

# Milwaukee School of Engineering (MSOE) Policy for Title IX-Based Sexual Misconduct

Last Revision: January 2026

## Section 1. Purpose and Scope of this Policy

### 1.1. Introduction

The Milwaukee School of Engineering (MSOE) seeks to provide an environment free from all forms of harassment or intimidation based on race, ethnicity, color, creed, religion, sex (including pregnancy and pregnancy-related disabilities), age, national origin/ancestry, arrest record, conviction record, physical or mental disability, military and veteran status, sexual orientation, gender identity, genetic characteristics, marital status, or any other characteristic protected by local, state or federal law. *Sexual misconduct* is broadly defined as unwanted or unwelcome comments, communications, or behaviors of a sexual nature. Members of the MSOE community, including students, faculty, staff, and other employees, as well as guests and visitors (i.e., third parties), additionally have the right to be free from sexual misconduct, including sexual harassment and sexual violence. The University does not discriminate on the basis of sex in its education programs and activities.

Sexual misconduct—which includes sexual discrimination, sexual harassment, and sexual violence—is addressed at MSOE by policies and procedures associated with federal Title VII and Title IX law, Wisconsin state law, as well as by official institutional policies and procedures (see, for example, the MSOE Student Conduct Code at <https://www.msoe.edu/campus-experience/student-life/msoe-student-handbook/>, the MSOE Faculty Handbook, and the MSOE Staff Handbook).

When sexual misconduct occurs in the context of the University's education programs and activities, and when the misconduct functions to jeopardize equal access to, and participation in, those education programs and activities, the misconduct may implicate Title IX requirements that are addressed in this *Milwaukee School of Engineering (MSOE) Policy for Title IX-Based Sexual Misconduct*. Enacted in 1972, Title IX prohibits discrimination on the basis of sex in education programs and activities that receive federal financial assistance (“[N]o 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.” 32 C.F.R. § 106.31). In a 1992 United States Supreme Court decision (*Franklin v. Gwinnett Public Schools*), sexual harassment was recognized to be a form of discrimination under Title IX.

The fundamental purpose of this policy, then, which is based on regulatory requirements and guidance issued by the United States Department of Education, is to protect all students, faculty, staff, other employees, and third parties from sex discrimination (here, in the form of sexual misconduct) that jeopardizes equal access to, and participation in, the University's education

programs and activities. The Title IX regulations are available at <https://www2.ed.gov/policy/rights/reg/ocr/edlite-34cfr106.html>.

When a report of sexual misconduct is brought to the attention of the University, trained personnel shall respond by applying the relevant policies and procedures in a manner that protects the safety of students, employees, and other parties, provides due process for all parties, promotes accountability, and—in the case of Title IX-based offenses—restores access to, and ensures participation in, the University's education programs and activities. Under the provisions of this Title IX-based sexual misconduct policy, the University has available a range of responses to reports of sexual misconduct, including an informal Title IX-based resolution process, a formal Title IX-based resolution process that features an investigation and a live hearing, and a mixture of informal and formal adjudication methods. In addition, in the event that an alleged sexual misconduct offense does not meet Title IX jurisdictional requirements, under the provisions of this policy, MSOE may seek resolution under other relevant policies and procedures. Regardless of the resolution path, all University responses to reports of sexual misconduct are associated with a supportive, respectful, fair, equitable, and impartial approach for all parties.

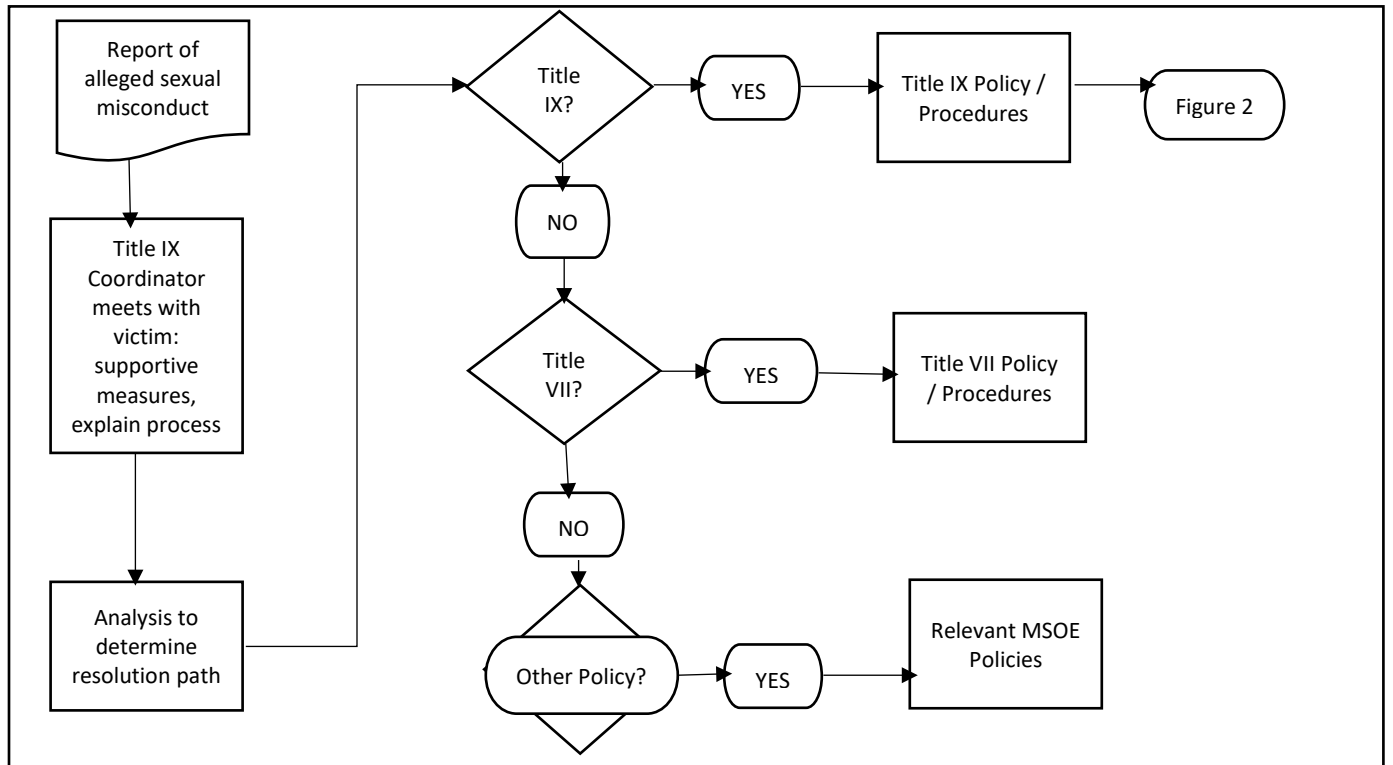
The primary audience for this Title IX-based sexual misconduct policy includes

- individuals who believe they are victims of sexual misconduct (including students, faculty, and staff, and third-party persons)
- individuals who are accused of sexual misconduct
- individuals who are participants in some manner – e.g., witnesses -- in the sexual misconduct process at the University, including third-party individuals
- Title IX personnel at MSOE, for which this policy serves as guidance in their Title IX work at the University

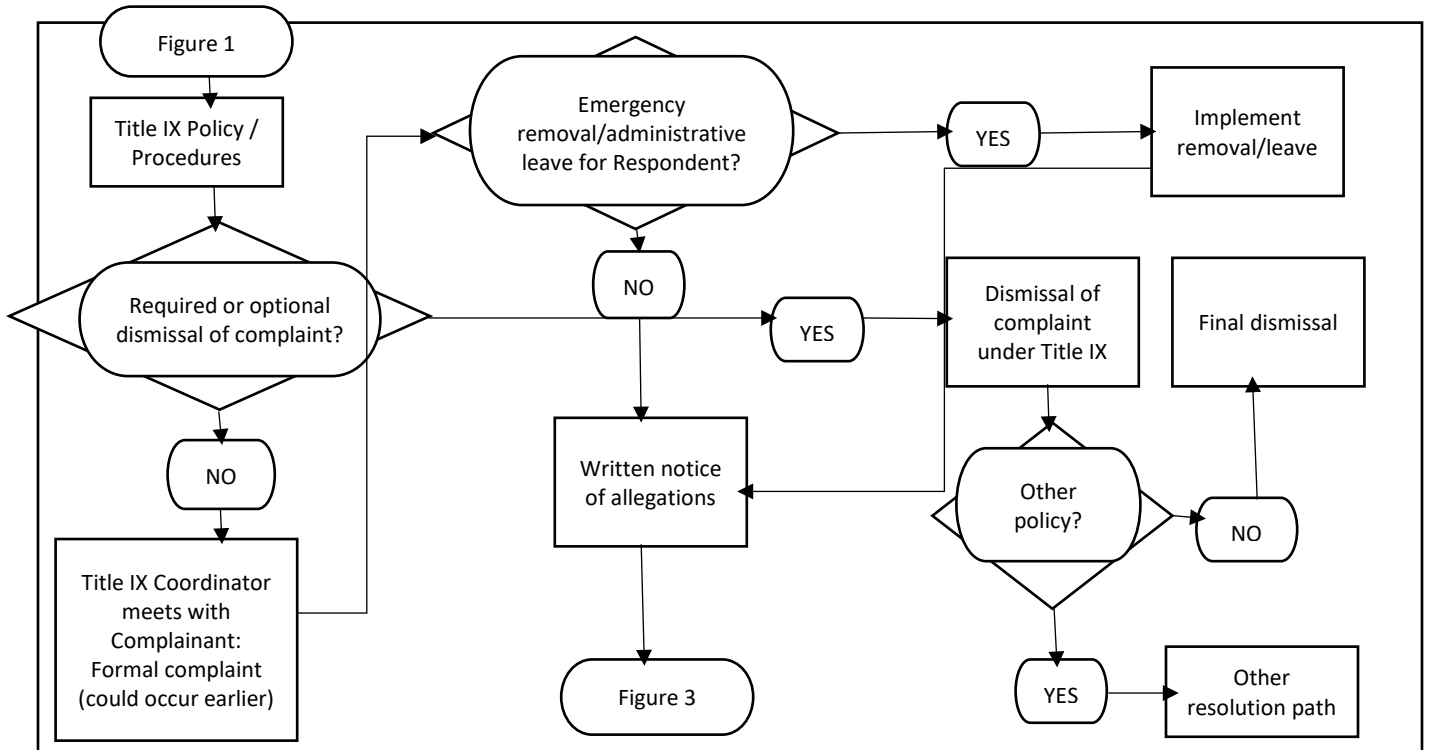
This Title IX-based sexual misconduct policy shall be revised as necessary to comply with regulatory requirements and guidance issued by the United States Department of Education. This policy is intended to serve as one of the institution's proactive measures to prevent sexual misconduct, and as such, this policy shall be widely distributed, and it shall be available and easily accessible on an ongoing basis in electronic and print formats.

## **1.2. Overview: The Title IX-Based Sexual Misconduct Process at MSOE**

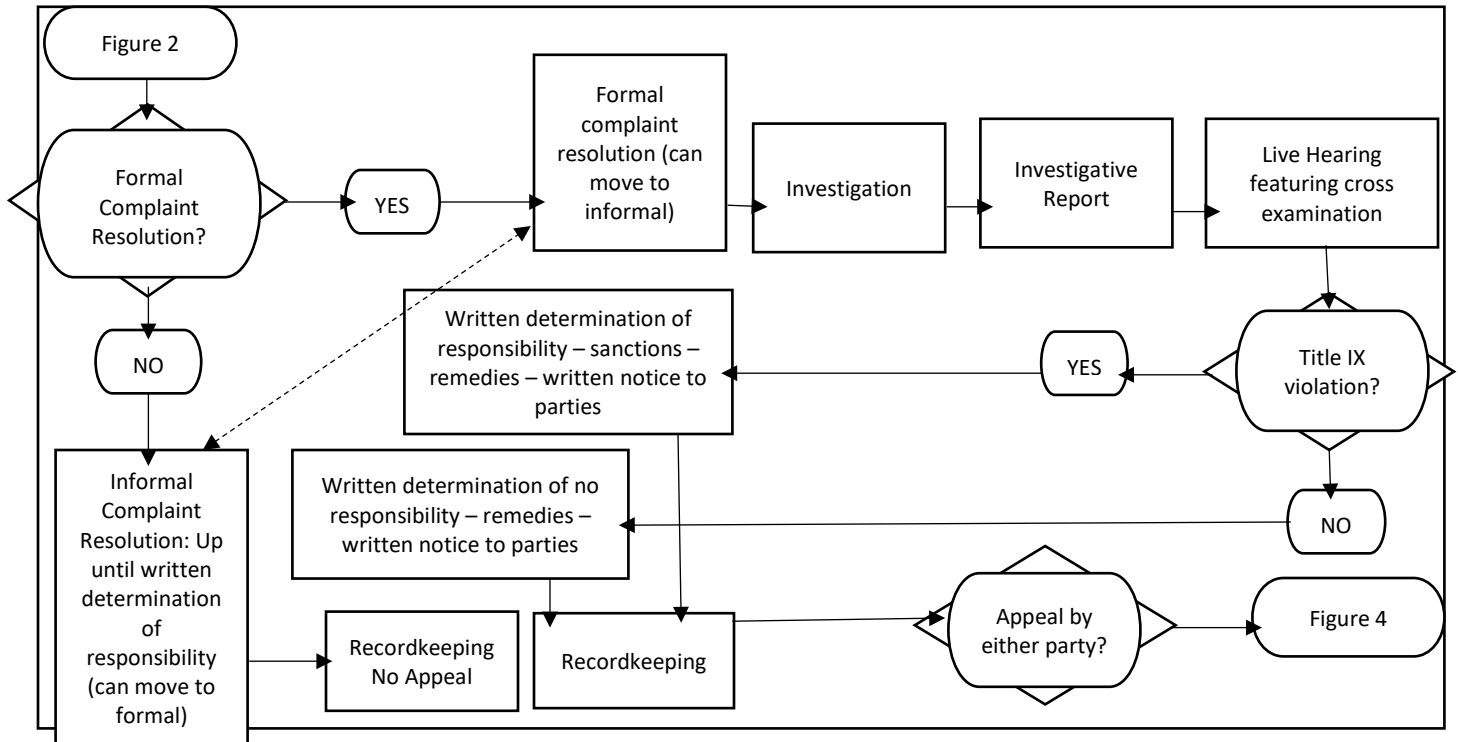
Figures 1 through 4 are flowcharts that provide a schematic overview of the Title IX-based sexual misconduct process at MSOE. Although the overview features a linear flowchart approach, it is important to understand that process looping and process spanning may occur in the Title IX process.



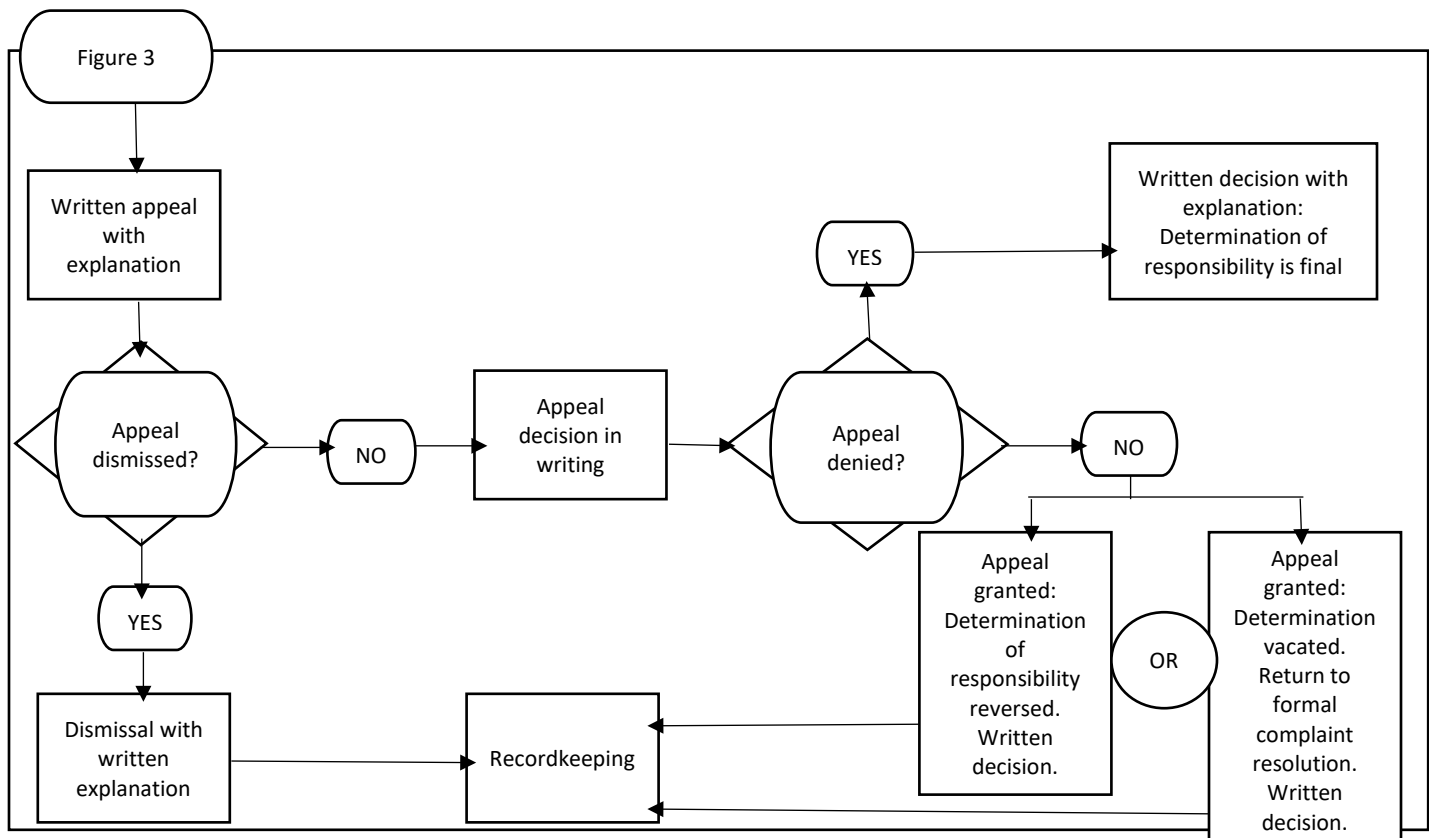
**Figure 1: The MSOE Title IX Process—Part 1.**



**Figure 2: The MSOE Title IX Process—Part 2.**



**Figure 3: The MSOE Title IX Process—Part 3.**



**Figure 4: The MSOE Title IX Process—Part 4.**

## Section 2. Definitions

**Coercion** is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want to engage in any sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

- There is no requirement that a party resists the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

**Consent** is clear, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in sexual activity.

- Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- Previous relationships or prior consent cannot imply consent to future sexual acts.
- In order to give effective consent, one must be of legal age.
- Consent cannot occur in situations associated with force, coercion, and incapacitation, which are further explained below.

**Force** is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent. Sexual violence is a form of sexual harassment (or sexual misconduct) prohibited by Title IX.

**Incapacitation** is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).

- Sexual activity with *someone who one should know to be -- or based on the circumstances should reasonably have known to be -- mentally or physically incapacitated* (by alcohol or other drug use, unconsciousness or blackout), constitutes a violation of this policy.
- This policy also covers a person whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of date rape drugs, including but not limited to:

- Rohypnol (“Roofies”) and GHB (gamma-hydroxy butyrate, sometimes referred to as “Liquid Ecstasy,” “Grievous Bodily Harm,” “Gatorade,” or “Liquid-G”). Possession, use and/or distribution of any of these substances is prohibited, and administering one of these drugs to another student is a violation of this policy.
- Use of alcohol or other drugs will never function as a defense for any behavior that violates this policy.
- The sexual orientation and/or gender identity of individuals engaging in sexual activity is not relevant to allegations under this policy.

## **Section 3. Title IX-Based Sexual Misconduct**

### **3.1. Fundamental Applicability Requirements for Title IX-Based Sexual Misconduct**

Title IX-based sexual misconduct

- applies only to locations within the geographic boundaries of the United States
- applies to MSOE's "education programs or activities"
  - These include the "operations" associated with the University. Examples of MSOE's education programs and activities include admissions, hiring, workplace operations, academic instruction, residence life, amenities on campus, athletic teams, work-study, activities on campus (such as games, concerts, speeches), off-campus trips or experiences organized by MSOE, and University-sponsored organization activities.
- applies to off-campus situations if the misconduct occurs in the context of an MSOE education program or activity, or in a house or building owned or controlled by MSOE, or by an officially recognized Greek or other student organization
- applies to current students, employees, and third-party individuals engaged in the University's education programs and activities—at the time of the filing of a formal complaint, the Complainant in an alleged Title IX-based sexual misconduct situation must be participating in or attempting to participate in MSOE's education programs and activities or employed and the Respondent must be enrolled in or employed at MSOE
- applies to employee-on-employee, employee-on-student, student-on-student, student-on-employee, and student and/or employee-third party situations

Sexual misconduct that does not meet these fundamental applicability requirements may be addressed by other relevant MSOE policies and procedures (including, but not limited to, Title VII policies and procedures, the MSOE Student Conduct Code, the MSOE Faculty Handbook, and the MSOE Staff Handbook). For example, sexual misconduct that occurs in a private location or that does not occur in the context of MSOE's educational programs and activities may be addressed with other official University policies and procedures.

### **3.2. Title IX-Based Sexual Offenses**

Title IX-based sexual misconduct at the University includes the following offenses:

1. Sexual Harassment
2. Sexual Assault
3. Domestic Violence
4. Dating Violence

## 5. Stalking

### 3.2.1. Sexual Harassment

Title IX-based sexual harassment is verbal or physical conduct on the basis of sex that is classified as either (1) quid pro quo harassment or (2) hostile environment harassment. Verbal conduct can include, but is not limited to, written and oral statements, including statements posted on social media sites. Under Title IX, sexual harassment also includes sexual assault, but for the purposes of this policy, sexual assault is defined in a separate section (see Section 3.2.2.).

#### 3.2.1.1. Quid pro quo harassment

Quid pro quo harassment occurs when an MSOE employee conditions the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct. Quid pro quo harassment exists when there are (i) unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature, and (ii) submission to or rejection of such conduct resulting in adverse educational or employment action. As such, for the personal protection of members of the MSOE community, relationships in which power differentials are inherent (for example, faculty-student, staff-student, administrator-student relationships) are discouraged or prohibited (refer to the relevant policy language). Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical and are prohibited.

#### 3.2.1.2. Hostile environment harassment

Hostile environment harassment occurs as a result of unwelcome conduct on the basis of sex that is determined—using a “reasonable person” standard—to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to MSOE's education programs and activities.

The determination of whether an environment is “hostile” must be based on a large number of circumstances, including (i) the frequency of the conduct, (ii) the nature and severity of the conduct, (iii) whether the conduct was physically threatening, (iv) whether the conduct was humiliating, (v) the effect of the conduct on the alleged victim's mental or emotional state, (vi) whether the conduct was directed at more than one person, (vii) whether the conduct unreasonably interfered with the alleged victim's educational or work performance, (viii) whether the conduct features a statement that is a mere utterance of an epithet which engenders offense in an employee or student, or offends by mere discourtesy or rudeness, (ix) whether a power differential exists with respect to the conduct, and (x) whether the speech or conduct deserves the protections of academic freedom or the First Amendment.



In a hostile environment harassment situation, the more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical.

### **3.2.2. Sexual Assault**

Title IX-based sexual assault is defined as incorporating the following classes of conduct: (1) rape, (2) sodomy, (3) sexual assault with an object, (4) fondling, and (5) incest.

#### **3.2.2.1. 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 (including due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the victim to demonstrate lack of consent.

#### **3.2.2.2 Statutory Rape**

Statutory rape entails sexual intercourse with a person who is under the statutory age of consent as defined by law. In the state of Wisconsin, the age of consent for sexual intercourse is 16 and over (Wisconsin State Statutes, Chapter 948, "Crimes Against Children"). Sexual intercourse with a person who has not attained the age of 16 constitutes a felony. However, Wisconsin State Statutes (Section 948.02) additionally indicate that sexual intercourse with a child who has attained the age of 16 is a Class A misdemeanor if the defendant has attained the age of 19 years when the violation occurs.

#### **3.2.2.3. Fondling**

Fondling entails touching of the private body parts of another person for the purpose of sexual gratification, without consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

To clarify, fondling includes intentional contact for the purpose of sexual gratification 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.

#### **3.2.2.4. Incest**

In the state of Wisconsin, incest is sexual intercourse between persons who are related to each other within a degree of kinship closer than second cousin.

### **3.2.3. Domestic Violence**

Domestic violence concerns felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Wisconsin, 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 the state of Wisconsin.

### **3.2.4. Dating Violence**

Dating violence is violence committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with the victim;
- Where the existence of such a relationship will be determined based on consideration of the following factors:
  - The length of the relationship
  - The type of relationship
  - The frequency of interaction between the persons involved in the relationship

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

### **3.2.5. Stalking**

Stalking occurs when a Person A engages in a course of conduct directed at Person B that would cause Person B—under a “reasonable person” standard—to

- Fear for their safety or the safety of others
- Suffer substantial emotional distress

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

## **3.3. Non-Title IX-Based Sexual Misconduct**

A broad range of sexual misconduct exists. In addition to Title IX-based sexual misconduct enumerated in Section 3.2, examples of other types of sexual misconduct include (but are not limited to) sexual exploitation, invasion of sexual privacy, engaging in voyeurism, non-consensual video or audio-taping of sexual activity, knowingly transmitting an STI, prostituting another, and exposing one's genitals in non-consensual circumstances. Sexual misconduct with respect to social media, online conduct, and technology, likewise, may occur. *Depending on the facts associated with these actions, they could rise to the level of Title IX sexual harassment.* However, sexual misconduct that does not qualify as Title IX misconduct may be addressed by other relevant MSOE policies and procedures (including, but not limited to, Title VII policies and procedures, the MSOE Student Conduct Code, the MSOE Faculty Handbook, and the MSOE Staff Handbook), as well as Wisconsin state laws.

### **3.4. Guidance in Violent Sexual Misconduct Situations**

In the event that you are the victim of a violent sexual assault, you are strongly encouraged to seek immediate medical treatment at a hospital emergency room or at a sexual assault treatment center. Trained personnel will collect evidence, check for injuries, address pregnancy concerns, and address the possibility of exposure to sexually transmitted infections. If you have changed clothing since the assault, bring the clothing you had on at the time of the assault with you to the hospital in a clean, sanitary container such as a clean paper grocery bag or wrapped in a clean sheet (plastic containers do not breathe, and may render evidence useless). If you have not changed clothes, bring a change of clothes with you to the hospital, if possible, as they will likely keep the clothes you are wearing as evidence. Do not disturb a crime scene—leave all sheets, towels, and other items that may bear evidence of a crime. Victims are strongly encouraged to report the incident.

## Section 4. Reporting Sexual Misconduct at MSOE

### 4.1. Who May Notify the University of Alleged Sexual Misconduct?

Any person may *notify* either the MSOE Title IX Coordinator or a University official—with authority to take corrective action—that a student, employee, or third-party person (e.g., a visitor, an alumnus) has experienced or committed sexual misconduct. Such *notification* (or *notice*) is deemed to be a *report* of alleged sexual misconduct. The notification can be provided to the Title IX Coordinator or University official in person, by print letter, by email, or by electronic communication (e.g., email, text message). A University official receiving a report must communicate the information to the Title IX Coordinator.

If the alleged misconduct occurs in the context of the University’s education programs and activities, the notice or report is said to constitute *actual knowledge* with respect to Title IX.

In order to respond to an allegation of Title IX-based sexual misconduct, MSOE must have actual knowledge. Imputation of knowledge based solely on vicarious liability or constructive notice (i.e., a “should have known” approach) is insufficient to constitute actual knowledge.

After receiving notice of an alleged sexual misconduct incident, the Title IX Coordinator must work to identify an alleged victim (or victims) if one has not been identified in the notice. If after reasonable inquiry, an alleged victim cannot be identified, the matter should be documented and dismissed with respect to the Title IX policy and procedures, but consideration should be given as to whether the matter can be addressed with other relevant MSOE policies and procedures.

After receiving notice of an alleged sexual misconduct situation, including the name of the victim, the Title IX Coordinator shall meet promptly with the individual to provide information about *supportive measures*, to explain the Title IX resolution process (or other resolution paths, if necessary), to explain how to file a formal complaint, and to discuss the alleged victim’s wishes concerning how to proceed in the matter.

#### 4.1.1. MSOE Title IX Coordinator

The MSOE Title IX Coordinator is:

**Dr. Kip Kussman**

Associate Vice President for Student Affairs and Dean of Students  
Milwaukee School of Engineering  
1025 N. Broadway  
Milwaukee, WI 53202  
Phone: 414-277-7175  
Email: [kussman@msoe.edu](mailto:kussman@msoe.edu)

#### 4.1.2. Other Institutional Officials Who Can Take Corrective Action

**Dr. Eric Baumgartner, President**

Telephone: 414-277-7103

Email: [baumgartner@msoe.edu](mailto:baumgartner@msoe.edu)

**Dr. Alicia Domack**, Interim Vice President of Academics

Telephone: 414-277-2478

Email: [domack@msoe.edu](mailto:domack@msoe.edu)

**Mr. Billy Fyfe**, Director of Public Safety

Telephone: 414-277-2339

Email: [fyfe@msoe.edu](mailto:fyfe@msoe.edu)

**Ms. Seandra Mitchell**, Vice President of Student Affairs and Campus Inclusion

Telephone: 414-277-6762

Email: [mitchell@msoe.edu](mailto:mitchell@msoe.edu)

**Dr. Steve Williams**, Vice President of Campus Infrastructure

Telephone: 414-277-7420

Email: [williams@msoe.edu](mailto:williams@msoe.edu)

**Ms. Rebecca Ploeckelman**, Director of Human Resources

Telephone: 414-277-7111

Email: [ploeckel@msoe.edu](mailto:ploeckel@msoe.edu)

**Ms. Kristen Mekemson**, Vice President of University Advancement

Telephone: 414-277-7152

Email: [mekemson@msoe.edu](mailto:mekemson@msoe.edu)

**Mr. Paul Matson**, Vice President of Finance and Chief Financial Officer

Telephone: 414-277-7126

Email: [matson@msoe.edu](mailto:matson@msoe.edu)

**Dr. Timothy Valley**, Vice President of Student Services and Enrollment Management

Telephone: 414-277-7150

Email: [valley@msoe.edu](mailto:valley@msoe.edu)

#### **4.1.3. Mandated Reporters**

With the exception of those employees who legally can maintain confidentiality, all MSOE employees are *mandated reporters*. Mandated reporters are individuals who must notify the University about alleged sexual misconduct. Mandated reporters must report this information to either the MSOE Title IX Coordinator or a University official who has the authority to take corrective action. If possible, mandated reporters should provide the date, time, location, and the names of the parties (if known). Mandated reporters are not required to investigate an alleged misconduct situation that they become aware of, but they are required to report the incident and as much information as they have about it, regardless of how they learned of it.

MSOE's mandated reporters include:

- all faculty,
- all staff personnel,
- all other employees, including student employees (e.g., Resident Assistants).

Service providers who are not University employees are not mandated reporters.

Before an alleged victim reveals any information to a mandated reporter, the mandated reporter needs to ensure that the victim understands that the reporter must report the incident, and all details, to the University. If the victim desires confidentiality, the mandated reporter should direct the victim to confidential resources.

## **4.2. How to Report a Formal Complaint of Sexual Misconduct at MSOE**

### **4.2.1. Formal Complaints**

A formal complaint of alleged sexual misconduct is a document filed by a Complainant or signed by the MSOE Title IX Coordinator alleging sexual misconduct against a Respondent and requesting that MSOE investigate the allegation. Although a simple notice or a report of non-Title IX-based sexual misconduct can be addressed with relevant non-Title IX policies and procedures at MSOE, the University *cannot* proceed with a *Title IX* grievance and resolution process without a formal complaint.

A *Complainant* means an individual who is alleged to be the victim of conduct that could constitute Title IX-based sexual misconduct. A *Respondent* is an individual who has been reported to be the perpetrator of conduct that could constitute Title IX-based sexual misconduct.

At the time of the filing of a formal complaint, a Complainant must be employed or participating in MSOE's education programs or activities. A third-party individual may not file a formal complaint on behalf of an alleged victim.

A formal complaint must be filed with the MSOE Title IX Coordinator. If the Title IX Coordinator has not already met with the Complainant after receiving notice of alleged conduct, the Coordinator must meet with the Complainant at the time of the filing of the complaint or shortly thereafter in order to discuss supportive measures, to explain the Title IX resolution process and other resolution paths (if necessary), and to consider the Complainant's wishes with respect to proceeding in the matter.

The formal complaint must be a document or electronic submission (e.g., email) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the document.

**In some situations, the MSOE Title IX Coordinator can file and sign a formal complaint:**

- when there is an important institutional interest in adjudicating a report, irrespective of the victim's wishes
- when serious misconduct, repeated misconduct, or misconduct by employees is alleged

- when the alleged victim does not wish to file a formal complaint, and if clear and compelling reasons exist for doing so, the Title IX Coordinator may proceed with a formal complaint—the Title IX Coordinator’s decision to do so must not be clearly unreasonable (e.g., the Title IX Coordinator may proceed for reasons associated with safety)

Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a Complainant or otherwise a party in the matter.

#### **4.2.2. Other Formal Complaint Options**

##### **4.2.2.1. Local Police Department**

In a sexual misconduct situation, a victim has the right to notify the local police department in order to report the alleged crime and to pursue legal prosecution. On the MSOE campus, if you wish to report an incident to the local police department you are advised to first contact MSOE Public Safety, and to ask them to contact the police. Reporting an alleged crime to the local police department will lead to a criminal investigation. In such situations, the University will also conduct its own sexual misconduct investigation in compliance with this policy.

MSOE Public Safety  
Mellowes Hall  
1121 N. Milwaukee Street  
Ground floor  
Milwaukee, WI 53202  
Emergency Phone: 414-277-7159

##### **4.2.2.2 Office for Civil Rights in the United States Department of Education**

A victim of sexual misconduct also has the right to file a formal Title IX complaint with the Office for Civil Rights (OCR) in the United States Department of Education.

Office for Civil Rights  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Hotline: 1-800-421-3481  
E-mail: [OCR@ed.gov](mailto:OCR@ed.gov)

##### **4.2.3. Confidential Reporting for Complainants**

Recognizing the sensitive nature of sexual misconduct situations, including a victim’s right to maintain confidentiality,<sup>1</sup> the University makes available a confidential reporting option.

To report an incident confidentially enables you to discuss the situation with an MSOE employee or other trained individual who will not share the information with anyone else. This individual will share

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<sup>1</sup> “Confidentiality” in this context means that when a victim discusses a sexual misconduct incident with another person, that person will not share the information with anyone else.

options and advice, but will not tell anyone about the situation unless you want them to do so. At MSOE, if you choose this reporting option, you should speak with

- on-campus mental health counselors
- the University's student health care coordinator, acting within a medical/patient relationship
- an off-campus sexual assault treatment center that can maintain confidentiality

The confidential MSOE employees will not report your situation to the University, unless you authorize them to do so.

- MSOE Counseling Services (Kern Center, Room 230) – 414-277-7590
- MSOE Health Services (Kern Center, Room 230) – 414-277-4555
- Sexual Assault Treatment Center (SATC), Aurora Sinai Medical Center, 945 N. 12th St., Milwaukee – 414-219-5555

#### **4.2.4. Privacy**

MSOE makes every effort to maintain privacy concerning notices, reports, and formal complaints of alleged Title IX-based sexual misconduct. Privacy is also maintained throughout the entire Title IX-based grievance and resolution process, including any appeal process. *Privacy* means that information related to a complaint will be shared only with a limited number of MSOE employees who have a “need to know” in order to assist in any phase throughout the resolution process associated with the complaint.

#### **4.2.5. Time Limits on Filing a Formal Complaint**

No time limit exists for providing the MSOE Title IX Coordinator with a report or formal complaint concerning alleged sexual misconduct. However, a significant passage of time can limit the ability of MSOE to investigate and to resolve allegations of sexual misconduct. Moreover, if the Respondent is no longer enrolled or employed at MSOE, the University cannot pursue an allegation under Title IX policy and procedures. MSOE may be able to address a time-impacted allegation under other relevant policies and procedures, but the decision to do so rests with the Title IX Coordinator. Allegations impacted by the passage of time may be documented by the Coordinator for future reference. At the discretion of the Coordinator, and if possible or not otherwise limited, MSOE may provide supportive measures, remedies, or other formal actions in time-impacted scenarios.

MSOE addresses allegations of Title IX-based sexual misconduct with the version of its Title IX policy in place at the time that a formal complaint is filed.

#### **4.2.6. When a Complainant Does Not Wish to Proceed**

If a Complainant does not wish to proceed—either with the filing of a formal complaint, or after the filing of a formal complaint—they may make this request to the MSOE Title IX Coordinator, who will evaluate the request. If the Complainant withdraws the complaint, MSOE has the option of dismissing



the complaint. However, the Title IX Coordinator shall evaluate the request against a number of factors, including the seriousness of the alleged misconduct, the need to ensure the safety of the campus, and the need to comply with state or federal law. The goal in this situation is to provide the Complainant with as much control over the process as possible, while balancing the University's obligation to protect its community.

The Title IX Coordinator has the exclusive discretion over whether MSOE shall proceed with the complaint if the Complainant does not wish to do so. If MSOE proceeds with the complaint in this situation, the Title IX Coordinator shall sign the formal complaint to initiate the grievance and resolution process.

If MSOE proceeds with the complaint after the Complainant has requested a desire not to proceed, or if a Complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, the University's ability to remedy and to respond to the allegations will likely be limited. Nonetheless, in these situations, MSOE will still offer supportive measures to the Complainant, and if applicable, available, and possible, remedies for both the Complainant and the community.

A Complainant who does not wish to proceed may subsequently decide to proceed, subject to the requirements enumerated in this policy.

#### **4.2.7. Amnesty for Parties and Witnesses**

MSOE recognizes that victims and witnesses may be deterred from reporting alleged sexual misconduct incidents if alcohol, drugs, or other minor policy violations of University rules were involved. In alleged sexual misconduct situations, MSOE further recognizes that both student safety and a prompt complaint resolution process entails the need both for Complainants to choose to report alleged misconduct and for witnesses to share information about what they know concerning the situation. Respondents, likewise, may hesitate to be forthcoming over concerns regarding minor conduct violations. To encourage reporting and participation in a Title IX process, MSOE maintains a policy of offering parties and witnesses amnesty from minor student conduct policy violations associated with a report—this amnesty includes underage alcohol consumption and use of illicit drugs. MSOE may choose, however, to pursue educational or therapeutic remedies for those individuals.

This amnesty does not include serious conduct violations, such as physical abuse and illicit drug distribution.

#### **4.2.8. The University's Clery Act Reporting Obligation with Respect to Sexual Misconduct Incidents**

The Clery Act helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. All personally identifiable information is kept confidential, but statistical information must be passed along to Public Safety regarding the type of incident and its general location (on-campus or off-campus, in the surrounding area, but no addresses are given) for publication in MSOE's annual Safety and Fire Safety Report.

With respect to the Clery Act, mandated federal reporters on the MSOE campus include: student/conduct affairs personnel, Public Safety personnel, coaches, the athletic director, the residence life staff, the Student Activities staff, the Human Resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities. When a sexual misconduct incident is reported to these MSOE individuals, they are required to report its *occurrence* to the University's Public Safety Office for Clery Act purposes. (*Note:* If any of these individuals are MSOE employees, they are first required to report all known details – not simply the occurrence of the incident – to the Title IX Coordinator.) They are moreover required to notify the Public Safety Office of “reported offenses” from the “records of calls for service, complaints and investigations.” The information to be shared includes the date, the location of the incident (using Clery location categories), and the Clery crime category. This reporting protects the identity of the victim. Not all sexual misconduct incidents meet the requirements for Clery Act sex offenses. As such, the Public Safety Office shall make the final determination concerning statistics associated with sex offenses.

If desired, the Title IX Coordinator may serve as a clearinghouse for statistics associated with sexual misconduct that must be reported for Clery Act purposes.

## **Section 5. General Principles Governing the MSOE Title IX-Based Sexual Misconduct Grievance and Resolution Process**

### **5.1. Deliberate Indifference**

When MSOE has actual knowledge of alleged sexual misconduct in its education program or activity against a person in the United States, the University must respond promptly in a manner that is not deliberately indifferent. MSOE would be deliberately indifferent only if its response would be clearly unreasonable in light of the known circumstances.

After MSOE acquires actual knowledge of alleged sexual misconduct in its education program and activity, and after the completion of a formal complaint and initial requirements, the MSOE Title IX-based sexual misconduct grievance and resolution process features a *formal* complaint resolution process and an *informal* complaint resolution process.

A formal process entails an investigation, an investigative report, a live hearing with cross-examination, a written determination (i.e., a written decision concerning responsibility), and an opportunity for either or both parties to appeal. A formal resolution process is the default Title IX-based sexual misconduct grievance and resolution process.

An informal process is a voluntary process to resolve a formal complaint of alleged Title IX-based sexual misconduct through a mechanism other than the default formal process.

### **5.2. Title IX Personnel: The Prohibition of Bias and Conflicts of Interest**

All Title IX personnel at MSOE are trained to ensure that they are conflict- and bias-free and that they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally. All Title IX personnel at MSOE must avoid sex stereotypes, and stereotypes based on a party's status as a Complainant or Respondent. All MSOE Title IX personnel must exercise an impartial approach.

A *conflict of interest* occurs when an individual has a material connection to a dispute, or the parties involved, such that a reasonable person would question the individual's ability to be impartial.

A *bias* is an inclination, predisposition, partiality, prejudice, preference, or predilection that impedes an individual's ability to be impartial.

### **5.3. Title IX Personnel: Training Requirements**

All MSOE Title IX personnel shall receive regular training on

- the definition of Title IX-based sexual misconduct
- the scope of MSOE's education program and activity
- how to conduct an investigation and grievance process, including live hearings, appeals, and informal resolution, as applicable

- how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- how to use any technology employed in a live hearing, as applicable
- how to assess issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, as applicable
- how to assess issues of relevance to create an investigative report that fairly summarizes relevant evidence, as applicable

Any training materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints.

#### **5.3.1. Transparency Concerning Training Materials**

MSOE must make publicly available on its website all materials employed to train its Title IX personnel, including Title IX Coordinators, investigators, decision-makers, facilitators of informal resolution, as well as other relevant personnel.

#### **5.4. Due Process**

In its Title IX process, MSOE must treat Complainants and Respondents equitably by offering supportive measures to a Complainant, by following a grievance process that complies with a number of requirements before the imposition of any disciplinary sanctions or other actions against a Respondent, and by administering the entire grievance process in a fair manner. MSOE presumes that the Respondent did not violate its Title IX-based sexual misconduct policy *unless or until* a determination of responsibility is made at the end of the grievance and resolution process.

In a Title IX-based grievance and resolution process, MSOE Title IX personnel will objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence. "Inculpatory" evidence refers to specific evidence (or items of evidence) that indicate a policy violation. "Exculpatory" evidence refers to specific evidence (or items of evidence) that indicate no policy violation. Determinations concerning credibility will not be based on a person's status as a Complainant, Respondent, or witness.

#### **5.5. Time Frame**

MSOE will employ a reasonably prompt time frame for the conclusion of the Title IX-based sexual misconduct grievance and resolution process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes. Temporary process delays are permitted for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

## 5.6. Disciplinary Sanctions

MSOE considers sexual misconduct violations to be serious offenses, which may render a violator subject to suspension or expulsion. Unless otherwise stipulated, sanctions imposed in the written determination of responsibility shall take effect after the conclusion of the resolution process. MSOE Title IX-based sexual misconduct sanctions range from disciplinary probation up to expulsion; counseling and educational requirements may also be enforced. A single sanction or a combination of sanctions may be employed.

The determination of sanctions can implicate a number of factors, including but not limited to: (1) the offender's prior disciplinary history; (2) how the University has sanctioned similar offenses in the past—like violations generally should have like disciplinary sanctions; (3) the nature and violence of the Respondent's conduct in an incident; (4) the impact of the Respondent's conduct on the Complainant; (5) the impact of the Respondent's conduct on the MSOE community. In addition, (6) the merits of misconduct violations on a case-by-case basis shall be considered.

## 5.7. Remedies

Remedies are services or actions implemented by MSOE at the end of the Title IX-based grievance and resolution process to restore or to preserve equal access to MSOE's education program and activity for the Complainant. Remedies may include the same individualized services associated with supportive measures (see below). However, unlike supportive measures, remedies can be disciplinary or punitive in nature, and can burden the Respondent. MSOE is not required to provide the exact remedy requested by a Complainant, but must provide a remedy that is not clearly unreasonable.

MSOE additionally endorses the provision of remedies for a Respondent to safely reintegrate into the MSOE community after completion of disciplinary sanctions.

## 5.8. Standard of Evidence

MSOE employs a *preponderance of evidence* standard of evidence in making a determination of responsibility in its Title IX-based sexual misconduct grievance and resolution process. This standard of evidence is employed for formal complaints against both students and employees.

Using a preponderance of evidence in its Title IX-based sexual misconduct grievance and resolution process, MSOE Title IX personnel evaluate the greater weight of all of the evidence with respect to deciding in favor of either the Complainant or the Respondent. The preponderance of the evidence resides not in the amount of evidence, but rather in how weighty and convincing the evidence (for and against) is. Thus, one clearly knowledgeable witness may provide a preponderance of evidence over a dozen witnesses with hazy testimony.

## 5.9. Retaliation

MSOE and any other person are prohibited from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report, filed a formal complaint, testified, assisted, participated or refused to participate in any manner in a Title IX-based investigation, proceeding, or hearing. Intimidation, threats, coercion, or discrimination,

including charges against an individual for code of conduct violations that do not involve Title IX-based sexual misconduct, but arise out of the same facts or circumstances as a report or complaint of Title IX-based sexual misconduct, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation. Complaints alleging retaliation may be filed according to MSOE's Title IX-based grievance and resolution process.

#### **5.9.1. "Gag" Orders**

Nothing in the prohibition against retaliation shall permit MSOE to impose "gag" orders on parties in a Title IX-based sexual misconduct grievance and resolution process. MSOE may not restrict the ability of parties to discuss the allegations or to gather and to present relevant evidence, which includes talking with witnesses. No party, however, can engage in retaliatory conduct.

#### **5.10. False Evidence**

In an MSOE Title IX-based sexual misconduct grievance and resolution process, any person is prohibited from knowingly giving false statements, information, and testimony, or knowingly misrepresenting the facts pertaining to Title IX-based allegations.

#### **5.11. Recordkeeping**

In its Title IX-based sexual misconduct process, MSOE must maintain for a period of seven years records concerning each Title IX-based investigation, hearing, appeal, and resolution, including, specifically:

- any supportive measures provided to the Complainant and the Respondent
- any notes and other documentation associated with the investigation, hearing, and appeal
- any audio or audiovisual or digital recordings or transcripts associated with the hearing and any other required proceedings
- any determination regarding responsibility
- any sanctions imposed on the Respondent
- any remedies provided to the Complainant (and if applicable, the Respondent) designed to restore or preserve equal access to MSOE's education program and activity
- any appeal and the result therefrom
- any informal resolution and the result therefrom

## **Section 6. The MSOE Sexual Misconduct Grievance and Resolution Process: The University's Initial Response**

### **6.1. Initial Requirements**

Immediately after MSOE has actual knowledge of alleged sexual misconduct, the Title IX Coordinator and other Title IX personnel (if necessary) must

- provide the victim/Complainant with supportive measures including:
  - explain the Title IX resolution process (or other resolution paths, if necessary)
  - explain how to file a formal complaint
  - discuss the alleged victim's wishes concerning how to proceed in the matter
- analyze the alleged conduct with respect to an appropriate resolution path—this entails the selection of the correct guiding policy (e.g., Title IX, Title VII, other policy) to address the matter
- evaluate whether an emergency removal or immediate administrative leave is necessary for the Respondent
- evaluate whether a report and/or formal complaint is subject to dismissal

The filing of a formal complaint with the Title IX Coordinator must take place *before* MSOE can pursue the matter under its Title IX policy. These initial activities can extend beyond the filing of a formal complaint.

#### **6.1.1. Supportive Measures**

The Title IX Coordinator is responsible for the effective implementation of supportive measures.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonable and available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures are intended to restore or to preserve equal access to MSOE's education program and activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or to protect the safety of MSOE's educational environment, or to deter further sexual misconduct.

Examples of supportive measures include

- counseling
- extensions of deadlines, course-related adjustments, and other academic accommodations
- modifications of work or class schedules
- campus escort services
- medical services
- mutual restrictions on contact between the parties

- changes in work or housing locations
- leaves of absence
- increased security and monitoring of certain areas on campus
- any other actions deemed appropriate by the Title IX Coordinator

MSOE will maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that such confidentiality does not impair the University's provision of the measures.

Supportive measures are typically offered after MSOE has acquired actual knowledge of alleged sexual misconduct. However, additional supportive measures may be implemented as needed throughout the grievance and resolution process.

If MSOE does not provide a Complainant with supportive measures, the University must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. This does not prohibit MSOE from providing supportive measures in the future, as needed.

#### **6.1.2. Analysis of the Alleged Conduct with Respect to the Correct Resolution Path**

MSOE strongly encourages the reporting of all alleged sexual misconduct to the MSOE Title IX Coordinator or to a University official with authority to take corrective action. Not all sexual misconduct qualifies as a Title IX offense. *Whether an alleged sexual misconduct report may be resolved by means of a Title IX policy and procedures, by a Title VII policy and procedures, or by other relevant MSOE institutional policies and procedures, depends on the circumstances and facts associated with an alleged conduct.* Therefore, after acquiring actual knowledge of alleged misconduct—and possibly extending through and beyond the filing of a formal complaint—MSOE must engage in an analysis of the known and the alleged circumstances and facts in order to determine the correct resolution path. The analysis of the known and alleged circumstances and facts in a case rests principally on the careful assessment of those circumstances and facts against the provisions in Sections 3.1., 3.2. and 3.3. in this policy.

If the circumstances and facts associated with alleged misconduct indicate that the misconduct must be resolved through a Title IX process, MSOE is prohibited from addressing the matter through another resolution path. If the circumstances and facts indicate that the misconduct cannot be resolved through a Title IX process, MSOE must next assess those circumstances and facts with respect to its Title VII policy and procedures. If this assessment does not support a Title VII resolution path, MSOE next will assess the matter with respect to other institutional policies and procedures. This analysis refers only to the determination of the governing resolution process—this procedure does not preclude the application of other relevant policies, if required, in addressing specific issues associated with the process.

#### **6.1.3. Emergency Removal or Immediate Administrative Leave for the Respondent**

If a Respondent in an alleged Title IX-based sexual misconduct report or complaint is a student (currently enrolled and participating in MSOE's education program and activity), the student may be temporarily removed or suspended on an emergency basis. The emergency removal can *only* take place after MSOE has conducted an official safety and risk analysis, which has determined that an



immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual misconduct justifies the removal. In an emergency removal, MSOE must provide the Respondent with written notice and an opportunity to challenge the decision immediately following the removal.

An employee Respondent may be placed on administrative leave without a requisite showing of threat to physical health or safety. Whether an opportunity exists to challenge the decision depends on other relevant policies (e.g., the MSOE Faculty Handbook, the MSOE Staff Handbook) and associated procedures. No employee Respondent may be kept on indefinite administrative leave.

#### **6.1.4. Dismissal of a Title IX-Based Sexual Misconduct Formal Complaint**

After the filing of a formal complaint, MSOE must investigate the allegations of sexual misconduct. If the conduct alleged in the formal complaint would not constitute Title IX-based sexual misconduct—even if proved—MSOE must dismiss the complaint for purposes of sexual misconduct under Title IX. MSOE must similarly dismiss the complaint if the alleged conduct did not occur in the University's education program or activity, or did not occur against a person in the United States.

Such a dismissal does not preclude action under another MSOE policy.

At the discretion of the Title IX Coordinator, MSOE may dismiss a formal complaint or any allegation therein, if at any time during the investigation or hearing

- the Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein
- the Respondent is no longer enrolled at or employed by MSOE
- the specific circumstances prevent MSOE from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein

The Title IX Coordinator must notify the Complainant in writing of the dismissal, including the reason(s) for dismissal.

#### **6.2. Consolidation of Formal Complaints**

At the discretion of the Title IX Coordinator, MSOE may consolidate formal complaints if they arise out of the same facts and circumstances. More precisely, consolidation of complaints may be effectuated as to allegations of sexual misconduct against more than one Respondent, or by more than one Complainant against one or more Respondent, or by one party against the other party, where the allegations of misconduct arise out of the same facts and circumstances.

#### **6.3. Notice of Allegations**

In its Title IX-based sexual misconduct grievance and resolution process, after the Coordinator has initiated and/or completed all other initial requirements based on a report of sexual misconduct, and after the Title IX Coordinator has received from a Complainant a formal complaint alleging misconduct,

MSOE must issue a written notice of allegations to both parties. The written notice of allegations must feature the following elements:

- notice concerning MSOE's Title IX-based policy, including notice that both a formal and informal resolution processes are available with respect to the allegations
- a recommendation that the parties carefully review the MSOE Title IX-based sexual misconduct policy
- notice of the specific allegations that potentially constitute Title IX-based sexual misconduct, including sufficient details known at the time and with sufficient time to prepare a response before an initial interview. Sufficient details include:
  - identities of the parties involved in the incident, if known
  - the conduct allegedly constituting Title IX-based sexual misconduct
  - the date and location of the alleged incident, if known

"[S]ufficient time to prepare" is understood here to mean 10 working days.

- a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance and resolution process
- notice that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney
- notice that the parties have the right to review all evidence gathered during the investigation of the complaint, subject to rules of preservation
- notice that in MSOE's Title IX-based grievance and resolution process, any person is prohibited from knowingly giving false statements, information, testimony, and evidence, or knowingly misrepresenting the facts pertaining to Title IX-based allegations.

If in the course of an investigation, MSOE decides to investigate allegations about the Complainant or Respondent that are not included in the notice of allegations, MSOE will provide written notice to the parties of the additional allegations.

#### **6.4. Complaint Grievance and Resolution Case Log**

Beginning with the acquisition of actual knowledge of alleged sexual misconduct, MSOE shall open and maintain a detailed case log. The case log may be in either electronic or hard copy format. The case log is confidential and shall be maintained in a secure location (either electronic or physical). All documentation associated with MSOE's response to a notice of actual knowledge and any subsequent formal complaint up to and including the conclusion of the complaint process

shall be housed in the case file. Required documentation includes correspondence concerning supporting measures, meeting notes, investigation notes or recordings, the investigation report, the recording or transcript of all hearings, the written determination, all documentation associated with appeals (if applicable), all documentation associated with informal resolution processes (if applicable), and other relevant documentation. All relevant MSOE Title IX personnel with respect to a report, complaint, and resolution process shall have the ability to contribute necessary documentation to the case file. The case log shall feature a detailed time and activity log that features a chronological description of all procedural steps associated with a formal complaint resolution process from the receipt of a report of misconduct or from the receipt of a formal complaint through the determination and any appeals, including any notifications to the parties and witnesses, interviews with the parties and witnesses, site visits, methods and activities used to gather non-testimonial evidence, hearings, appeals, and other activities. The time expended for each activity shall be recorded.

## **Section 7. The Formal Complaint Resolution Process: Part 1—Title IX Investigations**

The MSOE Title IX-based default grievance and resolution process is a formal complaint resolution process. At MSOE, an informal complaint resolution process is additionally available (see below).

In a formal complaint resolution process, after the initiation and/or completion of initial requirements and the notice of allegations, MSOE will undertake a University-led investigation, regardless of whether or not a criminal investigation by the local police is initiated.

### **7.1. Purpose and General Principles of an Investigation**

**7.1.1.** In an MSOE Title IX-based sexual misconduct investigation, the burden of proof, and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests with MSOE and not on the parties. The purpose of the investigation in the process is to collect relevant inculpatory and exculpatory evidence so that an impartial decision can be made concerning whether or not the alleged sexual misconduct occurred. Inculpatory evidence tends to support the decision that a Respondent committed a sexual misconduct offense, as alleged. Exculpatory evidence tends to support the decision that a Respondent did not commit a sexual misconduct offense, as alleged.

**7.1.2.** Parties must have sufficient notice to prepare for and meaningfully participate in an investigation. MSOE will provide to the parties written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings.

**7.1.3.** One or more trained Title IX investigators shall conduct the investigation in an independent manner solely for the purpose of gathering and compiling inculpatory and exculpatory evidence relevant to the complaint. The Title IX investigation is evidence-gathering, not fact-finding.

**7.1.4.** In an investigation, the parties must have an equal opportunity to present their statements, to present witnesses, including fact and expert witnesses, and to present other inculpatory and exculpatory evidence. Neither party shall be restricted in their ability to gather and to present relevant evidence.

### **7.2. The Investigative Record**

Note-taking and audio recording are both appropriate methods of making a record of investigative interviews and meetings. If an investigator takes notes, the investigator should employ the notes to write a coherent memorandum shortly after the interview. The interview notes must include clear information about the time, place, date, and persons involved in the interview. If an interview or meeting is recorded, the recording must clearly state the time, place, date, and persons involved in the interview.

Parties do not have the right to insist that MSOE record an investigative interview and meeting.

Each Title IX investigation shall feature either an electronic or hard copy case file. The case file must include a detailed log.

### **7.3. The Investigation and Evidence on Sexual History**

In a Title IX investigation, MSOE will not collect evidence of a Complainant's sexual predisposition or prior sexual history, unless

- such evidence is offered to prove that someone other than the Respondent committed the alleged misconduct, or
- specific incidents of the Complainant's prior sexual behavior *with the Respondent* are offered to prove consent

### **7.4. Privileged Records**

A privileged record is a record or documentation made or maintained by a physician, psychiatrist, psychologist, licensed counselor, attorney, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Complainant or the Respondent. In an investigation, MSOE cannot access privileged records and/or information, unless the Complainant or the Respondent voluntarily consent to allowing such access to MSOE—this includes MSOE's own counseling and health records and information.

### **7.5. Review of Evidence by the Parties**

So that each party can meaningfully respond to the evidence gathered in a Title IX investigation prior to the conclusion of the investigation, MSOE must provide both parties with an equal opportunity to inspect and to review any evidence obtained during the investigation and that is directly related to the allegations raised in a formal complaint. This includes (i) all inculpatory and exculpatory evidence, whether obtained from a party or other source, and (ii) the evidence upon which MSOE does not intend to rely in reaching a determination regarding responsibility.

Prior to the completion of the investigative report by the Title IX investigators, MSOE must send to each party and the party's advisor (if any) the evidence subject to inspection and review in an electronic format or in hard copy. The parties are prohibited from sharing evidence with 3<sup>rd</sup> parties apart from their advisor. The parties must have at least 10 working days to submit a written response, which the Title IX investigators will consider prior to completion of the investigative report. Depending on the written responses, additional investigation may be needed.

## **7.6. The Investigation Report**

After concluding the Title IX investigation, the investigators must complete an investigation report that fairly summarizes relevant evidence, including inculpatory and exculpatory evidence. The investigation report must not include factual findings and determinations of policy violations, which are made in a subsequent Title IX hearing associated with the complaint.

The investigators should consider the written responses of the parties (which the parties can submit after reviewing all of the evidence gathered in the matter, as indicated in Section 7.5.) in drafting the final language of the investigation report.

At least 10 working days prior to the Title IX hearing associated with the complaint, the final version of the investigative report must be sent to each party and the party's advisor, if any, in an electronic format or a hard copy, for their review and written response in preparation for the subsequent hearing.

## **7.7. Advisors During the Title IX Investigation**

In MSOE's Title IX investigations, the Complainant and the Respondent may be accompanied at any investigative interview and meeting by an advisor of their choice. The advisor may be, but is not required to be, an attorney. MSOE is not required to provide an advisor during an investigation.

In the investigation phase of the Title IX grievance and resolution process, a party's advisor (i) provides personal support, (ii) helps the party to prepare for meetings and interviews, (iii) accompanies the party to all meetings and interviews, and (iv) assists the party in reviewing the evidence prior to the close of the investigation.

In investigative interviews and meetings, advisors must remain passive, and must not argue on behalf of their respective parties. Advisors must not represent nor speak for a party during an interview. Advisors must not impede nor obstruct communications between MSOE and the parties during an investigation. MSOE may exclude from participation in the process an advisor who does not comply with these rules of conduct. If an advisor violates rules of conduct during an investigative interview, meeting, or interaction, the proceeding will be suspended and the advisor will be prohibited from further participation. If the party desires to name a new advisor, the proceeding may not be resumed until the new advisor is in place.

## **Section 8. The Formal Complaint Resolution Process: Part 2—Title IX Live Hearings**

### **8.1. Purpose of the Title IX Live Hearing**

The fundamental purpose of a Title IX Hearing is to provide a mechanism to hear testimony and to receive non-testimonial evidence with respect to a Title IX-based sexual misconduct formal complaint so that the MSOE decision-maker (or panel of decision-makers) in the Hearing can determine the facts associated with the complaint under a preponderance of evidence evidentiary standard. The decision-maker (or panel of decision-makers) must then apply those facts to MSOE's Title IX-based sexual misconduct policy, and issue a written determination resolving the formal complaint, and imposing disciplinary sanctions and remedies, as necessary.

### **8.2. Notice of Title IX Hearings**

The parties in a Title IX Hearing shall receive at least 10 days in advance written notice of the date, time, location, participants, and rules of conduct for the Hearing. Additional scheduling and logistical details, as required, must be included in the notice.

Any witnesses shall receive at least 10 days in advance written notice of the hearing including notice of the date, time, location, participants, rules of conduct for the hearing, and the process to obtain an excused absence to participate in the hearing.

### **8.3. Participants in a Title IX Hearing**

At MSOE, participants in a Title IX Hearing are limited to the following people:

- the decision-maker(s)
- other necessary institutional personnel, as needed, and institutional advisors
- the Complainant
- the Respondent
- the Complainant's advisor
- the Respondent's advisor
- witnesses *as they are called to testify*
- one support person (e.g., counselor, family member, friend) for the Complainant
- one support person (e.g., counselor, family member, friend) for the Respondent

At the discretion of the decision-maker(s), additional participants may be invited to attend a Hearing. The decision-maker(s) cannot be the same person as the Title IX Coordinator or the Title IX investigator(s).

#### **8.4. How a Title IX Hearing is Conducted**

##### **8.4.1. A Live Title IX Hearing**

The Hearing must be live. That is, it must feature contemporaneous participation by the parties and their advisors, as well as other required personnel. A Hearing can be held in a single room with all parties physically present. Or, at the request of either party, the Hearing may occur with parties located in separate rooms, with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions. Or, at MSOE's discretion, any or all parties, witnesses, and other participants may appear at the live Hearing virtually, with technology enabling participants simultaneously to see and hear each other.

##### **8.4.2. Rules of Conduct at a Title IX Hearing**

###### **8.4.2.1. Administration of the Hearing**

The Title IX Hearing is to be administered by a decision-maker or decision-makers. At the discretion of MSOE, a Hearing may feature a single decision-maker or a panel of decision-makers with a chairperson.

###### **8.4.2.2. Behavior at a Hearing**

All participants in an MSOE Title IX Hearing must maintain decorum and order, and act professionally. Participants must not speak out of order. All communications must be directed to the decision-maker (or the Chair of a panel of decision-makers), with the exception of questions posed to the other party and witnesses by each party's respective advisor. At an in-person Hearing, all participants will remain in their respective assigned seating at all times.

Under Title IX law, the parties are not permitted to personally engage in questioning and cross-examination.

At the discretion of the decision-maker(s), any participant who violates these behavioral requirements can be dismissed from the Hearing.

###### **8.4.3. Length of the Title IX Hearing**

In an MSOE Title IX Hearing, the decision-maker (or decision-makers) must set reasonable time limits on the Hearing and its constituent parts. The advisors for each party must have a reasonable opportunity to conduct questioning and cross-examination, but they do not have the right to conduct such questioning and cross-examination as long as they want. The decision-maker(s) will set the overall length to the Hearing in advance and keep the parties on schedule.



Breaks, recesses, and pauses in the proceedings may be called at the discretion of the decision-maker(s).

#### **8.4.4. Pre-Hearing Meeting**

At the request of the Title IX Hearing decision-maker(s) or the advisors for the parties in a Title IX Hearing, the decision-maker(s) and advisors may schedule a pre-Hearing meeting to discuss logistical details associated with the upcoming Hearing, as well as other relevant matters associated with the proper functioning of the Hearing. These relevant matters can include Hearing procedures, any necessary stipulations to ensure an expeditious proceeding, and the list of witnesses scheduled to attend. A pre-Hearing meeting can include attendance by the parties—however, if both parties desire to attend a pre-Hearing meeting, they must be scheduled to appear in such a manner that they are not in attendance at the same time.

#### **8.4.5. Advisors of the Parties at a Title IX Hearing**

Each party is required to have an advisor present at a Title IX Hearing. Each party may select and bring their own advisor of choice to the Hearing. The advisor may be, but is not required to be, an attorney. The advisor may be, but is not required to be, the same advisor that supported the party in the investigation phase, if the party elected to have an advisor during the investigation. If a party does not have an advisor present at the live Hearing, MSOE must provide without fee or charge to that party, an advisor of MSOE's choosing, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

In the Title IX Hearing phase of the grievance and resolution process, a party's Hearing advisor (i) provides personal support throughout the process, (ii) helps the party to prepare for a pre-Hearing meeting and the Hearing itself, (iii) accompanies the party to a pre-Hearing meeting and the Hearing, and (iv) conducts live questioning of the other party and witnesses at the Hearing. The fundamental purpose of a party's advisor in a Title IX Hearing is to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live Hearing must be conducted directly, orally, and in real time. At MSOE, the role of the party's advisor is limited to such cross-examination. An advisor must limit their questioning to relevant and appropriate questions intended to reasonably support the case of the party that the advisor is supporting. An advisor must not engage in other activity (such as stating objections to statements and events in a Hearing, presenting arguments, or engaging in "zealous advocacy"). An advisor must not speak for a party. An advisor may respectfully direct questions concerning relevance and procedures to the decision-maker(s), but must not engage in argument with the decision-maker(s). An advisor may respectfully request decision-maker(s) to explain decisions concerning relevance if such explanation is not offered, but must not object to, or argue with, decisions to exclude questions on the basis of relevance. At the discretion of the decision-maker(s), any advisor who violates these requirements, or who violates standards of behavior, can be dismissed from the Hearing, and the Hearing will be suspended until a new advisor can be installed.

#### **8.4.6. Relevance in a Title IX Hearing**

Evidence is relevant if

- it has a tendency to make a fact more or less probable than it would be without the evidence, and
- the fact is of consequence in determining the action

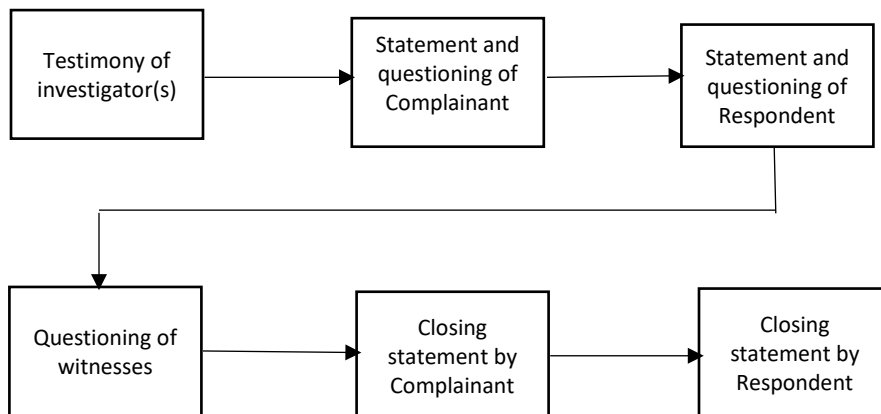
A Title IX Hearing advisor may conduct only relevant cross-examination and other questioning of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

#### 8.4.6.1. Questions Concerning the Complainant's Sexual Behavior

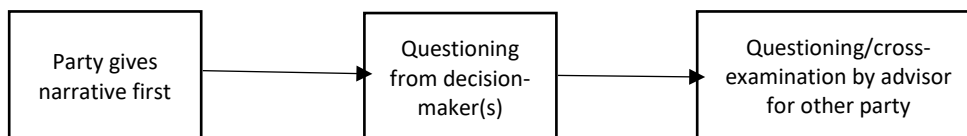
Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

#### 8.4.7. Recommended Sequence of Events and Questioning in a Title IX Hearing

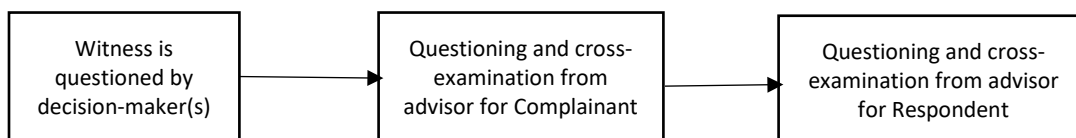
In an MSOE Title IX Hearing, the decision-maker(s) determine the sequence of events. The following sequence of events is recommended, but not required:



The following questioning sequence is recommended for the parties:



The following questioning sequence is recommended for the witnesses:



## **8.5. Determination Regarding Responsibility in a Title IX-Based Sexual Misconduct Complaint**

### **8.5.1. Written Determination**

After a Title IX Hearing, the decision-maker(s) must deliberate and consider all of the admissible testimony and admissible non-testimonial evidence by evaluating the evidence for weight and credibility. Not all evidence has equal value. Some evidence may be more reliable than other evidence. The weight of different pieces of evidence may vary depending on a range of factors, including credibility, corroboration, consistency, level of detail, expertise of a witness, and whether a witness is disinterested. Using a preponderance of evidence evidentiary standard, the decision-maker(s) must resolve disputed issues of fact, and using the facts as found, apply MSOE's Title IX-based sexual misconduct policy to those facts to determine whether sexual misconduct occurred.

After considering the evidence, the decision-maker(s) must issue a written determination regarding responsibility. That is, the decision-maker(s) must issue a written decision determining whether or not the Respondent is responsible for a violation of MSOE's Title IX-based sexual misconduct policy.

The written determination must include the following sections.

- A section devoted to the identification of the allegations potentially constituting Title IX-based sexual misconduct. Information on the allegations shall be found in the case file.
- A section devoted to a description of the procedural steps taken from the receipt of the formal complaint through the determination, including notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held. Information on all procedural steps shall be found in the case file.
- A section devoted to a description and explanation of the findings of fact that support the determination.

- A section devoted to a description and explanation of the conclusions regarding the application of relevant policy definitions to the facts.
- A section devoted to a statement of, and rationale for, each finding concerning each allegation.
- A section devoted to a statement concerning the disciplinary sanctions that MSOE will impose on the Respondent, if the Respondent is found responsible. At MSOE, the decision-maker(s) shall impose disciplinary sanctions, as required, in consultation with the Title IX Coordinator, the Dean of Students (for student Respondents), the Director of Human Resources (for staff employee and faculty Respondents), and the Vice President of Academics (for faculty Respondents).
- A section devoted to a statement concerning whether remedies designed to restore or preserve equal access to MSOE's education program or activity will be provided to the Complainant, and if so, what the remedies are. The Title IX Coordinator is responsible for the effective implementation of remedies.
- A section devoted to explaining the procedures and grounds for appeal.

The written determination must be issued contemporaneously to the Complainant and the Respondent.

## **Section 9. The Formal Complaint Resolution Process: Part 3—Appeals**

### **9.1. Purpose of a Title IX Appeal**

The purpose of the appeal is to permit either or both the Complainant and the Respondent to challenge on limited grounds the determination regarding responsibility resulting from a Title IX Hearing or the dismissal of a formal complaint. The appeal process is not an opportunity to re-argue the outcome of a Hearing.

### **9.2. Permitted Appellants**

Either or both the Complainant and the Respondent are permitted to file a request for a Title IX appeal to challenge a determination regarding responsibility resulting from a Title IX Hearing or the dismissal of a complaint. Third-party persons cannot file an appeal on behalf of the parties.

### **9.3. Time Line for a Title IX Appeal**

Parties have five (5) business days to file a request for appeal after a written determination is issued or after a written dismissal of a complaint is issued.

### **9.4. Permitted Grounds for a Title IX Appeal**

#### **9.4.1. Procedural Irregularity**

Procedural irregularity and/or procedural errors that affected the outcome of a resolution process can serve as the ground for a Title IX appeal. Procedural irregularity or errors that affect a resolution process outcome are referred to as *prejudicial errors*. Procedural irregularity or errors that do not affect a resolution process outcome are referred to as *nonprejudicial* or *harmless errors*. Nonprejudicial or harmless errors are not a ground for a Title IX appeal.

#### **9.4.2. New Evidence**

New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, and that could affect the outcome of the resolution process, is a ground for a Title IX appeal.

#### **9.4.3. Bias or Conflict of Interest of the MSOE Title IX Personnel**

The existence of bias or a conflict of interest either for or against complainants or respondents generally, or for or against the individual Complainant or Respondent in a resolution process, and that affected the outcome of a resolution process, can serve as a ground for a Title IX appeal.

### **9.5. Submitting a Title IX Appeal**

To submit a request for a Title IX appeal, either or both parties in a resolution process must submit a written statement featuring the following elements:

- A statement concerning the ground(s) of appeal
- An explanation, featuring sufficient specificity, of the rationale for the appeal and why the appeal should be granted

The written appeal statement must be submitted to the appeals decision-maker. The name and contact information for the appeals decision-maker must appear in the written determination associated with a resolution process.

The appeals decision-maker cannot be the same person as a decision-maker in the Title IX Hearing, nor can the appeals decision-maker be the Title IX Coordinator.

## **9.6. Notice of a Title IX Appeal**

When one or both parties in a resolution process file a request for appeal, the other party must be notified in writing of the appeal.

### **9.6.1. Statement of Opposition**

When an appeal is requested by one or both parties, the other party shall have an equal opportunity to submit to the appeals decision-maker a written statement in opposition to the request.

## **9.7. Immediate Dismissal of a Request for Appeal**

The appeals decision-maker shall immediately dismiss a request for a Title IX appeal that has been filed after the timeline stated in this policy and/or if the appellant in their request for appeal fails to articulate one or more of the three permissible grounds for appeal.

## **9.8. Written Decision Concerning the Appeal**

When a request for a Title IX appeal is granted, the appeals decision-maker must conduct a review of the record of the relevant resolution process, including the investigation report, the written determination, and any other relevant documentation. The focus of the appeals decision-maker is limited in scope. The decision-maker examines the record with a focus only on information that is directly relevant to the ground(s) of the appeal. After reviewing the record, the appeals decision-maker must produce a written decision that states the outcome of the appeal, together with the rationale for the decision. The written decision must be sent simultaneously to both parties.

The written appeals decision is final.

## **9.9. Outcomes of a Title IX Appeal**

Three outcomes are possible in a Title IX appeal.

### **9.9.1. Appeal Denied**

In this outcome, the appeal is denied, and the determination of responsibility, or the dismissal of the formal complaint, is affirmed and final.

### **9.9.2. Appeal Granted with Determination Reversed**

In this outcome, the appeal is granted, and the determination of responsibility is reversed. That is, a Title IX Hearing results in a written determination of responsibility consisting of one of two possible decisions—either the Respondent was determined to be in violation of the Title IX policy, or the Respondent was found not to be in violation of the policy. When the appeal is granted and the determination reversed, the original decision is reversed. This decision is final.

### **9.9.3. Appeal Granted with Determination Vacated and Remanded**

In this outcome, the appeal is granted, and the determination of responsibility is vacated, or rendered null and void. The complaint is sent back to the Title IX Coordinator, who must ensure that the resolution process for the complaint is restarted with a new investigation and/or new Hearing, as applicable, featuring new Title IX personnel.

## **Section 10. The Informal Complaint Resolution Process**

### **10.1. Purpose of a Title IX Informal Resolution Process**

The Title IX informal resolution process is a voluntary process to resolve formal complaints of Title IX-based sexual misconduct through a mechanism other than the default formal investigation and adjudication resolution process.

### **10.2. Requirements**

#### **10.2.1. Employee-on-Student Informal Resolution Prohibition**

The Title IX informal resolution process cannot be used to address complaints in which an MSOE employee has engaged in alleged Title IX-based sexual misconduct with a student. In this situation, the formal resolution process is required.

#### **10.2.2. Formal Complaint Required**

MSOE cannot offer an informal resolution process for an alleged Title IX-based sexual misconduct situation unless a formal complaint is filed and notice of allegations is sent to the Complainant and the Respondent.

#### **10.2.3. Voluntary Participation**

The Complainant and the Respondent must both voluntarily agree to participate in a Title IX-based informal resolution process. MSOE must first obtain the parties' voluntary written consent to the informal resolution process before commencing the process. The written consent must be signed by both parties.

MSOE cannot at any time require the parties to participate in an informal resolution process. MSOE cannot require participation in an informal resolution process as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right.

#### **10.2.4. Availability of an Informal Resolution Process**

In an alleged Title IX-based sexual misconduct situation, an informal resolution process is available to the Complainant and the Respondent from the filing of a formal complaint and notice of allegations up to the time that a determination regarding responsibility is reached.

At no point can MSOE require the parties to engage in an informal resolution process and waive their right to a formal resolution process entailing a full investigation and adjudication of the matter.

MSOE has the discretion to determine if an informal resolution process is appropriate to address a complaint. The University may decline to offer informal resolution despite one or more of the parties' wishes. Circumstances when MSOE may decline to allow informal resolution include but are not limited to when MSOE determines that the alleged conduct would present a future risk of harm to others.



#### **10.2.5. Withdrawal from the Informal Resolution Process**

The parties have the right to withdraw from an informal resolution process at any time up until the point it is final and resume a formal resolution process entailing a full investigation and adjudication of an alleged Title IX-based sexual misconduct situation.

The parties need to be aware that records generated during the informal resolution process subsequently may be shared in the formal resolution process.

#### **10.2.6. Written Notice**

In an alleged Title IX-based sexual misconduct situation, after both parties have provided their written consent for voluntarily participating in an informal resolution process, MSOE will issue a written notice to the parties, which will feature the following elements:

- the allegations
- the general and specific requirements of the informal resolution process, including the circumstances under which the resolution precludes the parties resuming a formal resolution process—typically, this is at the point when the informal resolution is finalized, but there may be contingency clauses
- a statement indicating that either party can request to resume the formal resolution process up until the informal resolution process is finalized
- an explanation of any consequences resulting from participation in the informal resolution process, including that records will be maintained or could be shared

### **10.3. Types of Informal Resolution**

MSOE offers parties the following types of informal resolution.

#### **10.3.1. Facilitated Exchange of Resolution Offers**

At MSOE, the exchange of resolution offers is facilitated by the Title IX Coordinator.

#### **10.3.2. Mediation**

MSOE employs a mediation between the parties in its informal resolution process, facilitated by the Title IX Coordinator (or designee), with the goal of reaching a mutually agreeable written settlement with terms. The mediation features individual meetings with the Title IX Coordinator (or designee) and each of the parties. Multiple meetings may be required.

#### **10.3.3. Settlement with the Involvement of Attorneys**

In this informal resolution process, both the Complainant and the Respondent must be represented by licensed attorneys. At MSOE, the Title IX Coordinator coordinates this process. All documentation associated with the settlement must be made available to the MSOE Title IX Coordinator.

#### **10.4. Qualifications for Facilitators of Informal Resolution**

At MSOE, the Title IX Coordinator administers the informal resolution process and can facilitate it. At their discretion, the Coordinator may designate other MSOE Title IX personnel to facilitate informal resolution associated with specific complaints. All informal resolution facilitators, including the Title IX Coordinator, must be suitably qualified and trained. All facilitators of informal resolution processes at MSOE are subject to Title IX rules concerning bias and conflicts of interest.

#### **10.5. Length of an Informal Resolution Process**

At MSOE, the Title IX-based informal resolution process should be reasonably prompt. The implementation of an informal resolution process has the effect of suspending the default formal resolution process entailing an investigation and a Hearing. If the informal resolution process fails or appears futile, MSOE will promptly resume the formal resolution process.

#### **10.6. Conclusion of the Informal Resolution Process**

The informal resolution process is final, except for any contingency clauses. A party cannot demand a formal resolution process (entailing an investigation and a Hearing) concerning the same conduct that has been resolved through informal resolution.

##### **10.6.1. Written Agreement**

The Title IX informal resolution process must result in a written agreement that must be signed by both parties.

##### **10.6.2. Contingency Clauses**

At MSOE, it is permissible to include a suitable contingency clause in the final agreement associated with an informal resolution process. The purpose of the contingency clause is to provide either or both parties with recourse in the event that either party fails to fulfill the agreement in its entirety as stipulated. For example, through an informal resolution process, a Complainant and a Respondent might agree that the Respondent will apologize for their misconduct and attend three counseling sessions, but that if the Respondent sexually harasses the Complainant in the future, the Complainant will be free to file a formal complaint that includes the conduct addressed in the informal resolution. Compliance with agreements will be monitored by the Dean of Students office. Failure to comply will result in administrative disciplinary procedures.

#### **10.7. Recordkeeping**

##### **10.7.1. Informal Resolution Documentation**

The Title IX informal resolution process must be thoroughly documented. Such documentation shall consist of, but not be limited to, the written consent on the part of the parties to voluntarily

participate, the informal resolution written notice, any documentation associated with the withdrawal of a party from the process, the informal resolution agreement, and so on.

At the discretion of MSOE, some or all terms associated with an informal resolution settlement may continue after the conclusion of the process, and after one or both parties are no longer participating in MSOE's education programs and activities as students. This provision may be necessary for several reasons—for example, after ending their participation as students, one or both parties may attend events as alumni associated with MSOE's education programs and activities.