

Policy: PG- 6

Subject: Sexual Misconduct Policy

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PURPOSE:

Morehead State University is committed to complying with state law, Title VII, as well as Title IX and related laws including the Jeanne Clery Act (Clery Act) and the Campus Sexual Violence Elimination Act (SaVE Act). These policies and procedures are adopted to prevent, investigate and respond to incidents of sexual misconduct, including sexual harassment, sexual assault, domestic violence, dating violence, and stalking. These guidelines apply to all members of the University community (students, faculty, and staff). The University will respond promptly and effectively to reports of sexual misconduct, and will take appropriate action to prevent, to correct, and when necessary, to discipline behavior that violates this policy on Sexual Misconduct.

APPLICATION:

This policy applies to all employees and students of the University, including volunteers, guests and subcontractors of the University.

Morehead State University is committed to creating and maintaining a community where all individuals who participate in University programs and activities can work and learn together in an atmosphere free of harassment, exploitation, or intimidation. Morehead State University will not tolerate sexual misconduct as defined in this Policy, in any form. Such acts of violence are prohibited by University policy, as well as state and federal laws. Individuals who the University determines more likely than not engaged in these types of behaviors are subject to penalties up to and including dismissal or separation from Morehead State University, regardless of whether they are also facing criminal or civil charges in a court of law.

Nothing contained in this policy shall be construed to supplant or modify existing laws of the Commonwealth of Kentucky and the United States. This policy shall not be used to remedy acts which are crimes under the laws of the Commonwealth of Kentucky or the United States.

DEFINITIONS:

A. MSU POLICY DEFINITIONS

MSU policy prohibits gender discrimination. Sexual misconduct is a form of gender discrimination. Different forms of sexual misconduct are explained in this policy. The

determination of what constitutes sexual misconduct will vary with the facts and circumstances of each case. For acts of gender discrimination that are not covered by one of the forms of sexual misconduct addressed in this policy, please see MSU's other policies on discrimination.

Sexual Harassment can take one of two forms. The first form involves unwelcome verbal, electronic, physical and/or visual conduct based on sex, which both (1) unreasonably interferes with a person's work or educational performance, and (2) creates an environment that both a reasonable person and the specific person being harassed would find intimidating, hostile or offensive. This form may come from a supervisor, one's educator or from any other person at the institution. The second form involves either (1) submission to unwelcome advances of a supervisor or educator as an express or implied condition of receiving work or educational benefits, or (2) a tangible work or educational detriment resulting from a person's failure or refusal to submit to sexual demands of a supervisor or educator. Examples of sexual harassment include (but are not limited to):

- Unwelcome sexual flirtation or advances.
- Offering employment, promotions, grades or other benefits in exchange for sexual favors.
- Making or threatening reprisals for refusing sexual advances.
- Unwelcome visual and/or electronic conduct such as leering; making sexual gestures; displaying sexually suggestive objects or pictures, cartoons or posters; and suggestive or obscene letters, notes or invitations.
- Unwelcome verbal or electronic conduct such as derogatory comments; epithets; slurs; sexual innuendo; sexual jokes; graphic verbal commentaries about a person's body; and sexually degrading words used to describe a person.
- Unwelcome physical conduct such as unwarranted, suggestive or offensive touching; and impeding or blocking movement.

Sexual Assault refers to any sexual act directed against another person, forcibly and/or against the person's will; or not forcibly or against the person's will where the survivor is incapable of giving consent, as well as incest or statutory rape. Examples of sexual assault for purposes of this policy include but are not limited to:

- Intentional touching of another person's intimate parts without that person's consent;

- Other intentional sexual contact with another person without that person's consent;
- Coercing, forcing or attempting to coerce or force a person to touch another person's intimate parts without that person's consent; or
- Rape, which is penetration, no matter how slight, of (1) the vagina or anus of a person by any body part of another person or by an object, or (2) the mouth of a person by a sex organ of another person, without that person's consent.

Domestic Violence includes felony or misdemeanor crimes of violence committed by:

- A current or former spouse or intimate partner of the survivor;
- A person with whom the survivor shares a child in common;
- A person who is or was residing in the same household as the survivor; or
- Any person against someone who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Dating Violence refers to violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the survivor.

Stalking occurs when someone engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

Sexual exploitation occurs when someone takes sexual advantage of another person for the benefit of anyone other than that person without that person's consent. Examples of behavior that could rise to the level of sexual exploitation for purposes of this policy include but are not necessarily limited to:

- Prostituting another person;
- Recording images (e.g., video, photographs) or audio of another person's sexual activity, intimate body parts or nakedness without that person's consent;
- Distributing images (e.g., video, photographs) or audio of another person's sexual activity, intimate body parts or nakedness if the person distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure and objects to such disclosure; and

- Viewing another person's sexual activity, intimate body parts or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's consent, and for the purpose of arousing or gratifying sexual desire.

Unwelcome conduct does not have to include intent to harm, be directed at a specific target or involve repeated incidents, and can involve persons of the same or opposite sex. Participation in conduct or the failure to complain does not always mean the conduct was welcome. The fact that a person has welcomed some conduct does not necessarily mean a person welcomed other conduct. Similarly, the fact that a person may have invited, requested or otherwise consented to conduct on one occasion does not necessarily mean the conduct is welcome on a later occasion.

Consent as used in this policy is defined as follows:

Consent is **informed**. Consent is an affirmative, knowing, unambiguous, and conscious decision by each participant to engage in mutually agreed-upon sexual activity.

Consent is **voluntary**. It must be given without coercion, force, threats, or intimidation. Consent means positive cooperation in the act or expression of intent to engage in the act pursuant to an exercise of free will. Even though consent does not necessarily need to be verbal, relying purely on non-verbal communication can lead to misunderstandings. So, a spoken agreement is the most clearly indicated form of consent. It may not, in any way, be inferred from silence, passivity, lack of resistance or lack of an active response alone. Assuming that consent was given by the absence of a "no" is wrong.

Consent is **revocable**. Consent to some form of sexual activity does not imply consent to other forms of sexual activity. Consent to sexual activity on one occasion is not consent to engage in sexual activity on another occasion. A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Even in the context of a relationship, there must be mutual consent to engage in sexual activity. Consent must be ongoing throughout a sexual encounter and can be revoked at any time. Once consent is withdrawn, the sexual activity must stop immediately.

Consent cannot be given when a person is **incapacitated**. A person cannot consent if s/he is unconscious or coming in and out of consciousness. A person cannot consent if s/he is under the threat of violence, bodily injury or other forms of coercion. A person cannot consent if his/her understanding of the act is affected by a physical or mental impairment. Consent must be given with rational and reasonable judgment, so if the survivor was

physically incapacitated from the consumption of alcohol or drugs, unconsciousness, or any other kind of inability, consent cannot be obtained.

B. CRIMINAL DEFINITIONS

Section 304 of the Violence Against Women Reauthorization Act (VAWA), known as the SaVE Act provision, obligates MSU's policy to include the definitions used by Kentucky's penal code (KRS Chapters 500 to 534) for "domestic violence," "dating violence," "sexual assault," "stalking," and "consent" with respect to sexual offenses. Kentucky's penal code does not define domestic violence or dating violence, although other crimes may apply to those circumstances. Kentucky's penal code defines sexual abuse in lieu of sexual assault, stalking, and lack of consent, which are set forth below. Please note that the Kentucky penal code definitions are for your information only as required by federal law. For purposes of applying MSU's policy, the definitions in Part A will govern.

510.110 Sexual abuse in the first degree

(1) A person is guilty of sexual abuse in the first degree when:

- (a) He or she subjects another person to sexual contact by forcible compulsion; or
- (b) He or she subjects another person to sexual contact who is incapable of consent because he or she:

- 1. Is physically helpless;
- 2. Is less than twelve (12) years old; or
- 3. Is mentally incapacitated; or

(c) Being twenty-one (21) years old or more, he or she:

- 1. Subjects another person who is less than sixteen (16) years old to sexual contact;
- 2. Engages in masturbation in the presence of another person who is less than sixteen (16) years old and knows or has reason to know the other person is present; or
- 3. Engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate; or

(d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she, regardless of his or her age, subjects a minor who is less than eighteen (18) years old, with whom he or she comes into contact as a result of that position, to sexual contact or engages in masturbation in the presence of the minor and knows or has reason to know the minor is present or engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate.

510.120 Sexual abuse in the second degree

(1) A person is guilty of sexual abuse in the second degree when:

- (a) He or she subjects another person to sexual contact who is incapable of consent because he or she is an individual with an intellectual disability;
 - (b) He or she is at least eighteen (18) years old but less than twenty-one (21) years old and subjects another person who is less than sixteen (16) years old to sexual contact; or
 - (c) Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who is at least eighteen (18) years old and who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to sexual contact.
- (2) In any prosecution under subsection (1)(b) of this section, it is a defense that:
- (a) The other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen (16) years old; and
 - (b) The other person was at least fourteen (14) years old; and
 - (c) The actor was less than five (5) years older than the other person.

510.130 Sexual abuse in the third degree

- (1) A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact without the latter's consent.
- (2) In any prosecution under this section, it is a defense that:
- (a) The other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen (16) years old; and
 - (b) The other person was at least fourteen (14) years old; and
 - (c) The actor was less than eighteen (18) years old.

508.130 Definitions for KRS 508.130 to 508.150

As used in KRS 508.130 to 508.150, unless the context requires otherwise:

- (1) (a) To "stalk" means to engage in an intentional course of conduct:
- 1. Directed at a specific person or persons;
 - 2. Which seriously alarms, annoys, intimidates, or harasses the person or persons; and
 - 3. Which serves no legitimate purpose.
- (b) The course of conduct shall be that which would cause a reasonable person to suffer substantial mental distress.
- (2) "Course of conduct" means a pattern of conduct composed of two (2) or more acts, evidencing a continuity of purpose. One (1) or more of these acts may include the use of any equipment, instrument, machine, or other device by which communication or information is transmitted, including computers, the Internet or other electronic network, cameras or other recording devices, telephones or other personal communications devices, scanners or other copying devices, and any device that enables the use of a transmitting device. Constitutionally protected activity is not included within the meaning of "course of conduct." If the defendant claims that he was engaged in constitutionally

protected activity, the court shall determine the validity of that claim as a matter of law and, if found valid, shall exclude that activity from evidence.

(3) "Protective order" means:

- (a) An emergency protective order or domestic violence order issued under KRS 403.715 to 403.785;
- (b) A foreign protective order, as defined in KRS 403.7521(1);
- (c) An order issued under KRS 431.064;
- (d) A restraining order issued in accordance with KRS 508.155; and
- (e) Any condition of a bond, conditional release, probation, parole, or pretrial diversion order designed to protect the victim from the offender.

508.140 Stalking in the first degree

(1) A person is guilty of stalking in the first degree,

(a) When he intentionally:

- 1. Stalks another person; and
- 2. Makes an explicit or implicit threat with the intent to place that person in reasonable fear of:
 - a. Sexual contact as defined in KRS 510.010;
 - b. Serious physical injury; or
 - c. Death; and

- (b)
 - 1. A protective order has been issued by the court to protect the same victim or victims and the defendant has been served with the summons or order or has been given actual notice; or
 - 2. A criminal complaint is currently pending with a court, law enforcement agency, or prosecutor by the same victim or victims and the defendant has been served with a summons or warrant or has been given actual notice; or
 - 3. The defendant has been convicted of or pled guilty within the previous five (5) years to a felony or to a Class A misdemeanor against the same victim or victims; or
 - 4. The act or acts were committed while the defendant had a deadly weapon on or about his person.

508.150 Stalking in the second degree

(1) A person is guilty of stalking in the second degree when he intentionally:

(a) Stalks another person; and

(b) Makes an explicit or implicit threat with the intent to place that person in reasonable fear of:

- 1. Sexual contact as defined in KRS 510.010;
- 2. Physical injury; or
- 3. Death.

510.020 Lack of consent

(1) Whether or not specifically stated, it is an element of every offense defined in this chapter that the sexual act was committed without consent of the victim.

(2) Lack of consent results from:

- (a) Forcible compulsion;

- (b) Incapacity to consent; or
 - (c) If the offense charged is sexual abuse, any circumstances in addition to forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct.
- (3) A person is deemed incapable of consent when he or she is:
- (a) Less than sixteen (16) years old;
 - (b) An individual with an intellectual disability or an individual that suffers from a mental illness;
 - (c) Mentally incapacitated;
 - (d) Physically helpless; or
 - (e) Under the care or custody of a state or local agency pursuant to court order and the actor is employed by or working on behalf of the state or local agency.
- (4) The provisions of subsection (3)(e) of this section shall not apply to persons who are lawfully married to each other and no court order is in effect prohibiting contact between the parties.

TITLE IX COORDINATOR

MSU's Title IX Coordinator and Deputy Coordinators play the main role in carrying out MSU's commitment to provide a positive learning, teaching and working environment for the entire MSU community. By providing training on preventing sexual misconduct and retaliation, the Title IX Coordinator and Deputy Coordinators strive to maintain a safe campus and provide a good MSU experience for all.

The responsibilities and functions of the Title IX Coordinator and Deputy Coordinators are set out in this policy, but in general, the Title IX Coordinator and Deputy Coordinators receive and oversee MSU's response to reports and complaints that involve possible gender discrimination, including sexual misconduct, to monitor outcomes, identify and address patterns, and assess effects on the campus climate so MSU can address issues that affect the wider MSU community.

More specifically, the Title IX Coordinator and Deputy Coordinators monitor compliance with the reporting, complaint, investigation, hearing and appeals processes outlined in this policy. Upon a finding of prohibited sexual misconduct under this policy, the Title IX Coordinator and Deputy Coordinators determine whether campus-wide remedies are needed in response, including but not limited to revision of policies; increased monitoring, supervision or security; and increased education and prevention efforts. The Title IX Coordinator and Deputy Coordinators also review sanctions issued under this policy to ensure that they, along with any interim measures and long-term measures taken, are reasonably calculated to stop the sexual misconduct and prevent its re-occurrence. The name, office and contact information for MSU's Title IX Coordinator and Deputy Coordinators are:

- **Title IX Coordinator for MSU:**

Human Resources Director

- **Deputy Coordinators:**

Deputy Coordinators are identified in the Appendix to this Policy and may change from time to time. The Appendix shall be revised to remain current and not require the amendment of this policy.

If any person has a question, complaint or concern he/she believes is covered by these policies and procedures or some other aspect of Title IX, he/she should contact either the Title IX Coordinator or one of the Deputy Coordinators. Reports of sexual misconduct can also be made to “Responsible Employees” as described in this policy.

REPORTING:

MSU strongly encourages persons who have experienced sexual misconduct, or knows of someone who has experienced sexual misconduct, to report the incident to MSU per this policy. **In case of an emergency or ongoing threat, a survivor should get to a safe location and call 911 or 606-783-2035.** Calling 911 will put the caller in touch with local police. Calling 606-783-2035 will put the caller in touch with university police.

A. Responsible Employees

In addition to the Title IX Coordinator and Deputy Coordinators, MSU considers certain people to be “Responsible Employees” which means they are MSU employees who are required to report alleged sexual misconduct to the Title IX Coordinator or Deputy Coordinator. Victims are encouraged to speak with a Responsible Employee to make reports of sexual misconduct. The following persons are “Responsible Employees” under this policy: MSU’s Title IX Coordinator, MSU’s Deputy Title IX Coordinators, the President of MSU, Members of the President’s Cabinet, General Counsel, fulltime President’s Office staff, fulltime Provost’s Office staff, Academic Deans and Chairs, Faculty, Dean of Students, and Leadership, the Director and Assistant Director of Residence Life, all Resident Hall personnel, the Athletic Director, Assistant Athletic Directors, Athletic Trainers, all Athletic Coaches, Human Resources Staff, Multicultural Affairs staff, Disability Services Coordinator, International student office staff, and Campus Police Officers.

Any member of MSU community can file a report with the Title IX Coordinator, Deputy Coordinators or Responsible Employees. If a survivor shares an incident of sexual misconduct with a Responsible Employee, he or she needs to know that it is the Responsible Employee’s obligation to notify the Title IX Coordinator or Deputy Coordinator of the incident immediately.

B. Reporting Timeframe

Any person may file a complaint of sexual misconduct at any time. Early reporting is encouraged to preserve evidence and provide the survivor with information regarding rights, options and resources available under this policy and federal/state laws.

The Title IX Coordinator or Deputy Coordinator will provide survivors of sexual misconduct with information about available support services and resources, and also assist survivors in notifying law enforcement, including the local police, if a survivor elects to do so. **Survivors are not required to report to area law enforcement in order to receive assistance from or pursue options within MSU.** Reporting sexual misconduct to the police does not commit the survivor to further legal action. However, the earlier an incident is reported, the easier it will be for the police to investigate if the survivor decides to proceed with criminal charges.

C. Reporting Options

This section addresses options for reporting sexual misconduct. MSU may investigate sexual misconduct even without a formal complaint whenever it known or there is reasonable cause to believe that sexual misconduct in violation of this policy has occurred.

1. Official Report: Persons are strongly encouraged to make an official report of any incident of sexual misconduct to the Title IX Coordinator or a Deputy Coordinator regardless of whether the incident occurred on or off campus. Official reports can be made directly to the Title IX Coordinator or a Deputy Coordinator via a written statement or an appointment. Official reporting initiates a course of immediate action. In cases where a complainant states he or she does not want to pursue a formal complaint, the ability of MSU to investigate may be limited. Even if a complainant does not want to pursue an investigation, under some circumstances the Title IX Coordinator or Deputy Coordinator may have a legal obligation to investigate a complaint, such as when there is a risk to the campus community if the accused remains on campus. When determining whether to go forward with an investigation, the Title IX Coordinator or Deputy Coordinator may consider factors such as the seriousness of the allegation, the age of the complainant, whether there have been other complaints or reports against the accused, and the rights of the accused to receive information about the complainant and the allegations if a hearing and possible sanctions may result from the investigation.

If a person decides to make an official report, a detailed (written, typed, emailed, or handwritten) statement of the alleged incident(s) should be submitted to the Title IX Coordinator or Deputy Coordinator. This formal statement should be signed and dated. The statement should be as specific as possible, including dates, times, locations, a description of the alleged misconduct and the name(s) of the accused person(s), and further provide a list of any person(s) who may have information that would be helpful to the investigation and review. The Title IX Coordinator or Deputy Coordinator will promptly investigate all formal reports.

2. Confidential Disclosure: Despite MSU's strong interest in having persons report complaints of sexual misconduct, it is understood that not everyone is prepared to make an official report to MSU. Help may be sought from certain resources that are not required to reveal private, personally identifiable information unless there is cause for fear for the survivor's safety or the safety of others. If a person desires that details of the incident be kept confidential, contact should be made with counselors or other providers who can maintain confidentiality, such as the Caudill Health Clinic. Such professionals generally are not legally required to report personally identifiable information given in confidence unless given permission. If the survivor chooses not to pursue a judicial process option (e.g., criminal charges), generally no further action will be taken unless the professional who receives the concern believes there is an imminent threat to the survivor or others. Persons who disclose incidents of sexual misconduct to counselors, clergy or other providers who can legally maintain confidentiality should discuss whether to have that counselor, advocate or provider report the misconduct to MSU and request interim measures required by Title IX, or request discretionary support measures from MSU without reporting the nature of the conduct.

3. Requests via a Counselor, Clergy or other Provider: A survivor may have his/her counselor, clergy or other provider who can legally maintain confidentiality request interim measures from MSU on the survivor's behalf. The request may trigger MSU's obligation to investigate. To the extent a counselor, clergy or other provider makes a disclosure but, consistent with the survivor's wishes, asks MSU not to investigate or otherwise notify the accused of the report, the Title IX Coordinator or Deputy Coordinators will consider whether he/she can honor the request while still providing a safe and nondiscriminatory environment for all students, faculty and staff, and to take interim measures to protect the survivor as needed.

D. Confidentiality

Reports and personal information will be kept as confidential as possible to the extent the law allows and to the extent confidentiality is consistent with MSU's need to protect the safety of the MSU community. Complete confidentiality cannot be promised as MSU will need to thoroughly investigate the case, and may need to share some information with relevant administrators of MSU in order to further protect and prevent incidents. Reports to law enforcement may be shared with MSU's Title IX Coordinator or Deputy Coordinators. MSU may be required by law to publish non-identifying information in campus crime statistics.

All MSU employees (with the exception of those who may be bound by confidentiality laws or privileges such as counselors) must share all reports of sexual misconduct with the Title IX Coordinator or a Deputy Coordinator so the matter may be investigated and a determination made whether steps are needed to ensure the safety of the MSU community.

It is the survivor's choice as to whether he/she participates in an investigation; however, MSU may proceed with an investigation without the survivor's participation.

E. Drug and Alcohol Amnesty

MSU offers amnesty (immunity) to students who may have violated MSU's policies concerning the use of drugs and/or alcohol at the time of the incident when he or she became a survivor of, or witnessed, sexual misconduct. Therefore, no MSU alcohol or drug charges are applied to a student who reports that he or she was under the influence of alcohol and/or drugs at the time of a sexual misconduct incident.

The purpose of this section is to encourage reporting. Survivors or bystanders (witnesses) should not let their use of alcohol or drugs deter them from reporting an incident. When conducting the investigation, MSU's primary focus will be addressing the sexual misconduct violation and not alcohol/drug use violations that may be discovered or disclosed. However, MSU may provide referrals to counseling and may require educational options on drugs and alcohol, rather than disciplinary sanctions, in such cases.

WRITTEN NOTICE OF RIGHTS AND OPTIONS

Any person who reports an incident of sexual misconduct, regardless of whether the incident occurred on or off campus, shall receive a written explanation of his/her rights and options as provided for under this policy. These rights and options include the right(s) of a survivor to:

- File a domestic abuse or dating violence complaint in court requesting an order restraining the attacker from further abusing, and/or an order directing the attacker to leave the victim's household, building, school (including MSU) or workplace.
- Seek a criminal complaint for threats, assault and battery, or other related offenses.
- Seek medical treatment (the police will arrange transportation for the victim to be transported to the nearest hospital or otherwise assist the victim in obtaining medical treatment if the victim desires).
- Request the police remain at the scene until the victim's safety is otherwise ensured.
- Request that a police officer assist the victim by arranging transportation to a safe place, such as a shelter or a family or friend's residence.
- Obtain a copy of the police incident report at no cost from the police department.

PROCEDURES SURVIVORS SHOULD FOLLOW

If an incident of sexual misconduct occurs, it is important to preserve evidence so that successful criminal prosecution remains an option.

The survivor of a sexual assault should not wash, shower or bathe, douche, brush teeth, comb hair, or change clothes prior to a medical exam or treatment. If a survivor has removed the clothing he or she was wearing during the assault prior to seeking medical treatment, that clothing should be placed in a brown paper, not plastic, bag and taken to the hospital when treatment is sought. If the survivor is still wearing the clothes that he or she was wearing during an assault, he or she should bring a change of clothes with him or her to the hospital so that the clothes containing possible evidence can be preserved and examined for evidence of the crime.

Evidence of violence, such as bruising or other visible injuries following an incident of sexual assault, should be documented by photographs. Evidence of stalking, including any communications such as written notes, email, voice mail, or other electronic communications sent by the stalker, should be saved and not altered in any way.

INTERIM MEASURES AND ACCOMMODATIONS

The Title IX Coordinator and Deputy Coordinators have the right to take necessary measures to protect a person's rights and personal safety. Therefore, interim measures will be available to protect persons from any kind of retaliation or threatening situations during and after the investigation process. These measures include but are not limited to changes in class schedules, living or working arrangements; safety escorts; parking arrangements; dining arrangements; and resources for professional counseling. Regardless of whether a person reports an incident of sexual misconduct to law enforcement or pursues any formal action, if a report of such an incident is made to MSU, MSU is committed to providing a victim a learning or working environment that is as safe as possible.

The Title IX Coordinator or Deputy Coordinator determines which measures are appropriate for survivors on a case-by-case basis. Upon receiving a report of sexual misconduct, the Title IX Coordinator or Deputy Coordinator will ask the survivor or his/her counselor, provider or advocate what interim measures, if any, are sought. If the survivor or his/her counselor, provider or advocate identifies an interim measure that is not already provided by MSU, the Title IX Coordinator or Deputy Coordinator will consider whether the request can be granted. In those instances where interim measures affect both a survivor and the accused, the Title IX Coordinator or Deputy Coordinator will minimize the burden on the survivor wherever appropriate.

When a survivor's off-campus counselor, provider or advocate seeks any of the above-listed interim measures without disclosing that sexual misconduct is the basis for the request, the Title IX Coordinator or Deputy Coordinator will consider the request consistent with its general policy of allowing counselors, providers and advocates to seek such measures for survivors of trauma without requiring that the nature of trauma be disclosed.

MSU is also committed to ensuring that orders of protection issued by courts are upheld on all MSU-owned, used and controlled property, as well as properties immediately adjacent to MSU. Therefore, if any member of MSU community obtains an order of protection or restraining order, he/she should promptly inform the Title IX Coordinator or Deputy Coordinator and provide him/her with a copy of that order so MSU can enforce it. MSU is also committed to protecting survivors from further harm, and if the Title IX Coordinator or Deputy Coordinator determines that a person's presence on campus poses a danger to one or more members of MSU community, he/she can issue an institutional "No Contact" or "No Trespass" order barring that person from MSU property.

INVESTIGATION AND HEARING PROCESS

MSU's Title IX Coordinator or Deputy Coordinator will investigate alleged violations of this policy regardless of whether the conduct is alleged to have occurred on-campus or off-campus. Each report must be evaluated on a case-by-case basis, taking into account the relevant circumstances of each case. The investigation process may include interviews, reviewing student and/or employee files, and gathering and examining other relevant evidence. The investigation process will be balanced and fair and give both the accused and the complainant the chance to discuss his/her involvement in the reported incident. Allegations of sexual misconduct will not be referred to informal mediation.

If the investigation concludes that evidence exists to suggest that a violation of this policy more likely than not occurred, the Title IX Coordinator or Deputy Coordinator will refer the case for a hearing before MSU's Sexual Misconduct Hearing Panel which shall consist of five members of the Sexual Harassment Hearing Board chosen by the Title IX Coordinator or a Deputy Coordinator designated by the Title IX Coordinator. The MSU General Counsel or his/her designee shall serve as legal advisor to the Sexual Misconduct Board and the Hearing Panel.

The Sexual Misconduct Hearing Board shall be appointed annually by the President and shall consist of no less than five faculty members, five staff members and three students. If vacancies exist during the school year, the President may appoint a person of the appropriate category to fill the vacancy. Members may be reappointed from year to year at the President's pleasure. The President may request names from the Faculty Senate Chair, the Staff Congress Chair and the Vice President for Student Life to consider for appointment to the panel from their constituencies. All panel members must attend Sexual Misconduct Hearing Board training as designated by the Title IX Coordinator in order to serve on the Board.

If a hearing involves a student, at least one member of the Hearing Panel selected to hear the case shall be a student, and at least one faculty member and one staff member shall serve on the panel. If a faculty member is involved in the case, at least three faculty members shall be selected to serve on the panel hear the case. If a staff member is involved in the case, at least two staff members shall be selected to the panel. The Title IX Coordinator or a designated Deputy Title IX Coordinator shall select one of the five chosen panel members to serve as the panel chair for the case. In the event of a conflict of interest, a Hearing Panel member will recuse himself/herself from the Panel, and the Title IX Coordinator or designee shall appoint a new panel member to serve.

Each party will have the following hearing rights:

- The right to notice of the specific allegations at issue, including notice of anticipated witnesses and evidence to be addressed at the hearing.
- The right to access information and evidence directly related to him/her within a reasonable time before the hearing.
- The right to attend the hearing and speak on his/her own behalf. Invoking the right not to speak will not be considered an admission of responsibility.
- The right to have an advisor of his/her choice present at the hearing. Advisors may not directly participate in the hearing.
- The right to introduce evidence and question witnesses at the hearing, provided, however, that the complainant and the accused will not be allowed to directly question each other. Such questions may be supplied to the chair who may ask the question.
- The panel members may ask questions of the witnesses at the hearing.

Hearings will be closed to the public. Hearings shall be recorded, and testimony shall be sworn. The Title IX Coordinator may accommodate concerns for the personal safety, well-being and/or fears of participants during the hearing by providing separate facilities, by using a visual screen and/or by permitting participation by telephone, video conference or other means as appropriate.

Following a hearing, the Sexual Misconduct Panel will deliberate and determine whether, given the evidence and testimony presented, it is more likely than not that a violation of this policy occurred. Possible hearing outcomes for students include, but are not limited to, changes to class schedules; changes to living arrangements; suspension, separation or expulsion from MSU; and for all reporting the incident to the local police. Faculty and staff may be reprimanded, suspended without pay, or removed from employment. The measure taken will depend upon the individual circumstances.

The Title IX Coordinator will inform both parties in writing of the outcome the investigation and/or hearing within seven (7) business days of the investigation and/or hearing's conclusion. Notice of the outcome will include key findings and any penalties or protective measures directly related to the party. If the measure taken by the Sexual Misconduct Panel includes suspension or removal of a faculty or staff member, the Title IX Coordinator will also forward the decision to the President. If the measures involve a student, the outcome will be reported to the Vice President for Student Life.

As a general rule, MSU will complete the investigation and hearing process within sixty (60) calendar days from receipt of a report. However, MSU may extend that time frame under special circumstances such as complex cases requiring extensive investigation and breaks between academic periods making relevant parties or officials unavailable. MSU will work to keep extensions to a minimum and will keep the parties informed of the status of their case.

Survivors always have the option to file a criminal report in addition to or in lieu of a report under this policy. In no case should a survivor be dissuaded from reporting sexual misconduct to law enforcement. Regardless whether a survivor elects to file a criminal report, MSU will conduct a separate investigation of its own consistent with this policy. If the accused is not affiliated with MSU, an investigation will still be conducted. The Title IX Coordinator or Deputy Coordinator may issue a No Contact or No Trespass order to an accused unless and until the accused is found not responsible. If the accused is a student or faculty from a visiting institution, MSU reserves the right to contact that institution for further investigation.

Throughout the process, arrangements will be made to prevent the parties from having direct contact or communication with each other.

The Title IX Coordinator will keep a record of the hearing and investigation process for each case.

APPEAL PROCESS

Once a decision has been made and both parties have been notified of the outcome, either party may appeal that outcome (including punishment) to MSU Appeals Board, which will consist of three members of the Sexual Misconduct Hearing Board that have not served on the case. If a case involves a student, at least one member of the Appeals Board shall be a student and likewise with Faculty and Staff.¹ Appeals must be received by the Title IX Coordinator no later than five (5) business days after the date the underlying decision is issued. Appeals received after the deadline will not be processed. Appeals should be marked "confidential" and submitted by hand delivery or by email or mail to the Title IX Coordinator.

¹ In the event of a conflict of interest, the board member who has the conflict will recuse himself/herself from the committee and the Title IX Coordinator (or designee) will appoint a replacement.

Both parties will be notified in writing by the Title IX Coordinator that an appeal was received. The burden of proof lies with the appellant.

MSU Appeals Board will assess and decide the appeal based on the investigation and hearing record from the previous levels within twenty-one (21) calendar days of receiving the appeal, unless circumstances require more time, in which case the Title IX Coordinator will advise the parties of the need for more time. Grounds for appeal are limited to the following:

- MSU made a procedural error, which could have significantly affected the outcome.
- Previously unavailable and relevant evidence was found that could impact the final result.
- The determination of whether a violation occurred was arbitrary and unjustified by the evidence presented at hearing.
- The penalties imposed or other protective measures taken are too severe based on the evidence of record.

The Title IX Coordinator will notify the parties of the outcome of the appeal. All decisions by MSU Appeals Board are final with the exception of the following:

- Sanctions which include student suspension or expulsion, which may be further appealed to the President and Board of Regents in the same manner as provided by the MSU Eagle Student Handbook for Student Disciplinary Committee decisions.
- Sanctions which include suspension or dismissal of a staff member which may be appealed to the President who will review the record and determine if dismissal or another penalty is appropriate. The President's decision shall be final.
- Sanctions which include faculty termination/removal, which may be further appealed to the President and Board of Regents. Sanction involving suspension without pay, may be appealed to the President. The President shall review the record and determine whether suspension or dismissal is appropriate. The decision of the President shall be final if he/she determines suspension or another penalty is appropriate. If the President determines removal is appropriate, he/she shall refer the case to the Board of Regents who shall review the case on the record de novo. The Board may either remove the faculty member or may determine if a lesser penalty is appropriate. The decision of the Board shall be final.

The Title IX Coordinator will keep a record of the appeal process.

NO RETALIATION OR DETERRENCE FOR FILING REPORTS

MSU strictly prohibits retaliation for making a report under this policy or participating in an investigation or hearing under this policy. Examples of retaliation include, but are not limited to, a face-to-face threat, a digital message and/or physical intimidation. Retaliation can be by someone other than the accused. Any person who feels they have been retaliated against as a result of a report under this policy should contact the Title IX Coordinator or a Deputy Coordinator immediately.

RESOURCES

Numerous resources both on and off campus are available and shall be set forth in the Appendix to this policy. The resources shall be updated as appropriate without necessity to amend this policy.

TRAINING AND EDUCATION

All students, faculty and staff must complete MSU-sponsored training on sexual misconduct issues within the dates and times arranged by the Title IX Coordinator as frequently as designated by the President. Failure to do so may result in corrective action. Training will, at minimum, cover the following:

- MSU policies and procedures for reporting and addressing sexual misconduct;
- Reminders that MSU prohibits the offenses of domestic violence, dating violence, sexual assault, sexual exploitation and stalking;
- The definitions for domestic violence, dating violence, sexual assault, sexual exploitation and stalking;
- The definition of consent and “welcome” conduct;
- Training on safe and positive options for bystander intervention that may be carried out by a person to prevent harm or intervene when there is a risk of sexual misconduct against a person other than such person;
- Information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks;
- Possible sanctions or protective measures that such institution may impose following a final determination of an institutional disciplinary procedure regarding sexual misconduct;

- Procedures survivors should follow if sexual misconduct has occurred;
- Procedures for institutional disciplinary action in cases of alleged sexual misconduct;
- Information about existing counseling, health, mental health, survivor advocacy, legal assistance, and other services available for survivors both on-campus and in the community; and
- Information about survivor options for, and available assistance in, changing academic, living, transportation, and working situations, if so requested by the survivor and if such accommodations are reasonably available, regardless of whether the survivor chooses to report the crime to campus police or local law enforcement.

In addition, MSU provides informational resources such as crime bulletins and alerts and bulletin board campaigns.

Adopted July 1, 1985
Revised September 24, 2015

APPENDIX

Title IX Coordinator

Harold Nally
301 Howell McDowell Administration Building
Morehead, KY 40351
606-783-2097
titleix@moreheadstate.edu

Assistant Title IX Coordinators

Ladonna Purcell
106 Procurement Services
(606) 783-2323

Richard Fletcher
186 Academic Athletic Center
(606) 783-5136

Dr. Robert Royar
104 Combs Building
(606) 783-2734

Lora Pace
329 Allie Young Hall
(606) 783-2517

Dr. Joyce Stubbs
429D Reed Hall
606-783-2633

VICTIM RESOURCES

Health

MSU Health Clinic (606) 783-2055
112 Allie Young Hall
Morehead, KY 40351

St. Claire Regional Medical Center (606) 783-6615 (Emergency Department)
222 Circle Drive (606) 783-6500 (Main Hospital Operator)
Morehead, KY 40351

Mental Health/Counseling/Advocacy

MSU Counseling Center (606) 783-2123
112 Allie Young Hall
Morehead, KY 40351

After hours, evenings, weekends contact (606) 783-2035

This is the MSU Police Dept. and they have the on-call schedule for licensed counselors

St. Claire Regional Medical Center (606) 783-6805
Counseling
475 Clinic Drive
Morehead, KY 40351

Pathways (606) 784-4161 ext. 4401
321 East Main Street
Morehead, KY 40351

Pathways Rape Crisis Center (606) 784-4161 ext. 4401
325 East Main Street (800) 562-8909
Morehead, KY 40351

DOVES of Gateway, Inc. (606) 784-6880
P.O. Box 1012 (800) 221-4361 (Crisis #)
Morehead, KY 40351

KCADV (502) 209-5382
Kentucky Coalition Against Domestic Violence
111 Darby Shire Circle
Frankfort, KY 40601

24-hour Crisis Line (800) 562-8909

National Domestic Violence Hotline (800) 799-SAFE

National Sexual Assault Hotline (800) 656-HOPE

Child & Adult Abuse Hotline (800) 752-6200

Disability Services

MSU Office of Disability Services (606) 783-5188
204E Adron Doran University Center
Morehead, KY 40351

Housing

DOVES of Gateway, Inc. (606) 784-6880
P.O. Box 1012 (800) 221-4361 (Crisis #)
Morehead, KY 40351

Gateway Homeless Shelter (606) 784-2668
695 Flemingsburg Road
Morehead, KY 40351

Morehead Housing Authority (606) 784-4314
200 Heritage Place
Morehead, KY 40351

Kentucky Housing Corporation (502) 564-7630
1231 Louisville Road (502) 564-7630 x702 Español
Frankfort, KY 40601-6191 (800) 633-8896

Legal Services

Northeast Legal Services, Inc. (606) 784-8921
320 East Main Street
Morehead, KY 40351

Education

Adult Learning Center (606) 783-9531
211-D Education Service Building
Morehead, KY 40351

Maysville Community & Technical College (606) 783-1538
Rowan Campus
609 Viking Drive
Morehead, KY 40351

Morehead State University (606) 783-2000
Office of Enrollment Services
100 Admissions Center
Morehead, KY 40351

Police Department Contacts

MSU Police Department (606) 783-2035 or 911 on campus
100 Laughlin Bldg.
Morehead, KY 40351

Morehead Police Department (606) 784-7511
105 East Main Street
Morehead, KY 40351

Kentucky State Police (Post 8) (606) 784-4127
1595 Flemingsburg Road
Morehead, KY 40351

Online Resources

If a person feels the need to pursue further help and counseling, there are institutions and charity groups that are specialized and specifically trained to aid survivors of different violent crimes. A formal report is not required to access these resources. These are some nationwide websites that provide help:

National Domestic Violence Hotline

<http://www.thehotline.org/>

Stalking Resource Center

<http://www.victimsofcrime.org/our-programs/stalking-resource-center>

National Sexual Assault Hotline

<http://www.rainn.org/get-help/national-sexual-assault-online-hotline>

Girls Health Website

<http://www.girlshealth.gov/safety/saferrelationships/daterape.html>

Clery Center for Security on Campus

<http://clerycenter.org/help-victims>