

## **Manchester University Policy and Procedures for Sexual Misconduct Complaints**

### **Introduction**

Manchester University is an institution of higher learning that respects the infinite worth of every individual and graduates persons of ability and conviction who draw upon their education and faith to lead principled, productive, and compassionate lives that improve the human condition. As such, Manchester University does not discriminate on the basis of sex and is committed to providing an educational environment free from sex discrimination.

As a recipient of federal funding, the University is required to comply with Title IX of the Higher Education Amendments of 1972, 10 U.S.C. § 1681 et seq. (Title IX). Title IX is a federal civil rights law that prohibits discrimination on the basis of sex — including pregnancy and Sexual Misconduct — in educational programs and activities. Title IX’s sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity.<sup>1</sup>

Sexual Misconduct is defined broadly under this Policy and Procedures for Sexual Misconduct Complaints (Policy). Sexual Misconduct includes Sexual Assault, Sexual Harassment, Non-consensual Sexual Contact, Non-Consensual Sexual Intercourse, Sexual Exploitation, Sexual Misconduct with a Minor, Child Molesting, and sex discrimination, which are defined below. Sexual Misconduct is a violation of University policy, state and federal civil rights laws, and may violate state and federal criminal laws. When an allegation of misconduct is brought to an appropriate administrator’s attention, and a respondent is found to have violated this policy, the University will issue appropriate sanctions to prevent future misconduct.

The University reserves the right to take whatever measures it deems necessary in response to an allegation of Sexual Misconduct in order to protect the rights and personal safety of students, employees, and other members of the University community. Such measures include, but are not limited to, modification of living arrangements, interim suspension from campus pending a hearing, and reporting the matter to local police. Not all forms of Sexual Misconduct will be deemed to be equally serious offenses, and the University reserves the right to impose different sanctions, ranging from verbal warning to expulsion, depending on the severity of the offense. The University will consider the concerns and rights of both the complainant and the person accused of the Sexual Misconduct.

### **Definitions**

The following terms and definitions apply to this Policy.

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<sup>1</sup> Further, Manchester University policy explicitly prohibits discrimination on the basis of sexual orientation and gender identity or expression.

**“Child Molesting”** means a person at least 18 years of age who, with a child under 14 years of age, performs or submits to sexual intercourse or sexual conduct, or performs or submits to any fondling or touching for the purpose of sexually gratifying either person.

**“Consent”** means clear, unambiguous words or actions that show a knowing and voluntary agreement between the participants to engage in a specific mutually agreed-upon sexual activity. Effective consent cannot be gained by Force, by ignoring or acting in spite of the objections of another, or by taking advantage of the Incapacitation of another, where the accused individual knows or reasonably should have known of such Incapacitation. Consent cannot be based on silence or the absence of saying “no” or “stop,” the existence of a prior or current relationship, or prior sexual activity. Consent to some sexual acts does not imply consent to others, nor does past consent to a given act imply ongoing or future consent. Consent is also absent when the activity in question exceeds the scope of consent previously given. Further, Consent must be clear and unambiguous for each participant throughout any sexual encounter. Consent can be revoked at any time. For all these reasons, sexual partners must evaluate consent in an ongoing fashion and should communicate clearly with each other throughout any sexual encounter.

**“Force”** means physical force, violence, threats, intimidation (implied threats), or coercion that produce consent or overcome resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced. Coercion is unreasonable pressure for sexual activity. An example, when someone makes clear that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point is coercive if the pressure is unreasonable. Resistance is a clear demonstration of non-consent, but the absence of resistance does not prove consent.

**“Incapacitation”** means a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g. understand the who, what, when, where, why, or how of the sexual interaction). States of incapacity include but are not limited to mental disability, sleep, blackouts, flashbacks, involuntary physical restraint, or the effects of drugs or alcohol. Where drugs or alcohol are involved, one does not have to be intoxicated or drunk to be considered incapacitated. Incapacitation is determined by how the alcohol or drugs consumed impacts a person’s decision-making capacity, awareness of consequences, and ability to make informed judgments. The question is whether the accused individual knew, or a sober, reasonable person in the position of the accused individual should have known, that the complainant was Incapacitated. Because Incapacitation is hard to determine, individuals are strongly encouraged, when in doubt, to assume the other person is Incapacitated and unable to give Consent. Intoxication or the use of alcohol or other drugs is never a defense to a complaint filed under this Policy.

**“Investigator”** means an individual assigned by the Title IX Coordinator to investigate the alleged Sexual Misconduct to determine whether there is cause to grant a hearing.

**“Non-Consensual Sexual Contact”** means any intentional sexual touching, however slight, with any object by a person upon another person without consent and/or by force. Sexual contact includes contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts;

any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

**“Non-Consensual Sexual Intercourse”** means any sexual intercourse however slight, with any object by a person upon another person without consent and/or by force. Sexual intercourse includes vaginal penetration by a penis, object, tongue or finger, or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

**“Responsible Employee”** means any University employee who a duty to report incidents of Sexual Misconduct to the Title IX Coordinator and who has authority to take action to redress Sexual Misconduct. Examples of Responsible Employee’s include deans, associate deans, vice presidents, coaches, Title IX coordinator and deputy coordinators, hall directors, resident assistants, human resources staff, campus safety officers, staff, faculty members, and administrators.

**“Retaliation”** means any adverse employment or educational action taken against a person because of the person’s participation in a complaint or investigation of discrimination or Sexual Misconduct.

**“Sexual Exploitation”** occurs when a person takes non-consensual or abusive sexual advantage of another for his/her per own advantage or benefit, or to benefit or give advantage to anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to: invasion of sexual privacy; prostituting another person; non-consensual recording; photographing or transmitting identifiable images of private sexual activity and/or the intimate parts (including genitalia, groin, breasts or buttocks) of another person; going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex, or transmitting photographs of the intimate parts of another, which were consensually taken, to a third person without consent); engaging in voyeurism; knowingly transmitting a sexual transmitted infection to another person; exposing one’s genitals in non-consensual circumstances, including forcing another to expose their genitals; and sexually-based stalking and/or bullying may also be forms of sexual exploitation.

**“Sexual Harassment”** means unwelcome, sex-based verbal or physical conduct that is, sufficiently severe or pervasive that it unreasonably interferes with an individual’s work or academic performance or unreasonably creates an intimidating, hostile, or offensive working or academic environment. To constitute Sexual Harassment, the conduct must be offensive both from a subjective viewpoint (the viewpoint of the alleged victim) and an objective viewpoint (the viewpoint of a reasonable person in the alleged victim’s position).<sup>2</sup> Quid pro quo sexual

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<sup>2</sup>: Sexual harassment goes beyond the mere expression of views or thoughts (spoken or written) that an individual may find offensive. The conduct must be sufficiently serious that it unreasonably limits an individual’s ability to participate in or benefit from the activities of the University. While some offensive behavior may not meet the definition of Sexual Harassment,

harassment is a type of Sexual Harassment where there are unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature between persons of unequal power and submission to or rejection of such conduct results in adverse educational or employment action. An example of quid pro quo sexual harassment is a professor insisting that a student have sex with him or her in exchange for a good grade.

**“Sexual Misconduct with a Minor”** means a person at least 18 years of age who, with a child at least 14 years of age but less than 16 years of age, performs or submits to sexual intercourse or sexual conduct, or performs or submits to any fondling or touching for the purpose of sexually gratifying either person.

**“Sexual Misconduct”** is a broad term encompassing “Sexual Exploitation,” “Sexual Harassment,” “Non-Consensual Sexual Contact,” “Non-Consensual Sexual Intercourse,” “Child Molesting,” and “Sexual Misconduct with a Minor” as defined in this policy. Sexual Misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual Misconduct can be committed by both men and women and can occur between people of the same or different sex.

**“Title IX Coordinator”** is the person designated by the University to be responsible for the oversight of the investigation and resolution of all reports of Sexual Misconduct. The Title IX Coordinator is available to assist any University employee or student regarding the appropriate response to Sexual Misconduct or advise complainants, respondents, and third parties about the policies and procedures of the University. At MU, the Title IX Coordinator is assisted by 4 deputy coordinators.

**Coordinator:**

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such behavior may nonetheless be unprofessional in the workplace, disruptive in the classroom, or violate other University policies and could warrant remedial actions and/or discipline. The following is a non-exhaustive list of actions that may constitute Sexual Harassment, whether the harasser is a co-worker, supervisor, student, faculty, member, or vendor:

1. Persistent unwelcome flirtation, requests for dates, advances, or propositions of a sexual nature;
2. Unwanted touching such as patting, pinching, hugging, or repeated brushing against the individual’s body;
3. Repeated degrading or insulting comments that demean an individual’s sex; or
4. Unwarranted displays of sexually suggestive objects or pictures.

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**Deputy Coordinators:**

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**Scope of Policy**

When and to whom does this policy apply?

Any person, including employees, students, trustees and people engaged in business with the University, may file a complaint of Sexual Misconduct against any other person, including a “University student” or “University employee.” A “University student” means any student who is registered or enrolled at the University (1) at the time of the alleged Sexual Misconduct (this includes during study abroad experiences, internships or experiential rotations, or during academic recess if there is an expectation of such student’s continued enrollment at the University) and (2) at the time that the Title IX Coordinator prepares and delivers a formal complaint against such a student to an Investigator. A “University employee” means any person who is employed by and enrolled in the payroll system at the University (1) at the time of the alleged Sexual Misconduct and (2) at the time that the Title IX Coordinator prepares and delivers a formal complaint against such employee to an Investigator.

This policy applies to any allegation of Sexual Misconduct against any member of the University community, including University students or employees, regardless of where the alleged Sexual Misconduct occurred. However, Sexual Misconduct that took place a great distance from the University will be more difficult to investigate. In addition, with respect to any complaint (1) by a person who is not a member of the University community, and (2) related to non-University conduct, the University reserves the right to determine, in its sole discretion, whether the conduct

described in the complaint constitutes a sufficient risk to the University community to warrant processing the complaint. Where parties to sexual misconduct cases include vendors or other business associates of the University, the University reserves the right to end or alter such business relationships in order to protect the safety of the University community.

Sexual Misconduct as defined in this Policy is governed by this Policy. Other misconduct offenses will fall under this Policy when they are based on sex, including the following:

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

“Dating violence” means 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 consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

“Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress.

The Title IX Coordinator or deputy coordinator will determine at the time of reporting whether the complaint meets the Title IX requirements of being based on sex.

### **Non-Retaliation**

Students and employees shall be free of any Retaliation because they have raised allegations of Sexual Misconduct in good faith or because they have participated in good faith in an investigation of Sexual Misconduct. All persons, including persons accused of Sexual Misconduct, must not engage in any type of Retaliation against the complainant or any other individual who participates in the investigation. Anyone engaging in Retaliation will face disciplinary action.

Because an allegation of Sexual Misconduct may have serious consequences, a complainant who knowingly and with malicious intent makes a false allegation of Sexual Misconduct may be subject to disciplinary action. Similarly, any individual who knowingly and with malicious intent is untruthful to University officials investigating allegations of Sexual Misconduct may be subject to disciplinary action.

## **Reporting Sexual Misconduct**

### Timing of Complaints

If the alleged Sexual Misconduct fits within the scope of this policy as defined above, a complaint of Sexual Misconduct may be filed at any time after the alleged Sexual Misconduct. There is no time limit to the applicability of this policy. Nevertheless, individuals are encouraged to report alleged Sexual Misconduct immediately in order to preserve evidence and maximize the University's ability to conduct a prompt, thorough, and impartial investigation. Failure to promptly report Sexual Misconduct may result in the loss of evidence or witness testimony and may decrease the University's ability to effectively enforce this policy.

There are two levels of reporting options, confidential reporting options and non-confidential reporting options (including Responsible Employees).

### **Option A: Confidential Reporting Options**

If one desires that details of the incident be kept confidential, they should speak with on-campus counseling services, campus health services, or the campus pastor. Campus counselors are available to help free of charge and can be seen on an emergency basis. These individuals will keep reports made to them confidential.<sup>3</sup>

You may make an anonymous report through Report It!, the University's electronic reporting program. To make an anonymous report, go to the MU webpage; click on the Report It! button and complete the electronic form. Include all relevant details of the alleged Sexual Misconduct in the form. Do not enter your name in the form if you wish to remain anonymous. All incidents will be investigated.

### **Option B: Non-Confidential Reporting Options (including Responsible Employees)**

The University requires all of its employees to report incidents of Sexual Misconduct to the Title IX Coordinator. You are encouraged to speak to officials of the institution to make formal reports of incidents. However, reporting to the Title IX Coordinator or other employee will not require that the individual reporting the incident file a formal complaint.

Responsible Employees under this policy include deans, associate deans, vice presidents, directors, faculty members, head coaches, assistant coaches, the Title IX coordinator and deputy coordinators, hall directors, resident assistants, human resources staff, campus safety officers, and other employees. Notice to them is official notice to the institution.

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<sup>3</sup> There are some unusual situations where even the University's confidential reporting options may be required by law to bring certain matters to the attention of law enforcement. For example, counselors are required by law to report when a patient is a threat to harm himself/herself/others.

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You have the right and can expect to have incidents of Sexual Misconduct to be taken seriously by the institution when formally reported, and to have those incidents investigated and properly resolved through administrative procedures.

You may also file a non-confidential report through Report It!, the University's electronic reporting program. To make a report, go to the MU webpage click on the Report It! button and complete the electronic form. Include all relevant details of the alleged Sexual Misconduct in the form. All incidents reported through Report It! or by other means will be investigated.

Formal reporting means that only people who need to know will be told, and information will be shared only as necessary with investigators, witnesses, and the accused individual.

### **University Resources for Victims of and those Accused of Sexual Misconduct**

#### *Law Enforcement*

Local Police: 9-1-1

North Manchester Campus Safety: 260-982-5999

Fort Wayne Campus/Parkview Security: 260-266-1800

#### *Counseling Services*

Manchester University Counseling Services: 260-982-5306

Hall Director on Call: 260-578-0793

Bowen Center Wabash: 260-563-8446

Bowen Center Warsaw: 1-800-342-5653

Bowen Center Columbia City: 260-248-8176

Bowen Center Fort Wayne: 260-471-3500

#### *Sexual Assault Support Services*

Rape Crisis Hotline – 24 hour – Fort Wayne Women's Bureau: 1-888-311-7273

Sexual Assault Treatment Center (Sexual Assault Nurse Examiner) Fort Wayne:

260-423-2222 (phone); 260-430-0369 (pager); <http://ftwsatc.com>

Address: 2270 Lake Avenue, Suite 201, Fort Wayne, IN 46805

### **Reporting and Investigation Process**

The purpose of this policy and the activities of the Title IX Coordinator and deputy coordinators is to stop, remediate the effects of, and prevent the recurrence of Sexual Misconduct. All complaints and investigations will be handled in a prompt, thorough and impartial manner. When the University has notice of a complaint of Sexual Misconduct, whether it was filed through the



Report It! electronic form or made in person, the complaint will be reported to the Title IX Coordinator.

Once reported to the Title IX Coordinator the following will take place:

1. Intake – The Title IX Coordinator or a deputy coordinator will meet with the complainant for an initial intake meeting. At this meeting the coordinator will provide the complainant with an understanding of the Sexual Misconduct reporting and investigation process, the resources available and answer any questions. The intake meeting may also involve a discussion of any accommodations/interim measures that may be appropriate concerning the complainant’s academic, University housing, and/or University employment arrangements.
2. Filing a Formal Complaint – If the complainant wishes, he or she may file a formal complaint against the accused. The complainant could do so at the intake meeting or at a later time. Once the complaint is filed, the coordinator or investigator will take the complainant’s statement and obtain the name of the accused and all other relevant facts. The coordinator will schedule an intake meeting with the accused to provide the accused with an understanding of the Sexual Misconduct reporting and investigation process, the resources available, and answer any questions. The intake meeting may also involve a discussion of any accommodations/interim measures that may be appropriate concerning the accused’s academic, University housing, and/or University employment arrangements.

The Title IX Coordinator will assign a deputy coordinator or other investigator to fully investigate the complaint.

3. Decline to File a Formal Complaint or Requests Confidentiality – If the University becomes aware of allegations of Sexual Misconduct but complainant does not wish to pursue a formal complaint and/or requests that his or her complaint remain confidential, Title IX nevertheless requires the University to investigate and take reasonable action in response to the information known to the University. However, the University’s ability to respond may be limited.

The Title IX Coordinator or deputy coordinator, after speaking with the complainant, will weigh the complainant’s request against the following factors: the seriousness of the alleged Sexual Misconduct; whether there have been other complaints of Sexual Misconduct against the same accused individual; and the accused individual’s right to receive information about the allegations if the information is maintained by the University as an “educational record” under the Family Educational Rights and Privacy Act. The Title IX Coordinator or deputy coordinator shall inform the complainant if his or her confidentiality cannot be ensured. The University reserves the right, regardless of confidentiality of the complainant, to issue a no contact order and take other reasonably necessary measures, including interim measures, to ensure the safety of the complainant or others.

4. Interim Measures – In all complaints of Sexual Misconduct whether the complainant files a formal complaint or asks that his or her complaint remain confidential, the University will impose reasonable and appropriate interim measures designated to stop and prevent the recurrence of the Sexual Misconduct and protect the complainant and the accused party. The Title IX Coordinator or deputy coordinator will maintain consistent contact with the parties to ensure that all safety and emotional and physical well-being concerns are being addressed.

The range of interim measures include but are not limited to the imposition of a no-contact directive instructing the parties to not contact one another; providing access to counseling services and assistance in setting up initial appointments; rescheduling of exams or assignments, providing alternate course completion options; change in work schedule or job assignment; change in housing; change in class schedule or withdrawal from a class without penalty; interim suspension; academic support services; or any other remedy which can be tailored to the involved individuals.

5. Investigation – Once a formal complaint is filed, the Title IX Coordinator will appoint a deputy coordinator or investigator to investigate the complaint. The investigation will be prompt, thorough, and impartial. The investigators are trained to complete Sexual Misconduct investigations. The investigators are neutral fact-finders, who, during the course of the investigation, typically conduct interviews with the complainant, the accused individual, and each third party witness; visit and take photographs at each relevant site; and, where applicable, coordinate with law enforcement agencies to collect and preserve evidence.

The investigators will compile an investigation report that includes, among other things, summaries of interviews with all parties and witnesses, photographs, electronic evidence (i.e. text messages, emails) and a detailed written analysis of the events in question. The investigative report will be shared with the Title IX Coordinator and the parties will be given equal access to the report.

The report will either make a recommendation that the accused receive a notice of possible violation of the University Code of Conduct and a hearing on the complaint should be granted or the report will recommend that no notice of possible violation be issued, in which case a hearing would not be necessary.

If the report does not recommend a notice of possible violation, the complainant may request a second review by the Title IX Coordinator to determine whether a notice of possible violation should be issued and a hearing conducted. If the second review results in a notice of possible violation being issued then the process will go through the normal hearing process. The decision of the Title IX Coordinator is final.

If the report recommends a notice of possible violation and grants a hearing on the complaint, the investigation report will then be shared with the administrator or hearing panel that will hear the complaint.

6. Notice of Possible Violation and Hearing Notice – If the investigation report recommends a notice of possible violation, the Title IX Coordinator or deputy coordinator will meet with complainant and the accused individual separately. Each will be provided a copy of the notice of possible violation, notice of hearing, a list of rights of the parties, and an overview of the hearing procedure.

If the accused individual admits responsibility in the course of the investigation and the investigation report concludes that a violation occurred, then the matter will skip the hearing process and will instead proceed immediately to the sanctions process. The investigation report will reflect the accused individual's admission of responsibility.

## **Hearing Process**

### Standard of Proof

The Department of Education's Office of Civil Rights has interpreted Title IX to require schools to evaluate evidence of alleged Sexual Misconduct under a preponderance of the evidence standard and that standard is adopted in this policy. A preponderance of the evidence means that the evidence shows that it is more likely than not that the accused individual violated this Policy. In the context of a hearing, the accused individual will be found responsible for alleged Sexual Misconduct if the administrator conducting an administrative hearing or hearing panel by unanimous vote, concludes that Sexual Misconduct more likely than not occurred based upon careful review of all evidence presented.

### Advisors

Both the complainant and the accused individual may have an advisor present to support and assist them during the hearing process. This advisor may include legal counsel. Either legal counsel or a non-legal advisor may privately consult with and advise the parties during the proceedings but may not speak on behalf of the parties or speak directly to the hearing panel, witnesses, or the other party.

The chair of the hearing panel in his or her sole discretion may ask an advisor or legal counsel to leave the proceedings if the advisor or legal counsel's behavior is disruptive to the proceedings.

### Witnesses

Both complainant and the accused individual may bring witnesses to the hearing who have relevant information. Witnesses are subject to questions from the hearing panel. Reasonable attempts will be made to schedule a hearing when all witnesses may participate. However, due to the serious nature of Sexual Misconduct allegations and the need to resolve these allegations in a prompt and timely manner, a hearing may not be rescheduled due the unavailability of witnesses after reasonable attempts to secure a date and time that meets the availability of the parties.

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The parties may elect to rely upon the statements of witnesses contained in the investigation report if such witnesses are unavailable to attend the hearing or the parties deem the content of the report sufficient.

### Hearing Options

The complainant and accused individual will be asked if they have a preference for an administrative hearing or a hearing by a University hearing panel. The preferences of the parties will be taken into consideration; however, the Title IX Coordinator will make a final determination of the type of hearing conducted based on the preferences of the parties and the seriousness of the allegations. In cases where allegations are the most serious (e.g. an accused individual has been suspended pending a hearing), a hearing may need to happen more quickly.

If the results of the investigation are conclusive then the Title IX Coordinator in consultation with the Office of Student Development or designee and/or human resources director or designee may in his or her discretion refer the case for an administrative hearing for a final determination.

### Administrative Hearing

Where parties both select an administrative hearing, the situation requires a quick adjudication (e.g. an accused individual has been suspended pending a hearing), or the results of the investigation are conclusive, the University will conduct an administrative hearing.

In cases involving allegations of student misconduct, the vice president for student development, the associate dean for student development or their designee (Administrative Hearing Officer), will conduct an administrative hearing. The Administrative Hearing Officer will carefully review the investigation report, meet with the investigator(s), the parties, and their advisors and witnesses. After hearing all the evidence the Administrative Hearing Officer will determine whether it is more likely than not that the accused party violated this Policy.

In cases involving allegations of misconduct by an employee, guest, and/or vendor, the director of human resources, the associate director of human resources or their designee (Administrative Hearing Officer), will conduct an administrative hearing. The Administrative Hearing Officer will carefully review the investigation report, meet with the investigator(s), the parties, and their advisors and witnesses. After hearing all the evidence the Administrative Hearing Officer will determine whether it is more likely than not that the accused party violated this Policy.

### University Hearing Panel

The University Hearing Panel (Panel) will hear all cases where a notice of possible violation was issued but not heard in an Administrative Hearing. A Panel is composed of three full-time members of the University staff and faculty who have been trained to hear Sexual Misconduct cases under this Policy.

In cases involving allegations of student misconduct, the Panel will be appointed by the vice president for student development or associate dean for student development from a pool of

trained individuals. Panels are appointed for individual cases. At the time of the appointment the vice president or associate dean will designate a Panel Chair for the hearing to lead the hearing process.

In cases involving allegations of misconduct by an employee, guest, and/or vendor, the Panel will be appointed by the director of human resources or associate director of human resources from a pool of trained individuals. Panels are appointed for individual cases. At the time of the appointment the director or associate director will designate a Panel Chair for the hearing to lead the hearing process.

Once a Panel is chosen, the members of the Panel may not discuss the evidence or merits of the case with anyone outside of the proceedings, publically or privately. The Panel Chair will provide panelists with a copy of the complaint, notice of investigation, notice of possible violation, notice of hearing, investigation report, and lists of witnesses and evidence submitted.

The Panel is not an investigative body. Trained investigators appointed by the Title IX Coordinator will conduct the investigation in Sexual Misconduct cases under this policy.

#### *Pre-Hearing Procedure*

On a date set by the Panel Chair, the parties will provide the Panel Chair with a list of witnesses they intend to call, copies of all documents that they propose to reference or present at the hearing, including electronic information such as text messages and emails. Evidence of the sexual history of the complainant will not be permitted at the hearing unless it is relevant to the complaint, which will be determined prior to the hearing by the Panel Chair. The Panel Chair will provide each party copies of the list of witnesses, and identification or copies of documents or other information submitted by the other party. In the absence of reasonable cause, as determined by the Panel Chair in his or her sole discretion, the parties may not introduce witnesses, documents, or other information at the hearing that were not provided to the Panel Chair by this deadline. The parties are also responsible for the attendance of their witnesses. Prior to the hearing, the Panel Chair will meet with the parties to review the hearing procedures and to review the notice of possible violation and evidence lists to remove any redundancies or irrelevant materials.

The hearing panelists shall review all information provided to them by the Panel Chair in advance of the hearing. The parties shall be given equal access prior to the hearing of the materials given to the panelists, including but not limited to the complaint, notice of investigation, investigation report, and the notice of possible violation and hearing notice. The Title IX Coordinator may, in his or her sole discretion, limit both parties' access to documents to a review with the ability to take notes, rather than providing the parties hard or electronic copies of these documents.

#### *Hearing Procedure*

The hearing is not a legal proceeding and will not follow courtroom procedure or the formal rules of evidence. The Panel Chair will determine the order of witnesses and evidence, including the investigator's testimony. The Chair will resolve any questions or issues of hearing procedure.

The parties will be expected not to repeat undisputed details or non-material circumstances that would merely duplicate information contained in the investigation report or in other written materials. Only the Panel Chair and panelists may question the individual parties and any witnesses unless permission is granted by the Panel Chair to modify the questioning process. Parties may ask the Panel Chair to pose additional questions or inquire further into specific matters by submitting these requests in writing or orally, at the discretion of the Panel Chair. The Panel Chair may, at his or her discretion, disallow or reframe any questions that are irrelevant or redundant. After all witnesses are questioned, each party may make a closing statement. Either party may request a break during the hearing and that request will be granted as long as it was made in good faith and at a reasonable time.

If the Panel determines that unresolved issues exist that would be clarified by the presentation of additional information, the Panel Chair may suspend the hearing and reconvene it in a timely manner to receive such additional information. The case will then be referred back to the case Investigator(s) to investigate and pursue the additional information and/or unresolved issues. A delay may not be based on the failure of witnesses to appear or other information that should have been submitted before the hearing.

Upon a reasonable and timely request and at the sole discretion of the Panel Chair, the hearing and testimony may be conducted by closed circuit video.

The Panel Chair through the Title IX Coordinator's office will arrange for the hearing to be recorded. Parties may request transcripts of such recording.

## **Rights and Responsibilities of the Complainant and Accused**

### *Rights and Responsibilities of the Respondent*

1. Persons notified of possible violations of university policy are informed of the allegations pending against them and expected to review their rights and responsibilities in The Source.
2. The respondent will not engage in any Retaliation against the complainant or witnesses.
3. No form of harassment may be used to obtain admissions of responsibility or information about conduct of other suspected persons.
4. Pending action on the notices of possible violations, the University will not normally alter the status of the respondent, including right to be present on the campus and attend classes. Exceptions may be made for reasons relating to the physical or emotional safety and well-being of students, faculty, and staff of the University.
5. Persons appearing before a Conduct Board or a University Hearing Panel have the right to be assisted by one advisor. Such advisor may not speak on behalf of the person. The Office of Student Development must be notified at least 24 hours in advance if an advisor will be present at the hearing (260-982-5052).
6. Persons hearing a case who have a particular interest in a case or who have a conflict of interest regarding the facts or the principal parties (complainant or respondent) in a case

- should be disqualified. Conflicts must be discussed with the conduct system coordinator at least 24 hours prior to the hearing.
7. The respondent is presumed not responsible unless sufficient information is presented to show that it is more likely than not that the respondent is responsible (the preponderance of the evidence standard).
  8. The respondent and complainant should be given an opportunity to speak on his or her behalf and present evidence and witnesses.
  9. The respondent has the right to remain silent and need not present a response.
  10. A respondent has the right to confer with a member of the University counseling team and/or a member of the Health Services staff for health-related concerns.
  11. The decision in the case is based solely upon the relevant information introduced during the hearing.
  12. The recommendation of the hearing body is final subject only to rights of appeal.
  13. Respondents, witnesses, or complainants in a conduct action who are unable to participate in a hearing at the time and date set, due to emergency or other serious circumstances, must discuss the conflict with the conduct system coordinator at least 24 hours prior to the hearing.
  14. Both the respondent and the complainant have the right to appeal the decision from a hearing.
  15. The hearing may proceed in the absence of respondents or their witnesses.

#### *Rights and Responsibilities of the Complainant*

1. Complainants are encouraged to report Sexual Misconduct immediately; quick reporting increases the probability that the alleged perpetrator can be held responsible. However, there is no time limit for making a report.
2. Complainants are encouraged to take steps to preserve evidence and avoid disturbing the crime scene.
3. A complainant has the right to report any criminal activity to local law enforcement authorities and pursue prosecution through the criminal court system, but is not required to do so.
4. A complainant also has the right to report any criminal activity to campus authorities, including Campus Safety and Student Development staff, and to process the case through the University Conduct Review System. This option is available even if the complainant chooses not to report the incident to law enforcement.
5. A complainant has a right to be assisted through the reporting process.
6. A complainant has a right to expect that the report will be taken seriously and appropriately investigated by campus authorities.
7. A complainant has the right to be treated with fairness, dignity and respect throughout the campus judicial processes.
8. A complainant has the right to have the complainant's safety considered at all times, and especially following any act of violence.
9. A complainant has the right to information, upon request, about the disposition of the campus conduct cases. Complainants of violence, sexual harassment, and sexual assault will receive the disposition of the campus conduct outcome in writing.

10. A complainant has the right to confer with a member of the University counseling team and/or a member of the Health Services staff for health-related concerns.
11. If a complainant prefers to obtain counseling off campus, members of the University counseling staff will assist in identifying an appropriate and satisfactory referral resource.
12. If a complainant requests changes in academic and living arrangements because of a criminal act, the University will make every effort to assist with making these changes, if the changes are reasonably available.
13. A complainant has the right to speak on one's own behalf and to present evidence and witnesses in campus conduct cases.
14. Complainants (and respondents) appearing before a Conduct Review Board have the right to be assisted by one advisor of their own choosing. Such advisor may not speak on behalf of the complainant. The Office of Student Development must be notified at least 24 hours in advance if an advisor will be present at the hearing (260-982-5052).
15. The decision in the case is based solely upon relevant information introduced during the hearing.
16. The campus hearing may proceed in the absence of a complainant.
17. A complainant of an act of violence can request not to be present at a hearing. Such a complainant could rely upon written documentation, or may testify via closed-circuit video.
18. The identity of complainants will be kept confidential, and their names will only be shared with those who have a need to know, including members of hearing bodies and administrators.
19. Complainants, witnesses, and complainants in a campus conduct action who are unable to participate in a hearing at the time and date set, due to an emergency or other serious circumstance, must discuss the conflict with the conduct system coordinator at least 24 hours prior to the hearing.
20. The recommendation of the hearing body is final, subject only to rights of appeal.
21. Decisions of the campus hearing bodies may be appealed by complainants, as well as respondents. Complainants will receive the disposition of the campus conduct hearing.

## **Sanctions**

If the accused student is found responsible, the Administrative Hearing Officer or Panel will consult with the vice president for student development, associate dean for student development, or designee to determine the appropriate sanction according to the Conduct System Sanction Guidelines. If the accused employee or other non-student is found responsible, the Administrative Hearing Officer or Panel will consult with the director of human resources, associate director of human resources, and vice president of that department to determine the appropriate sanction according to the employee Conduct System Sanction Guidelines.

The sanctioning process designed to eliminate the misconduct, prevent its recurrence, and remedy its effects while supporting the University's educational mission and Title IX obligations.



The guidelines for student violations of this policy include:

<b>Violation</b>	<b>Sanction Range</b>
Child Molesting	Suspension to Expulsion
Non-Consensual Sexual Contact	Community Restitution to Expulsion
Non-Consensual Sexual Intercourse	Suspension to Expulsion
Sexual Exploitation	Suspension to Expulsion
Sexual Harassment	Community Restitution to Expulsion
Sexual Misconduct with a Minor	Community Restitution to Expulsion

### **Decision**

The hearing officer or Panel Chair will communicate the decision of the Administrative Hearing or University Hearing Panel, including the sanction, to both parties, concurrently. Normally, the hearing officer or Panel Chair will announce the decision orally at the conclusion of the hearing. However, the hearing officer or Panel Chair may choose to communicate the decision in writing as soon as possible after the hearing if the hearing officer or Panel Chair believes it to be more appropriate. In all cases, the hearing officer or Panel Chair will send the parties a final outcome letter within ten (10) calendar days of the conclusion of the hearing.

The sanctions imposed by the Administrative or University Hearing Panel are not effective until the resolution of any timely appeal of the decision. The accused may be permitted to attend classes or activities during this time in a monitored or unsupervised manner unless otherwise modified by the decision of the Title IX Coordinator in consultation with the vice president for student development or designee and/or human resources director or designee until the appeal process is complete. Remedial measures in place at the time of the decision shall be maintained until the conclusion of the appeal process.

If advisable to protect the welfare of the complainant or the University community, the hearing officer or Panel may determine that any probation, suspension, or expulsion be effective immediately and continue in effect until such time as the appeal is heard or the Title IX Coordinator in consultation with the vice president for student development for student cases and the director or associate director of human resources for employee cases determines appropriate.

### **Appeals**

Either party may appeal the decision of the Administrative Hearing Officer or the University Hearing Panel by providing written notice to the Panel Chair within ten (10) calendar days of the date the hearing officer or Panel Chair communicates the initial decision. The original finding and sanction will stand if the appeal is not timely or is not based in the grounds for appeal stated below. The only grounds for an appeal are limited to:

1. A procedural error occurred that significantly impacted the outcome of the hearing (e.g. material deviation from established procedures, etc.);
2. To consider new evidence, unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. The written appeal

must contain a summary of this new evidence, an explanation for why the evidence was not presented earlier, and an explanation of its potential impact upon the outcome of the hearing;

3. The sanction assigned is disproportionate for the severity of the violation;

The notice of appeal must state the basis for the appeal. Upon notice of an appeal, the Panel Chair in cases involving students will provide the notice to the vice president for student development or associate dean for student development. The vice president or associate dean will review the appeal to determine if it meets the above procedural requirements. If so, the vice president or associate dean will appoint an appellate panel to hear the appeal.

In cases involving employees, the director or associate director will review the appeal to determine that it meets the above procedural requirements. If so, the director or associate director will appoint an appellate panel to hear the appeal.

The appellate panel will review the appeal and all evidence presented at the hearing. If the appellate panel determines that new evidence should be considered, the appellate panel will refer the case back to the original University Hearing Panel. The University Hearing Panel will consider the new evidence and issue a decision.

If the appellate panel determines that a material procedural error occurred it may return the complaint to the original hearing body with instructions to reconvene to cure the error. In rare cases where the procedural error cannot be cured by the original hearing officers (as in cases of bias), the appeals officers or committee may order a new hearing on the complaint with a new body of hearing officers.

If the appellate panel determines that the sanctions imposed are disproportionate to the severity of the violation, the appeals officer or committee in student cases will return the complaint to the vice president for student development, associate dean for student development or designee who may increase, decrease or otherwise modify the sanctions. This decision is final and not subject to appeal. In cases involving employees, the director of human resources, associate director of human resources or designee, and the vice president in the appropriate department may increase, decrease or otherwise modify the sanctions. This decision is final.

### **Final Outcome Letter**

The University is required to comply with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistic Act (Clery Act). Under the Clery Act, both the complainant and the accused individual must be informed of the hearing outcome, and the University may not impose any limitations on the re-disclosure of this information. Accordingly, following the hearing, the hearing body will issue a written final outcome letter concurrently to both the accused individual and the complainant. The final outcome letter will set forth, as required by the Clery Act, the name of the accused individual; the violations of this Policy for which the accused individual was found responsible, if any; essential findings supporting the hearing body's decision on the issue of responsibility; and the sanction imposed, if any. The University neither

encourages nor discourages the further disclosure of the final outcome letter by the complainant or accused individual.

## **Questions and Answers**

*What does Title IX have to do with sexual misconduct? I thought Title IX regulated the number of sports offered for men and women?*

Title IX of the Education Amendments of 1972 is a federal law enacted in 1972. The law says that: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance..." Sexual misconduct is a form of sex discrimination.

Title IX applies to all people in the University community. Sexual Misconduct can occur between all groups: student and student, faculty member and student, staff member and student, faculty member and faculty member, or staff member and staff member. This policy applies to all members of the University community alike.

*What do I do if I feel I have been sexually harassed?*

Please let someone know right away. Unfortunately, ignoring sexual harassment does not make it go away. You have several options available if you are a member of the Manchester community and feel that you have been subjected to unwelcome behavior of a sexual nature. You may contact Counseling Services Office, Student Development, or the Title IX Coordinator or deputy coordinators.

In some situations, individuals who are experiencing unwelcome behavior feel comfortable approaching the individual who is causing the problem and letting him or her know that the conduct is inappropriate and must stop. Sometimes, individuals are not aware that their behavior is offensive, and quickly apologize and change their behavior once they are aware that their conduct is unwelcome. However, you are **not** required or expected to confront your harasser prior to reporting unwelcome behavior.

*What do I do if I am sexually assaulted?*

Don't blame yourself; sexual assault is never the victim's fault. If you are a survivor of sexual violence, you have rights and you have options. The University's Title IX staff and student development office exist to help you get the support you need. Please tell someone as soon as possible. You may contact 9-1-1, Campus Safety, Counseling Services Office, Student Development, or the Title IX Coordinator or deputy coordinators. Members of the counseling office, the University nurse, and campus pastor may talk with you confidentially. Whether you

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are a student, faculty, or staff member, you have the right to file a complaint through the university and/or to explore other options.

Once you have contacted someone a member of the Title IX staff will meet with you and talk with you in person about your options and how you can get the help and support you want and need.

*I'm being harassed by someone who is not a Manchester employee, but who comes on campus to conduct business. Is there anything I can do?*

Manchester's Sexual Harassment Policy protects you from sexual harassment by vendors, contractors, and third parties you encounter in the University community. If you believe that you have been subjected to conduct that violates the policy, please contact the Counseling Services Office, Student Development, or the Title IX Coordinator or deputy coordinators as soon as possible.

*What if I am sexually harassed by a co-worker or a student but we are off-campus?*

It is possible for off-campus conduct between Manchester colleagues and/or students to contribute to a hostile working or academic environment, or to constitute quid pro quo sexual harassment in violation of University's policy. You may file a complaint regarding such behavior and the University will investigate it to the fullest extent possible. Please seek help Counseling Services Office, Student Development, or the Title IX Coordinator or deputy coordinators if you are subjected to unwelcome conduct of a sexual nature either off-campus or on-campus.

*What if I witness inappropriate conduct, or someone else tells me about it?*

Anyone who witnesses inappropriate comments or conduct, even if it is directed at someone else, can still feel uncomfortable and is encouraged to report it. Moreover, under the University's Sexual Misconduct policy and HR policies, all faculty and staff who become aware of or suspect sexual misconduct are required to report it to Human Resources or the Title IX Coordinator or deputy coordinator. If a non-employee witness's conduct that the person believes might be sexual harassment, the person is encouraged to contact Human Resources or the Title IX Coordinator or deputy coordinators. If you are an employee, you are also obligated to seek advice and help if you witness conduct that may violate the University's additional harassment policies, such as the prohibition on racial or religious harassment.

*What do I do if I have been accused of Sexual Misconduct?*

Do not contact the alleged victim. You may immediately want to contact someone who can act as your advisor. An advisor can be anyone including your academic advisor but it does not have to be your academic advisor. You may also contact the Student Development Office or the Title IX Coordinator, to explain and help you understand the University's procedures for addressing

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Sexual Misconduct complaints. We encourage you to talk to a confidential counselor in the Counseling Services Office or the campus pastor.

*What about legal advice?*

You may want to retain an attorney if you are accused of Sexual Misconduct to provide you with legal advice regarding the campus conduct proceeding and/or any criminal prosecution. If you choose to retain counsel, you may do so at your own expense. A victim desiring to file a criminal charge against the accused need not hire an attorney as the state's prosecutor will handle the case. Both the accused and the victim may use an attorney as their advisor during the campus grievance processes; however, the attorney will not be able to speak on their behalf.

*If I don't initially make a formal complaint can I do so at a later time?*

Yes, there is no time line for filing a formal complaint. However, the University strongly encourages prompt reporting of complaints and information rather than risking your or another student's well-being. The University may ultimately be unable to adequately conduct an investigation if too much time has passed or if the accused student has graduated or left school. Factors that could negatively affect the university's ability to investigate include the loss of physical evidence, the potential departure of witnesses, or the inability to recall the incident.

*How long does it take to investigate and resolve my complaint?*

In all cases the Title IX Coordinator strives to respond promptly and effectively by investigating the allegations and addressing the effects of the conduct. Typically, an investigation can take up to approximately sixty (60) calendar days following the receipt of the complaint. Factors that influence the timing of the investigation include the complexity and severity of the conduct, the number and availability of witnesses, and the identification and acquisition of any physical or other evidence.

*What should I do if I observe sex discrimination or sexual harassment, but it is not directed at me?*

Anyone who witnesses sex discrimination or sexual harassment, even it is directed at someone else, can still feel uncomfortable and harassed. If you are a student and witness conduct that you believe constitutes sex discrimination or sexual harassment, please make a complaint in the same manner as if the conduct was directed against you. Employees must report any Sexual Misconduct that they witness or that is reported to them. Other members of the University community are encouraged to report any Sexual Misconduct that they witness.

*Does the complaint remain private?*

The University respects the privacy of all parties to a complaint of Sexual Misconduct except insofar as it interferes with the University's obligation to fully investigate allegations of Sexual Misconduct. Where the obligation to investigate requires the University to release some private information, the University will only disseminate such information on a need-to-know basis. In all complaints of Sexual Misconduct, all parties will be informed of the outcome. The institution also must statistically report the occurrence on campus of major violent crimes, including certain sex offenses, in an annual report of campus crime statistics. This statistical report does not include personally identifiable information.

*Will my parents be told?*

Generally no, unless you tell them or grant them access to your student records. University officials will directly inform parents when requested to do so by a student or in a life-threatening situation. In the event of a major medical, disciplinary, or academic jeopardy, students are strongly encouraged to inform their parents.

*Will the accused student know my identity?*

Yes, if you file a formal complaint against the alleged perpetrator. No, if you choose to not file a formal complaint. Keep in mind that choosing not to identify yourself and/or the perpetrator will limit the University's ability to respond comprehensively.

*Will the incident be reported to the police?*

Normally, the University will not file a report with the local police unless the victim decides to do so. However, the University reserves the right to notify the local police in the event of a violent assault, crime or a felony or in any situation in which the University determines notification of the local police is necessary to protect the safety and welfare of the University community.

*What protection is offered to students going through this process (accuser and accused)?*

Remedial measures, including adjusting class schedules, changing residence halls, assisting individuals in obtaining assistance at the University and externally, will be offered to both the student who reports Sexual Misconduct and the student who is accused of Sexual Misconduct.

*What do I do if I experience sexual misconduct and I don't want anyone else to know?*

The University provides confidential counseling to survivors of Sexual Misconduct through Counseling Services. Nothing that a survivor tells a University counselor is shared with anyone without the survivor's express, written permission, unless disclosure is required by law.

*Is the university's investigation the same as criminal justice process?*

No. This policy has no impact on a criminal investigation that would be handled separately by police. The university does, however, encourage anyone who believes they have experienced a sexual assault, or any other crime, to make a report to the police department or other appropriate police agency.

*My friend told me he or she was assaulted. What can I do to help?*

Connect your friend to information and resources so that your friend can make informed decisions about any steps he or she may wish to take in reporting the incident and seeking support. You can encourage your friend to go to Counseling Services where he or she can talk to a counselor confidentially. The University's student sexual misconduct policy website is designed to provide information on a student's options in one central place.

*What are my support resources if I am accused of sexual misconduct?*

There are numerous support resources available for complainants and respondents, both on campus and in the community. Those resources available for respondents include the Dean of Student Development Office, Counseling Services, Health Services and the Title IX Coordinator.

*What if I'm an employee at the university and I have become aware of an incident of sexual misconduct?*

All employees of the University are required to report Sexual Misconduct. All other members of the University community are encouraged to report Sexual Misconduct. The University is committed to responding to any report of Sexual Misconduct made to a Responsible Employee. Reports will be referred to the University's Title IX Coordinator for review.

*What are the possible outcomes of an investigation?*

Once a deputy coordinator or investigator has completed an investigation, he or she will prepare an investigation report, which may recommend a notice of possible violation. The Title IX Coordinator will review this report before it is final. This report generally will be provided to the complainant and respondent. If the investigation report does not recommend a notice of possible violation, the complainant may request a second review by the Title IX Coordinator to determine if a notice of potential violation should have been issued. The Title IX Coordinator's decision on

this point is final. If a notice of possible violation is issued, the University will grant a hearing on the complaint. The hearing will allow the University to evaluate the evidence and determine if it is more likely than not that Sexual Misconduct occurred. If the respondent is found responsible for Sexual Misconduct at the hearing, the University will initiate a sanctioning process designed to eliminate the misconduct, prevent its recurrence, and remedy its effects while supporting the university's educational mission and Title IX obligations. There also is an appeal process available to complainants and respondents.

*If I am found responsible for sexual assault/misconduct, what will be my next steps?*

If a respondent is found responsible for sexual misconduct, the university's next step is to initiate a sanctioning process. Sanctioning is designed to eliminate the misconduct, prevent its recurrence, and remedy its effects while supporting the university's educational mission and Title IX obligations.

*What if I'm retaliated against for participating in an investigation?*

The university will take all appropriate steps to ensure that any person who reports or complains about Sexual Misconduct, or participates in an investigation of Sexual Misconduct will not be subjected to Retaliation. Anyone who believes they are experiencing Retaliation is strongly encouraged to report that concern using the same procedure for reporting possible sexual misconduct under the policy. A Retaliation concern will be reviewed as a separate offense under this policy.