCOPE

This policy applies to all University employees, including staff, faculty, and administrators; students; applicants for employment; customers; third-party contractors; and all other persons that participate in the University's educational programs and activities, including third-party visitors on campus, when the alleged conduct constitutes Sexual Harassment occurring against a person in the United States.

This policy prohibits conduct that constitutes "Sexual Harassment" as defined below when the complainant and alleged perpetrator are members of the same or opposite sex, and it applies regardless of national origin, immigration status, or citizenship status. The University's prohibition on sexual harassment extends to all aspects of its educational programs and activities, including but not limited to, admissions, employment, academics, athletics, housing, and student services.

This policy applies when the conduct occurs in an Education Program or Activity, defined as physical locations and events over which the University exercises substantial control over the respondent and the context in which the Sexual Harassment occurs. Education Programs or Activities include any building owned or controlled by a student organization that the University officially recognizes. This policy does not apply to Sexual Harassment that occurs off campus, in a private setting, and not part of the University's Education Programs or Activities. This Policy also does not apply to Sexual Harassment that occurs outside the geographic boundaries of the United States.

The University will analyze all complaints made under this policy and, if necessary, take action to prevent the recurrence of sex discrimination and remedy its effects.

It is the policy of the University to comply with Title IX of the Education Amendments of 1972 and its implementing regulations, which prohibit discrimination based on sex in the University's educational programs and activities. The University has designated the following Title IX Coordinators to coordinate its compliance with Title IX and to receive inquiries regarding Title IX, including reports and formal complaints of Sexual Harassment:

**Title IX Coordinator:**

Joni Bastian, Ph.D.  
VPSA, Dean of Students  
701 College Road  
Lebanon Illinois 62254  
Phone: (618) 537-6533  
Email: [jjbastian@mckendree.edu](mailto:jjbastian@mckendree.edu)

**Deputy Title IX Coordinator:**

Jennifer Miller, Ed.S.  
AVPSA  
701 College Road  
Lebanon, IL 62254  
Phone: (618) 537-6555  
Email: [jrmiller@mckendree.edu](mailto:jrmiller@mckendree.edu)

Any person may make a report to the Title IX Coordinators listed above by person, mail, or email. A person may also file a complaint of sex discrimination with the United States Department of Education's Office for Civil Rights.

# DEFINITIONS

## Sexual Harassment

Sexual harassment is conduct based on sex that constitutes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking.

Examples of Sexual Harassment include but are not limited to:

1. Pressure for a dating, romantic, or intimate partner relationship;
2. Pressure for sexual activity;
3. Sending sexually explicit emails or text messages.

## Quid Pro Quo Sexual Harassment

Quid Pro Quo Sexual Harassment is an employee of the University conditioning the provision of aid, benefit, or service of the University on an individual's participation in unwelcome sexual contact.

## Hostile Environment Sexual Harassment

Hostile Environment Sexual Harassment is defined as conduct based on sex that is unwelcome conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the University's Education Programs or Activities.

In determining whether harassment has created a hostile environment, the University will consider the totality of circumstances, including factors such as the actual impact the conduct has had on the complainant; the nature and severity of the conduct; the frequency and duration of the conduct; the relationship between the parties (including accounting for whether one individual has power or authority over the other); the context in which the conduct occurred; and the number of persons affected. The University will evaluate the totality of circumstances from the perspective of a reasonable person in the complainant's position. A person's adverse subjective reaction to conduct is not sufficient, in and of itself, to establish the existence of a hostile environment.

1. Some specific examples of conduct that may constitute Sexual Harassment if unwelcome include, but are not limited to: Unreasonable pressure for a dating, romantic, or intimate relationship or sexual contact
2. Unwelcome kissing, hugging, or massaging
3. Sexual innuendos, jokes, or humor
4. Displaying sexual graffiti, pictures, videos, or posters
5. Using sexually explicit profanity
6. Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities
7. E-mail, internet, or other electronic use that violates this policy
8. Leering or staring at someone in a sexual way, such as staring at a person's breasts or groin
9. Sending sexually explicit emails, text messages, or social media posts
10. Commenting on a person's dress in a sexual manner
11. Giving unwelcome personal gifts such as lingerie that suggest the desire for a romantic relationship

## Sexual Assault

McKendree's definition of "Sexual Assault" is mandated by federal regulations implementing Title IX of the Education Amendments of 1972. Those regulations require McKendree to adopt a definition of "Sexual Assault" that incorporates various forcible and non-forcible sex crimes as defined by the FBI's Uniform Crime Reporting System. See 34 C.F.R. § 106.30(a).

Sexual Assault consists of one or more of the following:

- Rape: Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, or by a sex-related object. This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (due to the influence of drugs or alcohol) or because of age. **Incapacitation** is a state where an individual cannot make an informed and rational decision to consent to engage in sexual contact because the individual lacks conscious knowledge of the nature of the act (e.g., to understand the “who, what, where, when, why or how” of the sexual interaction) and/or is physically or mentally helpless. An individual is also considered incapacitated, and therefore unable to give consent, when asleep, unconscious, or otherwise unaware that sexual contact is occurring. Incapacitation can only be found when the Respondent knew or should have known that the Complainant was incapacitated when viewed by a sober, reasonable person. One’s intoxication is not an excuse for failure to recognize another person’s incapacitation. Incapacitation may result from the use of alcohol and/or other drugs; however, consumption of alcohol or other drugs, inebriation, or intoxication alone are insufficient to establish incapacitation. Incapacitation is beyond mere drunkenness or intoxication. The impact of alcohol or drugs varies from person to person, and evaluating incapacitation requires an assessment of how consumption of alcohol and/or drugs affects an individual’s: Decision-making ability • Awareness of consequences • Ability to make informed judgments • Capacity to appreciate the nature of circumstances of the act. No single factor is determinative of incapacitation. Some common signs that someone may be incapacitated include slurred speech, confusion, shaky balance, stumbling or falling down, vomiting, and unconsciousness.
- Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is unable to give consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Illinois law.
- Sexual intercourse with a person who is under the statutory age of Consent as defined by Illinois law.

## Violence

Violence refers to any conduct that causes or threatens to cause physical, mental, or emotional harm to another.

## Domestic Violence

Domestic Violence includes any act of violence or threatened violence committed by a current or former spouse or intimate partner of a 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 Illinois, 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 Illinois.

Examples of domestic violence include but are not limited to:

1. Kicking, punching, pushing, or otherwise physically attacking
2. Placing someone in the protected class in reasonable apprehension of receiving a battery
3. Threatening harm to another for exercising control over a person in the protected class
4. Preventing someone from accessing needed emergency services

## Dating Violence

Dating violence is defined as violence or threatened violence 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 reporting party's statement and with consideration of the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence can include a single encounter.

Examples of dating violence are included above under Domestic Violence.

### Stalking

Stalking is a course of conduct directed at a specific person that would cause a reasonable person to 1) fear for one's safety, or the safety of others; or 2) suffer substantial emotional distress.

Examples include but are not limited to:

1. Waiting outside someone's home and/or place of business
2. Excessively calling, texting, or messaging someone

### Consent

Under Illinois law, "Consent" is defined as "a freely given agreement to the act of sexual penetration or sexual conduct in question. Lack of verbal or physical resistance or submission by the victim resulting from the use of force or threat of force by the accused shall not constitute consent. The manner of dress of the victim at the time of the offense shall not constitute consent." Additionally, "a person who initially consents to sexual penetration or sexual conduct is not deemed to have consented to any sexual penetration or sexual conduct that occurs after he or she withdraws consent during that sexual penetration or sexual conduct."

When a person is unable to understand the nature of the activity or cannot consent based on circumstances including but not limited to:

1. Full or partial incapacitation due to the influence of drugs or alcohol
2. The person is asleep or unconscious
3. The person is not of legal age to consent; or
4. The person is incapacitated due to a mental disability

### Complainant

The complainant is defined under this policy as an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.

### Respondent

Respondent is defined under this policy as an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

### Formal Complaint

The term "formal complaint" as used throughout this policy is defined as a **physical or electronic document (such as an email) signed by a complainant alleging Sexual Harassment** against a respondent and requesting that the University investigate the allegation of Sexual Harassment. At the time of filing a Formal Complaint, the complainant must be participating in, or attempting to participate in, one or more of the University's Education Programs or Activities.

In any case, where a Complainant elects not to file a formal complaint, the Title IX Coordinator may file a formal complaint on behalf of the University based on reported information so long as the filing is not clearly unreasonable under the facts and circumstances.

### **Investigating Officer**

An Investigating Officer is defined under this policy as individuals who have been assigned under this policy to conduct the investigation phase of the grievance process.

### **Hearing Officer**

A Hearing Officer is defined under this policy as an individual who has been assigned under this policy to conduct the hearing phases of the grievance process.

# MAKING A COMPLAINT OF SEXUAL HARASSMENT

## Students

Students who wish to report Sexual Harassment should file a formal complaint with the Title IX Coordinator, Deputy Title IX Coordinator, or designee. Employees must report sexual harassment to the Title IX Coordinator or Deputy Title IX Coordinator when they receive a report of such conduct. Confidential advisors, employees who have a professional license, must report that a possible violation of Sexual Harassment occurred, without providing the identity of the individual. Students may also file a complaint with the United States Department of Education's Office for Civil Rights, as outlined in the Title IX Statement at the beginning of this policy.

## Employees

Employees who wish to report sexual harassment should file a report with Human Resources, Title IX Coordinator, Deputy Title IX Coordinator, or designee. This includes employees who may have a professional license requiring confidentiality, *so long as the University does not employ them in that professional role*. An employee not reporting sexual harassment as required by this policy may be disciplined accordingly, up to, and including termination. This section does not apply to employees identified below as confidential advisors.

## Other Persons

Any other persons, including but not limited to third parties, vendors, bystanders, and visitors on campus, who wish to report sexual harassment may contact the Title IX Coordinator, Deputy Title IX Coordinator, or designee. They may also file a complaint with the United States Department of Education's Office for Civil Rights, as outlined in the Title IX Statement at the beginning of this policy.

## Amnesty

The University recognizes that an individual who has engaged in behavior that may violate the University's Student Code of Conduct may be hesitant to report sexual harassment. To encourage reporting, the University will grant immunity to any student who reports, in good faith, an alleged violation of this policy to the Title IX Coordinator or other employee. The reporting student will not receive a conduct sanction by the University for a conduct violation, such as underage drinking, that is revealed during such a report, unless the University determines that the violation was egregious, including without limitation, an action that places the health and safety of any other person at risk.

Notwithstanding the University's commitment to amnesty in these situations, the University may require the reporting individual to attend a course or pursue other educational interventions, for example, educational interventions related to alcohol and drug use. Further, this amnesty provision does not prevent action by police or other legal authorities against an individual who has illegally consumed alcohol or drugs or otherwise violated the law.

## Advisor

During the grievance process, both a complainant and a respondent may ask an advisor of their choice to accompany them at all stages of the process, including meetings with the Investigating Officer and at the hearing. The advisor may, but does not have to be, an attorney. There are two types of advisors, the advisor of choice and the appointed advisor. The advisor of choice is selected by the party and can be anyone, for example, a parent or advocate. Appointed advisors are typically chosen from a roster comprised of university faculty or staff members, subcontractors, etc. Advisors chosen or appointed may participate throughout the grievance process including meetings with the Investigating Officer and at the hearing.

The advisor cannot be another complainant or respondent in cases involving multiple complainants or respondents.

Advisors may be removed if they disrupt, harass, or intimidate others, or do not exhibit proper decorum expected under this policy. Advisors will be asked to sign an affirmation that they understand their role.

If a party is unable to obtain an advisor for the hearing process only, the University will provide one to conduct a cross-examination for the party. The advisor provided by the University will not be an attorney.

### Confidential Advisors

Resources are available if an individual desires to talk confidentially about their situation. The following confidential advisors are available to assist you and will **not** disclose the identifying information you provide unless otherwise required by law (e.g. if the complainant is a minor or there is a threat to the greater community). These individuals are required to make a non-identifying report to the Title IX Coordinator or designee so that the University can analyze whether there are patterns or systemic problems of Sexual Harassment on campus:

Counseling Staff:	Melissa McHenry, MA, MS, MCPC Director of Counseling Services (618) 537-6416
	Charles Gregory, MA, LCPC, LPC Asst. Director of Counseling Services (618) 537-6975
Health Services Staff:	Beth Allan, MSN, BSN, RN, CSN, NP-C Director of Health Services (618) 537-6502
	Lesa Auten Medical Assistant (618) 537-6503
Chaplain:	Rev. Dr. Beverly Wilkes-Null (618) 537-6962

### Confidential Reports

A confidential report is separate from seeking confidential counseling before making a report. Although the Title IX Coordinator will take all reasonable steps to investigate and respond to reports and complaints while keeping confidential the identity of the reporter, confidential reporting may ultimately limit the University's ability to take appropriate action in the absence of all relevant facts. The University must also consider its obligation to respond effectively to reports of policy violations and to maintain a safe environment for the McKendree University community.

"University Community" means all persons who participate in the University's education programs or activities, including board members, administrators, faculty, staff, other employees, students, volunteers, guests, and contractors.

If you have concerns about confidentiality, please contact the McKendree University Counseling Services.

### Anonymous Reports

Anonymous reports will be accepted by the University, although it is often difficult to gather facts and conduct a thorough analysis via anonymous complaints. An anonymous report can be completed through the electronic reporting option described below.



## Electronic Reporting Option

The Incident Reporting form may be used to submit reports of sexual harassment. The form is located at <https://www.mckendree.edu/offices/student-affairs/student-conduct/reporting.php> and can also be used to make anonymous reports. Many fields on the report can be left blank; the only required fields are the *Nature of this Report*, *Date of Incident*, *Location of Incident*, and *Incident Description Fields*. You can specify the type of misconduct in the *Title IX Concerns* dropdown box in the Questions section, should you wish to do so.

## Options and Other Available Resources

Options for reporting (confidential, non-confidential, off campus, etc.), as well as other resources, such as local law enforcement and community-based organizations, are summarized in Appendix A of this policy.

## Conduct that Constitutes a Crime

Any person who wishes to make a complaint of sexual harassment that also constitutes a crime—including sexual assault, domestic violence, dating violence, or stalking—is encouraged to make a complaint to local law enforcement. If requested, the University will assist in notifying the appropriate law enforcement authorities. In the event of an emergency, please contact 911. A person may decline to notify such authorities. When a physical crime of violence has been perpetrated against you, the University recommends that you immediately go to the emergency room of a local hospital and contact local law enforcement, in addition to making a prompt complaint under this policy.

If you experienced sexual assault, domestic violence, or dating violence, do everything possible to preserve evidence by making certain that the crime scene is not disturbed. Preservation of evidence may be necessary for proof of the crime or in obtaining a protection order. As necessary to preserve evidence, you should not bathe, urinate, douche, brush your teeth, or drink liquids until after you are examined and, if necessary, have a rape examination completed. Clothes should not be changed. When necessary, seek immediate medical attention at an area hospital and take a full change of clothing, including shoes, for use after a medical examination. Complainants may go to Memorial Hospital East, located at 1404 Cross Street, Shiloh, Illinois, 62269, to obtain a medical forensic examination. The phone number for this facility is (618) 607-1000.

It is also important to take steps to preserve other types of evidence, such as letters, emails, text messages, social media posts, pictures, etc. This type of information is relevant in all situations involving sexual harassment, and it is often the only type of evidence available in cases of Sexual Harassment and stalking (other than witnesses).

There are several options such as, but not limited to:

- Contacting parents or a relative
- Seeking legal advice
- Seeking personal counseling (always recommended)
- Pursuing legal action against the perpetrator
- Pursuing action through the University
- Requesting that no further action be taken
- Requesting further information about the University's policy and procedures for addressing sexual harassment and available resources

## Dismissal Prior to Commencement of Investigation

In a case where the complainant files a formal complaint, the Title IX Coordinator will evaluate the formal complaint and must dismiss it if the Title IX Coordinator determines:

- The conduct alleged in the formal complaint would not constitute Sexual Harassment, even if proven; or

- The conduct alleged in the formal complaint falls outside the scope of the policy (i.e., because the alleged conduct did not occur in the University's education programs and activities and/or the alleged conduct occurred outside the geographic boundaries of the United States).

In the event the Title IX Coordinator determines the formal complaint should be dismissed under this section, the Title IX Coordinator will provide a written notice of dismissal to the parties and advise them of their right to appeal. The Title IX Coordinator may refer to the subject matter of the formal complaint to other University offices, as appropriate. A dismissal under this section is presumptively a final determination for purposes of this policy unless otherwise specified in writing by the Title IX Coordinator in the written notice of dismissal.

### **Support Measures**

Supportive measures are non-disciplinary, non-punitive individualized services offered, as appropriate, and reasonably available, and without fee or charge, that are designed to restore or preserve equal access to the University's Education Programs or Activities without unreasonably burdening another party, including measures designed to protect the safety of all parties implicated by a report or University's education environment, or to deter Sexual Harassment.

Upon receiving actual knowledge of Sexual Harassment, the Title IX Coordinator or designee will promptly contact the complainant to discuss the availability of support measures, consider the complainant's wishes concerning support measures, inform the complainant that support measures are available irrespective of whether the complainant files a formal complaint, and explain the process for filing and pursuing a formal complaint.

In the event a formal complaint is filed, and an investigation is commenced, the University will also offer support measures to the respondent in the same way it offers and makes them available to the complainant. The University will also offer and make available support measures to the respondent before the respondent is notified of a formal complaint if the respondent requests such measures.

Support measures may include changes in academic, living, dining, transportation, or work situations, to the extent that the University has control over these environments, if options to do so are reasonably available. Support measures may also include mutual restrictions on contact between the parties. Requests to change an academic, living, dining, transportation, or work situation, or for any other protective measure (such as a no-contact order), should be made to the Title IX Coordinator, Deputy Title IX Coordinator, or designee. The Title IX Coordinator will communicate with each party throughout the investigation to ensure that support measures remain necessary and effective. Failure to comply with the terms of these support measures or protections may constitute a separate violation of the Sexual Harassment Policy and/or Student Code of Conduct.

If a complainant has obtained an ex parte order of protection, a full order of protection, or any other temporary restraining order or no contact order against the alleged perpetrator from a criminal, civil, or tribal court, the complainant should provide such information to the Title IX Coordinator, Deputy Title IX Coordinator, or designee. The University, in conjunction with McKendree University Public Safety, will take all reasonable and legal action to implement the order.

### **Interim Removal**

The University may remove a respondent under this policy on an emergency basis. The University will first conduct an individualized safety risk analysis and determine that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies the removal. Upon such a decision to implement interim removal, the University will provide the respondent with notice and an opportunity to challenge the decision immediately after removal.

For non-student employee respondents, the University retains broad discretion to place the non-student employee on administrative leave pending the outcome of the grievance process outlined in this policy.

### **Retaliation**

It is a violation of this policy to retaliate against any person who made a report or complaint, testified, assisted, participated, or refused to participate, in any manner in an investigation, proceeding, or hearing in any way. Retaliation includes, but is not limited to, intimidation, threats, coercion, discrimination, and/or bringing a code of conduct charge for actions that do not involve Sexual Harassment but arise from the same facts or circumstances as a formal grievance complaint, if the conduct charges are brought “for the purpose of interfering” with a person’s Title IX rights under this policy.

Persons who believe they have been retaliated against in violation of this policy should make a complaint in the manner outlined in this section. All institutional sanctions are available for those found to have engaged in retaliatory conduct, up to and including termination or expulsion.

### **Consolidation**

The University may consolidate multiple complaints involving different people when they arise from the same facts or circumstances.

# SEXUAL HARASSMENT GRIEVANCE PROCESS

This grievance process consists of three phases: investigation, hearing, and appeal. All three phases of the grievance process will have certain qualitative elements, including:

- Complainants and respondents will be treated equitably.
- There will be an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence.
- There will be no presumptions of credibility based on a party's status as a complainant, respondent, or witness.
- All institutional participants in the process will be clear of conflict of interest or bias.
- There is a presumption that the respondent is not responsible for the alleged conduct until a determination is made at the conclusion of this process.
- Equal opportunity to identify and have considered witnesses (including fact and expert witnesses) and other relevant inculpatory and exculpatory evidence.
- Timely access to all information considered by the Investigating Officer and Hearing Officer.
- Equal opportunity to review any statements or evidence provided by the other party.
- Equal access to review and comment upon any information independently developed by the Investigating Officer and Hearing Officer should the Investigating Officer or Hearing Officer share such information with the other party.

All phases of this process will be completed within reasonably prompt timeframes and thoroughly investigated, decided, and resolved under the Sexual Harassment Grievance Process. Any delays during this process shall only occur with good cause and after written notice to the parties has been provided.

The University will make reasonable and appropriate efforts to preserve an individual's privacy and protect the confidentiality of information when investigating and resolving a complaint. The University will not utilize procedures that invade legally recognized privileges (e.g., attorney-client, priest-penitent, patient-counselor, etc.) or access documents that may be protected under those privileges (e.g. health, psychiatric, or counseling records) unless the party holding the privilege has waived it in writing. However, because of laws relating to reporting and other state and federal laws, the University cannot guarantee confidentiality to those who make complaints.

In the event a complainant requests confidentiality, the University will take all reasonable steps to investigate and respond to the report consistent with the procedures outlined in this policy. In the event a complainant asks the report not to be investigated, the University reserves the right to initiate an investigation despite the complainant's request.

## Notice of Formal Complaint

Within **five (5) business days** of the Title IX Coordinator receiving a formal complaint, the Title IX Coordinator will transmit a written notice to the complainant and respondent that includes:

- A physical copy of this policy or a hyperlink to this policy
- Sufficient details known at the time so that the parties may prepare for an initial interview with the Investigating Officer, including the identities of the parties involved in the incident (if known), the conduct allegedly constituting Sexual Harassment and the date and location of the alleged incident (if known)
- A statement that the respondent is presumed not responsible for the alleged Sexual Harassment and that a determination of responsibility will not be made until the conclusion of the adjudication and any appeal
- Notifying the complainant and respondent of their right to be accompanied by an advisor of their choice
- Notifying the complainant and respondent of their right to inspect and review evidence; and
- Notifying the complainant and respondent of the University's prohibitions on retaliation and false statements

- It is a violation of this Policy for any person to submit a Report or Complaint that the person knows, at the time of submission, to be false. It is also a violation for any person to knowingly make a materially false statement during an investigation, adjudication, or appeal. Violations of this section will be addressed under the Student Code of Conduct in the case of students and other University policies and standards, as applicable, for other persons.

Should the University elect, at any point, to investigate allegations that are materially beyond the scope of the initial written notice, the University will provide a supplemental written notice describing the additional allegations to be investigated.

## Investigation

After the notice of the formal complaint has been made, the Investigating Officer will commence an investigation. During the investigation, the Investigating Officer may receive counsel from university administrators, the University's attorneys, or other parties as needed. Both the complainant and the respondent will be given periodic updates regarding the status of the investigation.

The parties will be given equal opportunity to inspect and review any evidence gathered during the investigation directly related to the allegations raised in the formal complaint, including inculpatory and exculpatory evidence. The Investigating Officer will send the evidence to the party and the party's advisor in electronic form and give them at least **ten (10) business days** to submit a written response, which the Investigating Officer will consider before finalizing the investigation.

After the period for the parties to provide any written response to the evidence has expired, the Investigating Officer will complete a written investigation report that summarizes the various steps taken during the investigation, summarizes the relevant evidence collected, lists material facts on which the parties agree, and lists material facts on which the parties do not agree. When the investigation report is complete, the Investigating Officer will transmit a copy to the Title IX Coordinator. The Investigating Officer will also transmit the investigation report to each party and their advisor, in either electronic or hard copy form. This report will be sent at **least ten (10) business days** before any hearing.

At any point in the investigation, if the Investigating Officer determines that the conduct alleged in the formal complaint, if assumed true: (a) does not constitute Sexual Harassment; (b) did not occur in the Institution's Education Programs or Activities; or (c) did not occur against a person in the United States, then the University will dismiss the complaint for purposes of this grievance procedure. However, the University reserves the right to address such conduct under another policy, such as the Student Code of Conduct.

## Clear and Convincing Evidentiary Standard

In making any determination on the resolution of the complaint, the evidentiary standard is the clear and convincing standard, **that is, the evidence is highly and substantially more likely to be true than untrue that sexual harassment occurred.** A clear and convincing standard is used for all cases regardless of the status of the respondent.

## Informal Resolution

Informal means of resolution may be used only after a formal complaint is filed at any time before the final determination, with voluntary written consent of both parties. This Policy prohibits informal resolution in any case where an employee is accused of sexually harassing a student.

The following standards apply to any informal resolution method:

- The informal process can only be used with both parties' voluntary written cooperation and appropriate involvement by the institution (e.g., the Title IX Coordinator)

- Either party is permitted to withdraw from the informal resolution process and resume the formal process at any time prior to a resolution being reached.
- If either party does not complete the action required by the Informal Resolution, the party will violate the Title IX Sexual Harassment policy and may receive further sanction.

## Formal Resolution

Formal means of resolution entail a full investigation of the formal complaint. During a formal resolution, a Hearing Panel will adjudicate the formal complaint.

## The Hearing Process

### *Convening and Appointment of Hearing Panel*

After receiving the Investigating Officer's report, the Title IX Coordinator or Deputy Coordinator will convene a Hearing Panel, that has received proper training consistent with this policy.

### *Notice of Appointment of Hearing Panel*

After the Hearing Panel is appointed, a written notice will be promptly transmitted to the parties notifying them of the deadline for the parties to submit any written response to the investigation report; setting a date and time for the hearing; and providing a copy of the University's Hearing Procedures.

### *Written Response to Investigation Report*

A party's written response to the investigation report must include:

- To the extent the party disagrees with the investigation report, any argument or commentary regarding such disagreement
- Any argument that evidence should be categorically excluded from consideration at the hearing based on privilege, relevancy, undue prejudice, the prohibition on the use of sexual history, or for any other reason
- A list of any witnesses that the party contends should be compelled to attend the hearing according to an attendance notice issued by the hearing panel
- A list of any witnesses that the party intends to bring to the hearing without an attendance notice issued by the hearing panel
- Any objection that the party has to the University's Hearing Procedures
- Any request that the parties be separated physically during the hearing
- Any other accommodations that the party seeks for the hearing
- The name and contact information of the advisor who will accompany the party at the hearing; and
- If the party does not have an advisor who will accompany the party at the hearing, a request that the University provide an advisor for conducting the questioning.

A party's written response to the investigation report may also include:

- Argument regarding whether any of the allegations in the formal complaint are supported by a clear and convincing standard of evidence; and
- Argument regarding whether any of the allegations in the formal complaint constitute Sexual Harassment.

### *Notices of Attendance*

The Hearing Panel or designee(s) will transmit notices of attendance to any University employee (including administrator, faculty, or staff) or student whose attendance is required at the hearing as a witness. The notice will advise the subject of their duty to appear for the hearing at the specified date and time and advise the subject to contact the Hearing Panel or designee immediately if there is a material and unavoidable conflict.

The subject of an attendance notice should notify any manager, faculty member, coach, or supervisor if attendance at the hearing conflicts with job duties, classes, or other obligations. All such managers, faculty

members, coaches, and other supervisors are required to excuse the subject of the obligation or provide some other accommodation, so that the subject may attend the hearing as specified in the notice.

The University has no authority to compel the attendance of any witness who is not an employee or a student, and a notice of attendance will not be issued to any such individual.

#### *Convening Live Hearing*

The Hearing Panel will conduct a live hearing according to the University's Hearing Procedures. The Hearing Panel will permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those bearing on credibility. The Hearing Panel will determine the relevance of questions and explain in real time any decision not to permit a question.

#### *Cross-Examination*

Cross-examinations will be conducted directly, orally, and in real-time by the party's advisor of choice and never by a party personally. At either party's request, the University will provide the parties with separate rooms and use technology so the decision-maker and parties may simultaneously see and hear the questions.

If a party or witness refuses to participate in the cross-examination, then the Hearing Panel will not draw an adverse inference based on the mere fact that an individual refused to participate in the cross-examination.

There will be an audio recording of the hearing that will be made available to the parties equally for inspection and review.

### **Determining Complaint Outcomes and Notification**

After the hearing, the Hearing Panel will issue a written determination of responsibility applying the clear and convincing evidence standard and decide as to whether or not a violation of the policy occurred.

The written determination will include:

- Identification of the allegations potentially constituting Sexual Harassment made in the formal complaint
- A description of the procedural steps taken by the University upon receipt of the formal complaint, through the issuance of the written decision, including notification to the parties, interviews with the parties and witnesses, site visits, methods used to gather non-testimonial evidence, and the date, location, and people who were present at or presented testimony at the hearing.
- Articulate findings of fact, made under a clear and convincing evidence standard, that support the determination
- A statement of, and rationale for, each allegation that constitutes a separate potential incident of Sexual Harassment, including a determination regarding responsibility for each separate potential incident
- Sanctions and any steps deemed necessary to 1) maintain an environment free from discrimination and harassment and 2) protect the safety and well-being of the complainant and other members of the University Community. Sanctions can include other remedial measures to correct the effects of such conduct on the complainant and others and to prevent the recurrence of discrimination, harassment, and/or retaliation; and
- A description of the University's process and grounds for appeal, as specified below

The Hearing Panel's written determination will be transmitted to the parties. Transmittal of the written determination to the parties concludes the hearing process, subject to any right of appeal.

The range of sanctions if it is determined that the underlying conduct is a violation of this policy, includes no-contact orders; classroom reassignment; and the provision of counseling, and other support services training. Written formal warning, suspension, expulsion, or other appropriate institutional sanction(s), depending on the severity of the incident and considering any previous conduct infractions.

The written determination, including any sanctions imposed, will be included in the parties' University files. The written determination shall be final, subject only to the right of appeal outlined in *Appeals* below.

## APPEALS

### Grounds for Appeal

The complainant or respondent may appeal the determination or any dismissal of the complaint on the following grounds only:

- **Question of Procedure:** there was a procedural irregularity that affected the outcome
- **New Evidence:** there is new evidence not reasonably available that could affect the outcome
- **Conflict of interest or Bias:** there was a conflict of interest or bias by the institutional participants that affected the outcome
- **Severity of Sanction:** the sanction, punishment, or corrective action imposed is disproportionate to the violation. Mere dissatisfaction with the sanction is not grounds for appeal

Appeals must be filed with the Title IX Coordinator/Deputy Coordinator within **five (5) business days** of receiving the outcome notification letter. The Title IX Coordinator/Deputy Coordinator will forward the request to an Appeals Officer.

The appeal must be in writing and contain all the following information:

- Name of the complainant
- Name of the respondent
- A statement of the determination of the complaint, including corrective action if any
- A detailed statement of the basis for the appeal including the specific facts, circumstances, and argument in support of it; and
- Requested action, if any

When an appeal has been filed, the non-appealing party will be (1) notified of such in writing within **ten (10) business days** of the submission of the appeal and (2) allowed to submit a written statement in response. The appealing party may request a meeting with the Appeals Officer, but the decision to grant a meeting is left to the Appeals Officer's discretion. However, if a meeting is granted, then the other party will be granted a similar opportunity.

### Resolution of the Appeal

The Appeals Officer will resolve the appeal within **twenty (20) business days** of receiving it and may take actions that they determine to be in the interest of a fair and just decision. The parties will be notified in writing if the Appeals Officer's decision will take longer than **20 business days** and the basis for the reasonable delay.

The decision of the Appeals Officer is final.

The Appeals Officer shall issue a written decision describing the appeal and the rationale for the result that is provided to the parties simultaneously.



## OTHER INFORMATION

### Academic Freedom

While the University is committed to the principles of free inquiry and free expression, Sexual Harassment is neither legally protected expression nor the proper exercise of academic freedom.

### Outside Appointments, Dual Appointments, and Delegations

The University has the discretion to retain and appoint suitably qualified persons who are not University employees to fulfill any function of the University under this policy, including, but not limited to, Title IX Coordinator, investigator, hearing officer, hearing panel, administrative officer, informal resolution officer, and appeals officer. The University also retains discretion to appoint two or more people to jointly fulfill the role of investigator, hearing officer, administrative officer, informal resolution officer, and/or appeals officer.

The functions assigned to a given University official under this policy, including but not limited to the functions assigned to the Title IX Coordinators, investigator, hearing officer, hearing panel, administrative officer, informal resolution officer, and appeals officer, may, in the University's discretion, be delegated by such University official to any suitably qualified individual and such delegation may be recalled by the University at any time.

### Education/Training

Because the University recognizes that the prevention of Sexual Harassment is important, it offers educational programming on an annual and ongoing basis to a variety of groups such as Title IX Coordinators; investigators; decision-makers; informal resolution facilitators; campus personnel; incoming students and new employees participating in orientation; and members of athletic teams and other student organizations.

All Title IX Coordinators, investigators, decision-makers, and informal resolution facilitators receive training on various relevant aspects of McKendree's Sexual Harassment Policy and grievance process, including definitions of Sexual Harassment; the scope of the University's education programs and activities; how to conduct investigations, hearings, appeals, and informal resolutions; and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest and bias. The training for decision-makers also includes training on relevant technology to be used at any live hearing, relevance, and the permissible use of sexual history. All training provided will be free of sex stereotypes and serve to promote impartial investigations.

To learn more about education resources, please contact the Title IX Coordinator, Deputy Title IX Coordinator, or designee. To access the University's training materials please review the University's Title IX webpage.

### Record Keeping

The University maintains the following records as they relate to this Policy and process outlined herein:

- complete records of each phase relating to the resolution of a formal complaint, including records of an informal resolution, for at least **seven (7) calendar years**
- materials used to train institutional participants in the various phases of the resolution process, including the Title IX Coordinator(s), investigators, and hearing officers; and
- for each instance where the University received a report of Sexual Harassment, but where a formal complaint was not filed, the University has maintained for at least **7 calendar years**, a record of all actions taken, including all supportive measures provided and its rationale for why the actions it took were not deliberately indifferent.

### Discretion in Application

The University retains discretion to interpret and apply this policy in a manner that is not unreasonable, even if the University's interpretation or application differs from the interpretation of the parties.

Despite the University's reasonable efforts to anticipate all eventualities in drafting this policy, it is possible unanticipated or extraordinary circumstances may not be specifically or reasonably addressed by the express policy language, in which case the University retains discretion to respond to the unanticipated or extraordinary circumstance in a way that is not unreasonable.

The provisions of this policy and the Hearing Procedures referenced herein are not contractual, whether or as part of any other express or implied contract. Accordingly, the University retains discretion to revise this policy and the Hearing Procedures at any time, and for any reason. The University may apply policy revisions to an active case if doing so is not unreasonable.

### Changes in the Law

In the event a change in controlling law conflicts with some provision of this policy necessitates the modification of some provision of this policy, or mandates the inclusion of new provisions not included, the University may immediately apply the policy in a manner consistent with such controlling law, after providing written notice to the parties of the change in controlling law, even if the Policy has yet to be formally amended to address the change in controlling law.

# APPENDIX A: SUPPORT, SERVICES, & REPORTING

## ON AND OFF CAMPUS SUPPORT AND SERVICES

<p><b>HEALTH SERVICES</b>  Beth Allan, RN, MSN, CSN, NP-C  Director of Health Services  (618) 537-6503  <a href="mailto:baallan@mckendree.edu">baallan@mckendree.edu</a>  513 Stanton Street  Lebanon, IL 62254</p> <p>Mon – Thurs, 8am - 4:30pm  Friday 8am- 2pm  <a href="http://www.mckendree.edu/offices/health-services">http://www.mckendree.edu/offices/health-services</a></p>	<p><b>COUNSELING SERVICES</b>  Melissa McHenry, MA, MS, LCPC  Director of Counseling Services  (618) 537-6416  <a href="mailto:msmchenry@mckendree.edu">msmchenry@mckendree.edu</a></p> <p>Charles Gregory, MA, LCPC, LPC  Asst. Director of Counseling Services  (618) 537-6975</p> <p>Hours: Mon – Fri, 8am – 4:30pm  <a href="http://www.mckendree.edu/offices/counseling-services">http://www.mckendree.edu/offices/counseling-services</a></p>
<p><b>CENTER FOR FAITH AND SPIRITUALITY</b>  Rev. Dr. Beverly Wilkes-Null, Chaplain  (618) 537-6962  <a href="mailto:blwilkes@mckendree.edu">blwilkes@mckendree.edu</a>  Bothwell Chapel, 1st Floor  701 College Road  Lebanon, IL 62254</p> <p>Hours: Mon – Fri, 8am – 5pm  <a href="https://www.mckendree.edu/student-life/involvement/campus-ministries">https://www.mckendree.edu/student-life/involvement/campus-ministries</a></p>	<p><b>TITLE IX COORDINATOR AND DEPUTY COORDINATOR</b>  Joni Bastian, Ph.D.  VPSA and Dean of Students  (618) 537-6555  <a href="mailto:jjbastian@mckendree.edu">jjbastian@mckendree.edu</a></p> <p>Jennifer Miller, Ed.S.  AVPSA  (618) 537 – 6572  <a href="mailto:jrmiller@mckendree.edu">jrmiller@mckendree.edu</a></p> <p>Hours: Mon – Fri, 8am – 5pm  <a href="http://www.mckendree.edu/offices/hr">http://www.mckendree.edu/offices/hr</a></p>
<p><b>CALL FOR HELP SEXUAL ASSAULT VICTIM CARE UNIT</b>  24/7 Hotline: (618) 397-0975  <a href="http://www.callforhelpinc.org">http://www.callforhelpinc.org</a></p> <p>9400 Lebanon Road  East St. Louis, IL 62203  (618) 397-0968</p>	<p><b>RAINN</b>  (Rape, Abuse and Incest National Network)  24/7 Hotline: (800) 656-HOPE  <a href="http://www.rainn.org">http://www.rainn.org</a></p>
<p><b>VIOLENCE PREVENTION CENTER, SOUTHWESTERN ILLINOIS</b>  24/7 Hotline: (618) 235-0892 or (800) 924-0096  <a href="https://www.vpcswi.org/">https://www.vpcswi.org/</a></p> <p>P.O. Box 831  Belleville, IL 62222  (618) 236-2531 ext. 140</p>	<p><b>SAFE CONNECTIONS</b>  24/7 Hotline: (314) 531-2003  <a href="http://www.safeconnections.org/">http://www.safeconnections.org/</a></p> <p>2165 Hampton Avenue  St. Louis, MO 63139  Office Phone: (314) 646-7500</p>

## ON AND OFF CAMPUS SUPPORT AND SERVICES (CON'T)

<p>ALIVE (Alternatives to Living in Violent Environments) 24/7 Hotline: (314) 993-2777 <a href="http://www.alivestl.org">http://www.alivestl.org</a></p>	<p>MEMORIAL HOSPITAL EAST (618) 607-1000 1404 Cross Street Shiloh, IL 62269</p>
<p>ST. ELIZABETH'S HOSPITAL (618) 234-2120 1512 N. Green Mount Road O'Fallon, IL 62269</p>	<p>ST. JOSEPH'S HOSPITAL, HIGHLAND (618) 651-2600 12866 Troxler Avenue Highland, IL 62249</p>
<p>THE SAINT LOUIS ANTI-VIOLENCE PROJECT <a href="http://www.stlsvp.org">http://www.stlsvp.org</a> Contact: <a href="http://www.stlsvp.org/contact-us.html">http://www.stlsvp.org/contact-us.html</a></p>	<p>MCKENDREE UNIVERSITY PUBLIC SAFETY Emergency Assistance Line (618) 537-6911 Emergency Cell Phone (618) 792-3500 535 N. Monroe Street Lebanon, IL 62254  Hours: 24 /7 <a href="http://www.mckendree.edu/offices/public-safety">http://www.mckendree.edu/offices/public-safety</a></p>
<p>ST. MARTHA'S HALL 24/7 Hotline: (314) 533-1313 <a href="http://saintmarthas.org/">http://saintmarthas.org/</a></p>	<p>LEBANON POLICE DEPARTMENT (618) 537-4955 403 W. St Louis Street Lebanon, IL 62254 Hours: 24/7</p>

## PRIVILEGED AND CONFIDENTIAL REPORTING

<p>HEALTH SERVICES Beth Allan, RN, MSN, CSN, NP-C Director of Health Services (618) 537-6503 <a href="mailto:baallan@mckendree.edu">baallan@mckendree.edu</a> 513 Stanton Street Lebanon, IL 62254  Mon – Thurs, 8am - 4:30pm Friday 8am- 2pm <a href="http://www.mckendree.edu/offices/health-services">http://www.mckendree.edu/offices/health-services</a></p>	<p>COUNSELING SERVICES Melissa McHenry, MA, MS, LCPC Director of Counseling Services (618) 537-6990 <a href="mailto:msmchenry@mckendree.edu">msmchenry@mckendree.edu</a> 509 Stanton Street Lebanon, IL 62254  Hours: Mon – Fri, 8am – 4:30pm <a href="http://www.mckendree.edu/offices/counseling-services">http://www.mckendree.edu/offices/counseling-services</a></p>
<p>CENTER FOR FAITH AND SPIRITUALITY Rev. Dr. Beverly Wilkes-Null, Chaplain (618) 537-6962 <a href="mailto:blwilkes@mckendree.edu">blwilkes@mckendree.edu</a> Bothwell Chapel, 1st Floor 701 College Road Lebanon, IL 62254  Hours: Mon – Fri, 8am – 5pm <a href="https://www.mckendree.edu/student-life/involvement/campus-ministries">https://www.mckendree.edu/student-life/involvement/campus-ministries</a></p>	<p>COUNSELING SERVICES Charles Gregory, MA, LCPC, LPC Asst. Director of Counseling Services (618) 537-6975 <a href="mailto:cgregory@mckendree.edu">cgregory@mckendree.edu</a></p>

## NON-CONFIDENTIAL REPORTING

<p>TITLE IX COORDINATOR  Joni Bastian, Ph.D.  VPSA and Dean of Students  (618) 537-6555  jjbastian@mckendree.edu  Clark Hall 108  701 College Road  Lebanon, IL 62254</p> <p>Hours: Mon – Fri, 8am – 5pm  <a href="http://www.mckendree.edu/offices/student-affairs">http://www.mckendree.edu/offices/student-affairs</a></p>	<p>DEPUTY TITLE IX COORDINATOR  Jennifer Miller, Ed.S.  AVPSA  Clark Hall 108  701 College Road  Lebanon, IL 62254</p> <p>Hours: Mon – Fri, 8am – 5pm  <a href="http://www.mckendree.edu/offices/student-affairs">http://www.mckendree.edu/offices/student-affairs</a></p>
<p>McKENDREE UNIVERSITY PUBLIC SAFETY  Emergency Assistance Line  (618) 537-6911  Emergency Cell Phone  (618) 792-3500  535 N. Monroe Street  Lebanon, IL 62254</p> <p>Hours: 24 /7  <a href="http://www.mckendree.edu/offices/public-safety">http://www.mckendree.edu/offices/public-safety</a></p>	<p>LEBANON POLICE DEPARTMENT  (618) 537-4955  403 W. St Louis Street  Lebanon, IL 62254  Hours: 24/7</p>
<p>RESIDENCE LIFE OFFICE  (618) 537-6855</p> <p>On Call Resident Director  (618) 920-9447</p> <p>Clark Hall 109  701 College Road  Lebanon, IL 62254</p>	