

**MARSHALL B. KETCHUM UNIVERSITY**  
**Enrollment and Student Services**

**TITLE IX: SEXUAL HARASSMENT & NON-  
DISCRIMINATION POLICY**

2023 - 2024



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## **A. Title IX: Sexual Harassment and Non-Discrimination Policy**

Note: This policy will be updated following a release of the new Title IX rules expected in May of 2023. The updated policy will be distributed to the MBKU community via email.

### **1. Section 1: Introduction**

- 1.1 Policy Statement:** Marshall B. Ketchum University (MBKU) is committed to creating and maintaining a learning and working environment that is free from unlawful discrimination based on sex in accordance with Title IX of the Higher Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in education programs or activities; Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits sex discrimination in employment; and the Campus Sexual Violence Elimination Act, Clery Act, and the Violence Against Women Act (VAWA). Sexual Harassment and Retaliation under this Policy will not be tolerated by MBKU and is grounds for disciplinary action, up to and including, permanent dismissal from MBKU and/or termination of employment.
- 1.2 Purpose:** MBKU takes all reported sexual misconduct and harassment seriously. MBKU will promptly discipline any individuals within its control who are found responsible for violating this Policy. Additionally, reported sexual misconduct and harassment that does not meet the definitions and jurisdiction of this Policy will be referred for review to the Vice President for Enrollment and Student Services (VPES) if allegedly committed by a student or the Vice President for Human Resources (VPHR) if allegedly committed by an employee under the respective Code of Conduct in compliance with VAWA and Clery Act.
- 1.3 Applicability:** This Policy applies to students and employees as follows:
  - 1.3.1 To Students:** Where the Respondent is a student at MBKU at the time of the alleged conduct, the alleged conduct includes Sexual Harassment under this Policy, the alleged conduct occurs in MBKU's Education Program and Activity, the alleged conduct occurs against a person in the United States, and the Complainant is participating in or attempting to participate in MBKU's Education Program or Activity.
  - 1.3.2 To Employees:** Where the Respondent is an employee at MBKU at the time of the alleged conduct, where the alleged conduct includes Sexual Harassment under this Policy, the alleged conduct occurs in MBKU's Education Program and Activity, the alleged conduct occurs against a person in the United States, and the Complainant is participating in or attempting to participate in MBKU's Education Program or Activity.
- 1.4 Title IX Coordinator and Key Title IX Officials:** The Title IX Coordinator is the MBKU administrator who oversees MBKU's compliance with Title IX. The Title IX Coordinator is responsible for administrative response to reports and Formal Complaints of Sexual Harassment. The Title IX Coordinator is available to discuss the grievance process, coordinate supportive measures, explain MBKU policies and procedures, and provide education on relevant issues. The Title IX Coordinator may designate one or more Deputy Title IX Coordinators to facilitate these responsibilities.

Any member of the MBKU community may contact the Title IX Coordinator with questions. Title IX Coordinator and Deputy Title IX Coordinator contact information is as follows:

**Carmen Barnhardt, OD, MS Ed**

Title IX Coordinator

Vice President for Enrollment and Student Services

2575 Yorba Linda Blvd.

Fullerton, CA 92831

[TitleIX@ketchum.edu](mailto:TitleIX@ketchum.edu) | 714-449-7423

Website: <https://www.ketchum.edu/student-life/title-ix>

Reporting Form (accessible after login): <https://my.ketchum.edu/ICS/>

**Wende Holtzen, MS, SPHR, SHRM-SCP**

Title IX Deputy for Employees

Vice President for Human Resources  
2575 Yorba Linda Blvd.  
Fullerton, CA 92831  
[TitleIX@ketchum.edu](mailto:TitleIX@ketchum.edu) | 714-449-7459

**Lauren Kim, EdD**

Title IX Deputy Coordinator for Student Support and Compliance  
Assistant Vice President for Student Information Management and Registrar  
2575 Yorba Linda Blvd.  
Fullerton, CA 92831  
[TitleIX@ketchum.edu](mailto:TitleIX@ketchum.edu) | 714-449-7462

**Ashley White, MA, MS**

Title IX Investigator  
Director of University Student Affairs  
2575 Yorba Linda Blvd.  
Fullerton, CA 92831  
[TitleIX@ketchum.edu](mailto:TitleIX@ketchum.edu) | 714-449-7414

**Akiko Shiratsuchi**

Title IX Support Coordinator for Employees  
Senior Human Resources Generalist  
2575 Yorba Linda Blvd.  
Fullerton, CA 92831  
[TitleIX@ketchum.edu](mailto:TitleIX@ketchum.edu) | 714-463-7538

In addition to the Title IX Coordinator, MBKU appoints investigators, decision makers and informal resolution facilitators who have roles in the formal grievance process more fully explained in Sections six (6) through nine (9) of this policy.

The Title IX Coordinator, Deputy Title IX Coordinators, investigators, decision-makers, and informal resolution facilitators will receive annual training in compliance with Title IX. All administrators in these roles will not rely on sex stereotypes and will provide impartial investigations and adjudications of Formal Complaints of Sexual Harassment. All materials used to train these administrators will be publicly made available on MBKU's website in accordance with Title IX requirements.

The Title IX Coordinator, Deputy Title IX Coordinators, investigators, decision-makers, and informal resolution facilitators shall not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

- 1.5 Notification:** MBKU will use University electronic mail (email) for purposes of communication and notification under this Policy.
- 1.6 Free Speech:** Freedom of speech and principles of academic freedom are central to the mission of institutions of higher education. Constitutionally protected expression cannot be considered Sexual Harassment under this Policy.
- 1.7 Dissemination of Policy:** This Policy will be made available to all MBKU administrators, faculty, staff, and students online at [www.ketchum.edu](http://www.ketchum.edu), in the MBKU Student Handbook and the MBKU Employee Handbook.
- 1.8 Effective Date:** The effective date of this Policy is August 14, 2020.
- 1.9 Retaliation and False Statements Prohibited:** Neither MBKU nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this Policy or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.
  - 1.9.1** Alleged violations of Retaliation will be referred to the VPES or VPHR to be investigated and resolved under the respective Code of Conduct.

- 1.9.2** The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this Policy.
- 1.9.3** Charging an individual with a Code of Conduct violation for making a materially false statement in bad faith during a grievance proceeding under this Policy does not constitute Retaliation prohibited under Policy. However, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.
- 1.10** **Amnesty:** Reporting Sexual Harassment is encouraged at MBKU. Thus, it is imperative that Complainants and witnesses share information without fear of potential consequences for minor policy violations including, but not limited to, underage consumption of alcohol or the use of illicit drugs. MBKU offers parties and witnesses amnesty from such minor violations but may include educational opportunities for individuals in lieu of a finding of responsibility or punitive sanctions.
- 1.11** **Other University Policies:** This Policy takes precedence over other University policies and procedures concerning Sexual Harassment under Title IX in the event of a conflict.
- 1.12** **Modification and Review of this Policy:** MBKU reserves the right to modify this Policy to consider applicable legal requirements. MBKU will regularly review this Policy to determine whether modifications should be made.
- 1.13** **Additional Code of Conduct Violations:** Alleged violations of the student or employee Code of Conduct that rise from the same events as alleged Sexual Misconduct under this Policy will be investigated and resolved under the grievance process in this Policy unless the Sexual Harassment has been dismissed under Section 5.2 of this Policy.

## **2. Section 2: Definitions**

### **2.1 Definitions of Prohibited Conduct Under this Policy<sup>1</sup>**

- 2.1.1 Sexual Harassment** means conduct based on sex that satisfies one or more of the following:
  - 2.1.1.1** An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct (Quid Pro Quo);
  - 2.1.1.2** Unwelcome conduct determined by a Reasonable Person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity<sup>2</sup>; or
  - 2.1.1.3** Sexual Assault, Dating Violence, Domestic Violence or Stalking as defined in this Policy.
- 2.1.2 Sexual Assault** means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, including Rape, Fondling, Incest, and Statutory Rape as defined in this Policy.
- 2.1.3 Rape<sup>3</sup>** means the 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, without the Consent of the victim.

<sup>1</sup> See Appendix 1 for reference to California state law definitions that may apply to the definitions contained within this Policy.

<sup>2</sup> A severe, pervasive, and objectively offensive assessment includes, but is not limited to, a consideration of the frequency of the offensive conduct, the nature of the unwelcome sexual acts or words, such as whether the harassment was physical, verbal or both; whether the harassment was merely an offensive utterance; and the number of victims involved and the relationship between the parties including, but not limited to, the ages of the harasser and the victim. In evaluating whether conduct is severe, pervasive, and objectively offensive, MBKU will look at the totality of the circumstances, expectations, and relationships.

<sup>3</sup> Rape as defined in the Uniform Crime Reporting Program (UCR) includes:

- 2.1.4 Fondling<sup>4</sup>** means the touching of the private body parts of another person for the purpose of sexual gratification, without the Consent of the victim, including instances where the victim is incapable of giving Consent because of his/her age or because of his/her temporary or permanent mental Incapacity.
- 2.1.5 Incest<sup>5</sup>** means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- 2.1.6 Statutory Rape<sup>6</sup>** means sexual intercourse with a person who is under the statutory age of Consent.
- 2.1.7 Dating Violence** means violence committed by a person –
- 2.1.7.1** who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- 2.1.7.2** where the existence of such a relationship shall be determined based on a 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.
- 2.1.8 Domestic Violence** includes felony or misdemeanor crimes of violence committed by:
- a current or former spouse or intimate partner of the victim,
  - a person with whom the victim shares a child in common,
  - a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
  - a person similarly situated to a spouse of the victim under the domestic or family violence laws of California, or
  - 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 California.
- 2.1.9 Stalking** means engaging in a Course of Conduct directed at a specific person that would cause a Reasonable Person to—
- fear for his or her safety or the safety of others; or
  - suffer Substantial Emotional Distress.
- 2.2 Definitions Related to Sexual Harassment: Consent, Course of Conduct, Incapacitation, Reasonable Person, Substantial Emotional Distress**
- 2.2.1 Consent** is affirmative, conscious, voluntary, and revocable. Consent to sexual activity requires of each person an affirmative, conscious, and voluntary agreement to engage in sexual activity.

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Forcible Rape: The carnal knowledge of a person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity.

Forcible Sodomy: Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

Sexual Assault with an Object: —To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

<sup>4</sup> Fondling is referred to as Forcible Fondling in the UCR.

<sup>5</sup> Incest is a Nonforcible Offense in the UCR.

<sup>6</sup> Statutory Rape is a Nonforcible Offense in the UCR.

It is the responsibility of each person to ensure they have the affirmative Consent of the other to engage in the sexual activity. Lack of protest, lack of resistance, or silence do not, alone, constitute consent. Affirmative consent must be ongoing and can be revoked at any time during sexual activity.

The existence of a dating relationship or past sexual relations between the Complainant and Respondent will never by itself be assumed to be an indicator of consent (nor will subsequent sexual relations or dating relationship alone suffice as evidence of Consent to prior conduct).

The Respondent's belief that the Complainant consented will not provide a valid defense unless the belief was actual and reasonable. In making this determination, the decision-maker will consider all the facts and circumstances the Respondent knew, or reasonably should have known, at the time. In particular, the Respondent's belief is not a valid defense where:

**2.2.1.1** The Respondent's belief arose from the Respondent's own intoxication or recklessness;

**2.2.1.2** The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively Consented; or

**2.2.1.3** The Respondent knew, or a reasonable person should have known, that the Complainant was unable to Consent because the Complainant was incapacitated, in that the Complainant was:

- asleep or unconscious
- unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication
- unable to communicate due to a mental or physical condition.

**2.2.2 Course of Conduct** means two or more acts, including, but not limited to, acts in which the individual 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.

**2.2.3 Incapacitation** means that a person lacks the ability to actively agree to sexual activity because the person is asleep, unconscious, under the influence of alcohol or other drugs such that the person does not have control over their body, is unaware that sexual activity is occurring, or their mental, physical or developmental abilities render them incapable of making rational informed decisions. Incapacitated is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely because of drinking, using drugs, or taking medication.

A person violates this policy when they engage in sexual activity with another person who is Incapacitated and a Reasonable Person in the same situation would have known that the person is Incapacitated. Incapacitation can be voluntary or involuntary. Signs of Incapacitation may include, without limitation: sleep; total or intermittent unconsciousness; lack of control over physical movements (e.g., inability to dress/undress without assistance; inability to walk without assistance); lack of awareness of circumstances or surroundings; emotional volatility; combativeness; vomiting; incontinence; unresponsiveness; and inability to communicate coherently. Incapacitation is an individualized determination based on the totality of the circumstances.

**2.2.4 Reasonable Person** means a reasonable person under similar circumstances and with similar identities to the victim.

**2.2.5 Substantial Emotional Distress** means significant mental suffering or anguish that may, but does not necessarily require, medical or other professional treatment or counseling.

## **2.3 Other Defined Terms**

- 2.3.1 Actual Knowledge** means Notice of Sexual Harassment allegations to the Title IX Coordinator or any Official with Authority, except that actual knowledge is not met when the only individual with actual knowledge is the Respondent.
- 2.3.2 Business Day** means any weekday not designated by MBKU as a holiday or administrative closure day. When calculating a period of Business Days specified in this Policy, the Business Day of the event that triggers a time period is excluded.
- 2.3.3 Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. Complainants and Respondents are referred to collectively as “parties” throughout this Policy.
- 2.3.4 Confidential Employee** means an individual who will not report any information about an incident to the Title IX Coordinator without the Complainant’s permission.
- 2.3.5 Disciplinary Sanctions** are imposed only after a finding of responsibility through the grievance process or an agreement through the informal resolution process.
- 2.3.6 Education Program or Activity** includes locations, events, or circumstances over which MBKU exercises substantial control over both the Respondent and the context in which the Sexual Harassment occurs. This includes conduct that occurs on MBKU property, during any MBKU activity, or in any building owned or controlled by a student organization that is officially recognized by MBKU.
- 2.3.7 Formal Complaint** means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that MBKU investigate the allegation of Sexual Harassment.
- 2.3.8 Official with Authority** means an individual who has the authority to institute corrective measures and is required to report Sexual Harassment to the Title IX Coordinator to initiate MBKU’s response to the Sexual Harassment allegations. Officials with Authority are limited to the following positions at MBKU, Title IX Coordinator and Deputy Title IX Coordinators.
- 2.3.9 Remedies** are designed to restore or preserve equal access to MBKU’s Education Program or Activity. Remedies may include but are not limited to the same individualized services as Supportive Measures; however, Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.
- 2.3.10 Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. Complainants and Respondents are referred to collectively as “parties” throughout this Policy.
- 2.3.11 Retaliation** means intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or Sexual Harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of Sexual Harassment, for the purpose of interfering with any right or privilege secured by Title IX or this Policy.
- 2.3.12 Supportive Measures** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably 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.

Such measures are designed to restore or preserve equal access to MBKU’s Education Programs or Activities without unreasonably burdening the other



party, including measures designed to protect the safety of all parties or MBKU's educational environment, or deter sexual harassment.

Supportive measures may include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

### **3. Section 3: Reporting Sexual Harassment and Preservation of Evidence**

#### **3.1 Reporting to MBKU**

**3.1.1 Reporting to Title IX Coordinator:** Reports of Sexual Harassment may be made to the Title IX Coordinator in any of the following ways, by anyone, at any time: email, phone, online form, mail. Reports may be made to the Title IX Coordinator in person at 2575 Yorba Linda Blvd during normal business hours. After Title IX Sexual Harassment has been reported to the Title IX Coordinator, the Title IX Coordinator will promptly offer supportive measures to the Complainant, regardless of whether the Complainant was the reporter of the Sexual Harassment.

**3.1.2 Reporting to Officials with Authority:** The following positions are Officials with Authority: Title IX Coordinator, Deputy Title IX Coordinators, Title IX Investigator, and Title IX Support Coordinators. If they are notified of Sexual Harassment, they will promptly report such Sexual Harassment to the Title IX Coordinator.

**3.1.3 Reporting to Confidential Employees:** The Director of University Student Counseling serves as a Confidential Employee. Reports made to Confidential Employees are considered confidential reports and will not be reported to the Title IX Coordinator without the Complainant's permission and will not constitute actual notice to MBKU.

Alyse Kirschen, PhD  
Director of University Student Counseling Services  
2575 Yorba Linda Blvd.  
Fullerton, CA 92831  
Main Campus, F112  
[AKirschen@ketchum.edu](mailto:AKirschen@ketchum.edu) | 714-595-9700

**3.1.4 Notification to all other MBKU Employees:** Employees who are not defined as Officials with Authority or Confidential Employees may but are not required to report Sexual Harassment to the Title IX Coordinator.

**3.1.5 Anonymous Reporting:** Anonymous reports may be made by telephone, in writing or [electronically](#) (sign-in required) with Title IX Coordinator. A decision to remain anonymous, however, may greatly limit MBKU's ability to stop the alleged conduct, collect evidence, or act against parties accused of violating this Policy.

**3.2 Reporting to Law Enforcement:** Reports may be filed with local law enforcement agencies. The Title IX Coordinator can assist with contacting law enforcement agencies. Law enforcement investigations are separate and distinct from MBKU investigations.

Fullerton Police Department	714-738-6800
Placentia Police Department	714-993-8164
Anaheim Police Department	714-765-1900
Brea Police Department	714-990-7625

**3.3 Reporting to Outside Agencies:** Students and employees may report to external agencies:

- **Students**  
**Office for Civil Rights**

**U.S. Department of Education**

50 United Nations Plaza  
San Francisco, CA 94102  
Telephone: 415-486-5555  
Facsimile: 415-486-5570  
Email: [OCR.SanFrancisco@ed.gov](mailto:OCR.SanFrancisco@ed.gov)

**Office for Civil Rights**

**U.S. Department of Health and Human Services**

90 70th Street, Suite 4-100  
San Francisco, CA 94103  
Telephone: 800-368-1019  
Facsimile: 202-619-3818  
Email: [ocrmail@hhs.gov](mailto:ocrmail@hhs.gov)

- **Employees**

**U.S. Equal Employment Opportunity Commission**

California Workforce Commission  
Roybal Federal Building  
255 East Temple St., 4<sup>th</sup> Floor  
Los Angeles, CA 90012  
Telephone: 1-800-669-4000  
Facsimile: 213-894-1118  
[info@eeoc.gov](mailto:info@eeoc.gov)

**3.4 Outside Agency Support and Resources:**

Sexual Assault Victim Services	714-834-4317
Rape Crisis Hotline	714-957-2737
OC Domestic Violence Hotline	714-992-1931 or 800-799-7233
Legal Aid Society of Orange County	714-835-8806

**3.5 Local Emergency Facilities**

**St. Jude Medical Center** - 714-871-3280

101 E Valencia Mesa Drive  
Fullerton, CA 92835

**Placentia Linda Hospital** - 714-993-2000

1301 N Rose Drive  
Placentia, CA 92870

**Kaiser Permanente** - 714-644-2000

3430 E La Palma Avenue  
Anaheim, CA 92806

- 3.6 Time Limits on Reporting:** There are no time limits on reporting Sexual Harassment to the Title IX Coordinator or MBKU. If the Respondent is no longer subject to MBKU's Education Program or Activity or significant time has passed, MBKU will have limited ability to investigate, respond and/or provide disciplinary remedies and sanctions.

- 3.7 MBKU Federal Reporting Obligations:** Certain MBKU employees, called Campus Security Authorities, have a duty to report certain incidents of misconduct to comply with the Clery Act. Campus Security Authorities are not required to report personally identifiable information for Clery Act purposes, but statistical information must be sent regarding the type of incident that occurred and its general location (e.g., on or off-campus) for publication in an annual report of crime statistics, called the Annual Security Report. Statistics published in the Annual Security Report help to provide the campus community with a clearer picture of the extent and nature of campus crime, but the statistics do not personally identify Complainants or Respondents. Reports by Campus Security Authorities are not official police reports and do not initiate criminal investigations.

When Sexual Assault, Domestic Violence, Dating Violence, and/or Stalking are reported under the Clery Act, MBKU must issue timely warnings for such incidents

that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

MBKU will not disclose a Complainant's name and other identifying information in a timely warning but will provide sufficient information for MBKU community members to make informed safety decisions in response to potential danger.

**3.8 Preservation of Evidence:** MBKU recognizes that a Complainant may need time to decide whether to report an incident of Sexual Harassment to the police and/or MBKU. The purpose of this section is to provide Complainants with suggestions on preserving evidence while they decide whether to report an incident. MBKU encourages Complainants, as soon as possible after experiencing Sexual Assault to take steps to preserve evidence such as:

- Have a forensic sexual assault nurse examination performed as soon as possible after the incident, but no later than 72-96 hours after the incident
- When possible, prior to having a forensic sexual assault nurse examination performed, avoid: changing clothing, bathing, showering, using a douche, using the bathroom, brushing one's teeth, drinking liquids, washing one's hands or face, or combing one's hair;
- Preserve any clothing, sheets, or other materials (items containing bodily fluids should be stored in cardboard boxes or paper bags);
- Preserve or capture electronic communications such as text messages, e-mails, social media posts or exchanges (e.g., Snapchat, Facebook, Twitter);
- Preserve or capture video, audio (e.g., voice mail messages), or photographs, including those stored on smartphones or other devices; and
- Preserve any other physical, documentary, and/or electronic data that might be helpful to an investigator.

#### 4. Section 4: Initial Response to Reported Sexual Harassment

Upon receipt of a report of Sexual Harassment, the Title IX Coordinator will promptly contact the Complainant, regardless of whether the Complainant was the individual who initiated the report. During the initial contact with the Complainant, the Title IX Coordinator will:

- Provide the Complainant with notice of their rights and options
- Explain the process for filing a Formal Complaint;
- Explain the Grievance Process;
- Discuss the availability of Supportive Measures regardless of whether a Formal Complaint is filed;
- Consider the Complainant's wishes with respect to Supportive Measures.

#### 5. Section 5: Formal Complaint

MBKU will investigate all allegations of Sexual Harassment in a Formal Complaint.

**5.1 Filing a Formal Complaint:** A Formal Complaint must:

- 5.1.1** Contain an allegation of Sexual Harassment against a Respondent;
- 5.1.2** Request that MBKU investigate the allegation; and
- 5.1.3** Be signed by the Complainant or Title IX Coordinator.

In limited circumstances, if a Complainant does not sign a Formal Complaint, the Title IX Coordinator may sign a Formal Complaint. In determining whether to sign a Formal Complaint, the Title IX Coordinator will consider factors that include but are not limited to:

- 5.1.3.1** Whether there have been other reports of Sexual Harassment or other relevant misconduct concerning the same Respondent whether the incidents occurred while the Respondent was an MBKU student or employee;
- 5.1.3.2** Whether the Respondent threatened further Sexual Harassment or other misconduct against the Complainant or others;

- 5.1.3.3 Whether the alleged Sexual Harassment was committed by multiple perpetrators;
- 5.1.3.4 The nature and scope of the alleged Sexual Harassment including whether the Sexual Harassment was perpetrated with a weapon;
- 5.1.3.5 The ages and roles of the Complainant and the Respondent;
- 5.1.3.6 Whether MBKU can pursue the investigation without the participation of the Complainant (e.g., whether there are other available means to obtain relevant evidence of the alleged Sexual Harassment such as security cameras or physical evidence);
- 5.1.3.7 Whether the report reveals a pattern of perpetration (e.g., perpetration involving illicit use of drugs or alcohol) at a given location or by a group.

## 5.2 Dismissal of a Formal Complaint

**5.2.1 Required Dismissal:** The Title IX Coordinator will dismiss a Formal Complaint for purposes of Sexual Harassment if:

- 5.2.1.1 The conduct alleged in the Formal Complaint would not constitute Sexual Harassment as defined in this Policy even if proved;
- 5.2.1.2 The conduct alleged did not occur in MBKU's Education Program or Activity; or
- 5.2.1.3 The Conduct alleged in the Formal Complaint did not occur against a person in the United States.

Dismissal of a Formal Complaint does not preclude action under other provisions of the MBKU's policies and procedures. If a Formal Complaint is dismissed under this section and the Respondent is a student, the matter will be sent to the Vice President for Enrollment and Student Services for review. The Vice President for Enrollment and Student Services will decide whether the matter will be pursued under the MBKU Code of Conduct.

If a Formal Complaint is dismissed under this section and the Respondent is an employee, the matter will be sent to the Vice President for Human Resources for review. The Vice President for Human Resources will decide whether the matter will be pursued under the MBKU Code of Conduct.

**5.2.2 Permissive Dismissal:** The Title IX Coordinator may dismiss a Formal Complaint or any allegations within the Formal Complaint, if at any time during the investigation or hearing:

- 5.2.2.1 A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations within the Formal Complaint,
- 5.2.2.2 The Respondent is no longer enrolled or employed by MBKU, or
- 5.2.2.3 Specific circumstances prevent MBKU from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations within the Formal Complaint.

**5.2.3 Appeal of Dismissal:** Either party may appeal the dismissal of a Formal Complaint or any allegations therein. See Section 7 for bases and process for appeals.

**5.3 Consolidation of Formal Complaints:** The Title IX Coordinator may consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Respondent or by more than one Complainant against one or more Respondents where the allegations arise out of the same facts or circumstances.

## **6. Section 6: Grievance Process**

The grievance process within this Policy is designed to treat Complainants and Respondents equitably. Remedies are provided to a Complainant where a determination of responsibility for Sexual Harassment has been made against the Respondent and Disciplinary Sanctions are not imposed against a Respondent prior to the completion of the grievance process.

### **6.1 General Grievance Process Information:**

- 6.1.1 Burden of Proof and Burden of Gathering Evidence:** All investigations and proceedings, including hearings, relating to Sexual Harassment will be conducted using a “preponderance of the evidence” (more likely than not) standard. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on MBKU, not the parties.
- 6.1.2 Presumption of Not Responsible:** The Respondent is presumed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the end of the grievance process.
- 6.1.3 Time Frames for Grievance Process:** MBKU strives to complete the grievance process within one hundred and twenty (120) Business Days. Temporary delays and/or extensions of the time frames within this Policy may occur for good cause. Written notice will be provided to the parties of the delay and/or extension of the time frames with explanation of the reasons for such action. Examples of good cause for delay/extensions include but are not limited to 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.
- 6.1.4 Medical Records:** MBKU will not access, consider, disclose, or otherwise use party’s records that are that are made or maintained by a physician, psychiatrist, psychologist, 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 party, unless MBKU obtains that party’s voluntary, written permission to do so for the grievance process within the Policy.
- 6.1.5 Privileged Information:** MBKU will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding the privilege has waived the privilege.
- 6.1.6 Range of Disciplinary Sanctions:** Disciplinary action taken against a student may include one or more of the following:

#### **For Students**

- 6.1.6.1 Written Warning** – A notice in writing to the student that the student is violating or has violated University policy and a copy of the warning letter is placed in the student’s conduct file (notation in their disciplinary record).
- 1.1.6.2 Professional Probation** – Places students at a higher risk of more severe disciplinary sanctions if the student is found to violate any University policy during the probationary period. Any MBKU student on Professional Probation may not participate in leadership roles on campus, including federal work-study positions. Temporarily noted on the student transcript.
- 6.1.6.3 Loss of Privileges** – Denial of specified privileges.
- 6.1.6.4 Restitution** – Compensation for loss, damage, or injury. This may take the form of appropriate service, monetary, or material replacement.

- 6.1.6.5** Educational/Developmental Sanctions – Work assignments, essays, service to MBKU, community service or other related discretionary or educational assignments.
- 6.1.6.6** Suspension – Separation of the student from the University for a definite period after which the student shall be eligible to return without reapplying. Conditions for return may be specified. Based on the UCC's decision, Suspensions may be effective immediately or deferred, pending an appeal process.
- 6.1.6.7** Dismissal – Separation of the student from the University for a definite period after which the student shall be eligible to reapply for admission.
- 6.1.6.8** Expulsion – Separation of the student from the University permanently.
- 6.1.6.9** Dismissal and expulsion sanctions are permanently noted on the student transcript.

**For Employees**

- Warning – Verbal or Written
- Performance Improvement Plan
- Referral for Counseling
- Required Training or Education
- Loss of Potential Merit Pay Increase
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Suspension with Pay
- Suspension without Pay
- Termination
- Other Actions: In addition to or in place of the above sanctions, MBKU may assign any other sanctions as deemed appropriate.

- 6.1.7 Notice of Meetings, Interviews, and Hearings:** Parties and witnesses will be provided notice of any meeting, interview, and/or hearing with sufficient time (approximately three (3) days) to prepare to participate. This notice will include the date, time, location, participants and purposes of the meeting, interview and/or hearing.
- 6.2 Notice of Allegations:** Upon receipt of a Formal Complaint, the investigator will provide Notice of Allegations to the parties who are known. The Notice of Allegations will include:
  - 6.2.1** Notice of the party's rights and options
  - 6.2.2** Notice of MBKU's grievance process
  - 6.2.3** Notice of MBKU's informal resolution process and options
  - 6.2.4** Notice of the allegations of Sexual Harassment including:
    - i. The identities of the parties involved in the incident, if known,
    - ii. The conduct allegedly constituting Sexual Harassment, and
    - iii. The date and location of the incident, if known.
  - 6.2.5** Notice that the Respondent is presumed not responsible of the alleged conduct and that a determination regarding responsibility is made at the conclusion of grievance process.
  - 6.2.6** Notice that the parties may have an advisor of their choice, who may be, but is not required to be an attorney, and that the advisor may inspect and review evidence as explained in section 6.3.2 of this Policy.
  - 6.2.7** Notice of the MBKU Code of Conduct provision that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

The Notice of Allegations will be updated, and written notice provided to the parties if at any time during the investigation, MBKU decides to investigate allegations about the Complainant or Respondent that are not included in the initial Notice of Allegations.

- 6.3 Investigation of Formal Complaint.** MBKU will investigate following a Formal Complaint and Notice of Allegations. During all meetings and interviews the parties may be accompanied by an advisor of their choice, which can be, but is not required to be an attorney. During the investigation stage of the grievance process, the advisor's role is limited to assisting, advising, and/ or supporting a Complainant or Respondent. An advisor is not permitted to speak for or on behalf of a Complainant or Respondent or appear in lieu of a Complainant or Respondent during the investigation phase of the grievance process.
- 6.3.1 Opportunity to Provide Information and Present Witnesses:** Each party will be provided an equal opportunity to provide information to the investigator and present witnesses for the investigator to interview. The information provided by the parties can include inculpatory (evidence that may support a finding or conclusion that Respondent engaged in Sexual Harassment) and exculpatory evidence (evidence that may support a finding or conclusion that a Respondent did not engage in Sexual Harassment). The witnesses can include both fact witnesses and expert witnesses.
- 6.3.2 Opportunity to Inspect and Review Evidence:** Each party will be provided an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence upon which MBKU does not intend to rely upon in reaching a determination regarding responsibility. This review includes inculpatory and exculpatory evidence that is obtained by a party, witness, or other source. Each party and their advisor (if any) will be provided an electronic copy of the evidence for inspection and review. The parties will have ten (10) business days to review submit a written response to the investigator. The investigator will consider the written responses prior to completing an investigative report. All evidence provided during the inspection and review phase will be available at any hearing for the parties to use during the hearing, including for purposes of cross examination.
- 6.3.3 Investigative Report:** Following the opportunity to inspect and review evidence related to the allegations raised in the Formal Complaint, the investigator will create an investigative report that fairly summarizes relevant evidence obtained during the investigation.
- 6.3.4 Review of the Investigative Report:** At least ten (10) Business Days prior to a hearing, the investigator will provide each party and the party's advisor (if any) an electronic copy of the investigative report for their review and written response.
- 6.3.5 Investigation Timeframe:** The investigation of a Formal Complaint will be concluded within 90 Business Days of the filing of a Formal Complaint. The parties will be provided updates on the progress of the investigation, as needed.
- 6.4 Live Hearing:** After the investigation, MBKU will provide for a live hearing for all Formal Complaints of Sexual Harassment that have not been dismissed per Section 5.2 or resolved by informal resolution under Section 8. At the request of either party, or at the discretion of the Title IX Coordinator, MBKU will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker and parties to simultaneously see and hear the other party or witness answering questions.
- 6.4.1 Information at the Hearing:** The following information/evidence will be available in electronic form at the hearing:

- 6.4.1.1** Evidence from the investigation, including the evidence related to the allegations that was reviewed by the parties, regardless of whether it was incorporated into the report.
- 6.4.1.2** The investigation report and any attachments/appendices.
- 6.4.2 Decision-maker:** The decision-maker will be appointed by MBKU and will not be the Title IX Coordinator or investigator. The decision-maker will be trained, impartial, and without a conflict of interest. The decision-maker will be an MBKU employee or external individual designated by MBKU.
- 6.4.3 Challenge to the decision maker:** Either party may challenge the appointment of a decision-maker, based on conflict of interest or bias, in writing to the Title IX Coordinator, no less than three (3) Business Days prior to the scheduled hearing.
- 6.4.4 Advisor's Role at the Hearing:** Each party must have an advisor present at the hearing. The advisor's role is limited to supporting, advising, and assisting the party during the hearing and conducting questioning (cross-examination) of participants. Advisors are required to follow rules of decorum enforced by the decision-maker. Failure to follow the rules of decorum by an advisor may result in removal of an advisor from the hearing. If a party does not have an advisor present at the live hearing, MBKU will appoint the party with an advisor without fee or charge.
- 6.4.5 Recording of the Hearing:** MBKU will create an audio or audiovisual recording of all live hearings and make the recording available to the parties for inspection or review.
- 6.4.6 Hearing Process Facilitator:** MBKU may designate a hearing process facilitator to coordinate the hearing, including, but not limited to, coordination and scheduling of the hearing; the logistics of physical or virtual rooms for parties and/or witnesses, including separation of the parties; ensuring all technology is working appropriately; ensuring the parties have access to electronic documents during the hearing; distributing materials; etc. The facilitator may also be the Title IX Coordinator. The facilitator may invite the parties and their advisors, separately, to a meeting prior to the hearing to review the hearing process for the purpose of ensuring a smooth hearing. This meeting is separate from the pre-hearing conference discussed below.
- 6.4.7 Pre-Hearing Matters:** To streamline the hearing process, the decision-maker may request the submission of questions prior to the hearing through electronic submission and/or a pre-hearing conference.
- 6.4.7.1 Pre-Hearing Submission of Questions:** The decision-maker may request the parties submit questions, in writing, prior to the hearing. This submission does not preclude the advisor from asking additional questions live during the hearing. The decision-maker may allow for the pre-hearing submission of questions regardless of whether a pre-hearing conference occurs.
- 6.4.7.2 Pre-Hearing Conference:** The decision-maker may hold a pre-hearing conference to further streamline the live hearing, especially in complex cases involving multiple Complainants, Respondents, and/or a significant number of witnesses. During the pre-hearing conference, parties and their Advisors will be meet with the decision-maker separately to review written questions previously submitted and/or to submit, in writing, any questions they wish to ask during the live hearing so that the decision-maker can be prepared to respond to the relevancy of said questions during the live hearing. The decision-maker may discuss any preliminary relevancy determinations regarding submitted questions and/or discuss alternative ways in which to ask questions; however, the decision-maker will make any final relevancy determinations in



real-time, orally, during the live hearing. This conference does not preclude the advisor from asking additional questions live during the hearing.

At the pre-hearing conference, the decision-maker may also hear arguments regarding the relevance of the evidence identified in the investigation report as relevant or not relevant, and/or related to the allegations.

**6.4.7.3 Hearing Documents:** The decision-maker or hearing facilitator will provide parties with a copy of all materials provided to the decision-maker about the matter.

**6.4.7.4 Accommodation Requests:** Participants in need of disability related accommodations and/or interpretation services during the hearing must contact the Title IX Coordinator with said requests three (3) days prior to the hearing.

**6.4.8 Participants in the Hearing:** Participants at the hearing include the decision-maker, the investigator(s) who conducted the investigations, the parties, advisors to the parties, witnesses and anyone providing authorized accommodations. In addition, MBKU may have a hearing facilitator present. Any witnesses scheduled to participate in the hearing must have been first interviewed by the investigator (s) or have provided a written statement or answered questions from the investigator in writing. The decision-maker will provide the names of all persons participating in the hearing to the parties at least seven (7) days prior to the live hearing.

**6.4.9 Hearing Process and Phases:** The live hearing will include the following phases:

**6.4.9.1 Notice of Hearing:** After the investigative report has been completed and at least ten (10) business days prior to the date set for the hearing, the parties, and their Advisors (if any) will be provided with a Notice of the Hearing. The Notice will include the date, time, location, name of the decision-maker, names of all participants in the hearing, and the location (virtual or in person) of the hearing.

**6.4.9.2 Opening Statements:** Each party will have the opportunity to present an opening statement to the decision-maker.

**6.4.9.3 Questioning of Hearing Participants:** The investigator will be the first witness to provide information. The investigator will submit their investigation report and describe the evidence and information gathered in their investigation. The parties and witnesses will then be called in an order determined by the decision-maker. Questioning of parties and witnesses will occur in the following manner:

- i. **By the Decision-maker:** The decision-maker will ask initial questions of the participants at the hearing.
- ii. **By the Advisors:** After the decision-maker asks questions of a participant, each party's advisor will be permitted to ask relevant questions and follow up questions orally, directly, and in real time of the participant. The parties are never permitted to ask questions of participants directly. The questioning of participants by advisors will be conducted in the following manner:
  - A question is asked by an advisor.
  - Before participant answers the questions, the decision-maker determines whether the question is relevant.
  - If the question is determined relevant by the decision-maker, the participant answers the question.

- If the question is determined not to be relevant by the decision-maker, the decision-maker must explain the decision to exclude a question as not relevant.

**iii. Evidence and Questions Excluded:**

- **Sexual Predisposition or Prior Sexual Behavior of the Complainant:** 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.
- **Privileged Information:** No person will be required to disclose information protected under a legally recognized privilege. The decision-maker must not allow into evidence or rely upon any questions or evidence that may require or seek disclosure of such information, unless the person holding the privilege has waived the privilege. This includes information protected by the attorney-client privilege.
- **Medical Records:** Evidence or records that are made or maintained by a physician, psychiatrist, psychologist, 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 party, are not permitted to be used during a hearing unless the party provides voluntary, written permission to do so for the grievance process within this Policy.

**6.4.9.4 Closing Statements:** Each party will have the opportunity to present a closing statement to the decision-maker.

**6.4.9.5 Determination Regarding Responsibility:** After the live hearing, the decision-maker will issue a written determination regarding responsibility using the preponderance of the evidence standard. The decision-maker will provide the Complainant and the Respondent with the written determination simultaneously. The determination regarding responsibility becomes final either on the date that MBKU provides the parties with the written determination of the result of the appeal, if an appeal is filed, or, if an appeal is not filed, the date on which an appeal would no longer be considered timely. The written notice will include:

- i. Identification of the allegations potentially constituting Sexual Harassment;
- ii. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- iii. Findings of fact supporting the determination;
- iv. Conclusions regarding the application of this Policy to the facts;
- v. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions that MBKU imposes on the Respondent,

- and whether remedies designed to restore or preserve equal access to MBKU's education program or activity will be provided by MBKU to the Complainant<sup>7</sup>; and
- vi. The procedures and permissible bases for the Complainant and Respondent to appeal.

### 7. Section 7: Appeals

Either party may appeal the determination regarding responsibility, or the dismissal of a Formal Complaint or any allegations therein within three (3) Business Days of the receipt of the determination regarding responsibility or dismissal. The appeals must be made in writing and delivered to the Title IX Coordinator.

- 7.1 Bases for Appeal:** Appeals of the determination of responsibility or the dismissal of a Formal Complaint may be made on the following bases:
- 7.1.1** Procedural irregularity that affected the outcome of the matter;
  - 7.1.2** New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or
  - 7.1.3** The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.
- 7.2 Appeal Procedures: If an appeal is submitted, MBKU will**
- 7.2.1** Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.
  - 7.2.2** Ensure that the decision-maker for the appeal is not the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator, or the Title IX Coordinator.
  - 7.2.3** Provide the non-appealing party with five (5) Business Days from receipt of the notification of appeal to submit a written statement in support of the outcome of the determination or dismissal.
  - 7.2.4** Issue a written decision describing the result of the appeal and the rationale for the result which can be one of the following:
    - 7.2.4.1** Affirm the decision-maker's determination regarding the Respondent's responsibility and affirm the disciplinary sanctions and remedies, if applicable;
    - 7.2.4.2** Affirm the decision-maker's determination regarding the Respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable;
    - 7.2.4.3** Remand the process back to the hearing stage for the decision-maker to remedy any procedural irregularity or consider any new evidence;
    - 7.2.4.4** Reverse the decision-maker's determination of the Respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable; or
    - 7.2.4.5** Affirm or amend the sanctions and/or remedies outlined in the determination issued under this Policy.
  - 7.2.5** Provide the written decision simultaneously to both parties.
- 7.3 Appeal Timeframe:** The appellate decision-maker will release the written decision within twenty (20) Business Days of receiving the appeal.

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<sup>7</sup> The Title IX Coordinator is responsible for the implementation of any remedies.

### 8. Section 8: Informal Resolution Process

At any time after a Formal Complaint has been signed and before a determination regarding responsibility has been reached, the parties may voluntarily agree to participate in an informal resolution facilitated by MBKU, that does not involve a full investigation and adjudication. Types of informal resolution include, but are not limited to, mediation, facilitated dialogue, conflict coaching, and restorative justice and resolution by agreement of the parties.

- 8.1 Informal Resolution Notice:** Prior to entering the informal resolution process, MBKU will provide the parties a written notice disclosing:
  - 8.1.1** The allegations;
  - 8.1.2** The requirements of the informal resolution process, including the right of any party to withdraw from the informal resolution process and resume the grievance process and the circumstances which preclude parties from resuming a Formal Complaint arising from the same allegations;
  - 8.1.3** Consequences resulting from the informal resolution process, including that the records will be maintained for a period of seven (7) years but will not be used by investigators or decision-makers if the formal grievance process resumes.
- 8.2 Informal Resolution Agreement:** Prior to entering the informal resolution process, the parties must voluntarily agree, in writing to the use of the informal resolution process.
- 8.3 Informal Resolution Availability:** The informal resolution process is not permitted to resolve allegations that an employee committed Sexual Harassment against a student.
- 8.4 Informal Resolution Timeframe:** Informal resolutions of a Formal Complaint will be concluded within 45 days of notice to MBKU that both parties wish to proceed with the informal resolution process. Such notice that the parties wish to proceed with an informal resolution process will “pause” the counting of the timeframe to conclude the Grievance Process of this Policy, should the informal resolution process fail, and the parties continue with the Grievance Process.
- 8.5 Informal Resolution Documentation:** Any final resolution pursuant to the Informal Resolution process will be documented and kept for seven (7) years. However, no recording of the informal resolution process will be made, and all statements made during the informal resolution process will not be used for or against either party (and the decision-maker and/or appellate decision-maker may not consider any such statement made during informal resolution) should the parties resume the grievance process. Failure to comply with an informal resolution agreement may result in disciplinary action.

### 9. Section 9: Emergency Removal and Administrative Leave

- 9.1 Emergency Removal:** At any time after the Title IX Coordinator is on notice of Sexual Harassment, MBKU may remove a Respondent on an emergency basis. MBKU will only conduct an emergency removal after:
  - 9.1.1** Undertaking and individualized safety and risk analysis,
  - 9.1.2** Determining that an immediate threat the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal, and
  - 9.1.3** Providing the Respondent with notice and an opportunity to challenge the decision to the Title IX Coordinator, within two (2) Business Days following the removal.
- 9.2 Administrative Leave:** MBKU may place a non-student employee Respondent on administrative leave during the pendency of the grievance process in this Policy.

#### 10. Section 10: Recordkeeping

MBKU will maintain all the documentation related to reports of Sexual Harassment, Formal Complaints, the grievance process, and information resolution process for seven years in accordance with state and federal records laws and requirements. The documentation of all records is private and confidential to the extent possible under law. Student records of the grievance process are disciplinary records under Family Education Rights and Privacy Act (FERPA). Employee records of the grievance process are subject to the Freedom of Information Act (FOIA) and applicable state laws and included in the employee's official employment record.

#### 11. Section 11: Additional Conduct Violations Related to this Policy

Alleged violations of the terms in this section will be sent to the VPES for student Respondents or to the VPHR for employee Respondents for investigation and adjudication under the MBKU Code of Conduct (need to add employee policy name). The following are violations of the Code of Conduct for Students regarding knowingly providing false information or disruption and will be resolved through the Student/Employee Conduct process:

- 11.1 Falsification, distortion, or misrepresentation of information under review by a Program Conduct Officer, the University Conduct Committee, and/or Appellate Officer.
- 11.2 Disruption or interference with the orderly conduct of a conduct meeting/Hearing.
- 11.3 Attempting to discourage an individual's proper participation in, or use of, the student conduct process.
- 11.4 Attempting to influence the impartiality of a University Conduct Officer prior to and/or during the conduct meeting/Committee Hearing.
- 11.5 Harassment (verbal or physical) and/or intimidation of a University Conduct Officer prior to, during and/or after a conduct meeting/Committee Hearing.
- 11.6 Influencing or attempting to influence another person to commit an abuse of the student conduct process. Retaliation against any person submitting a complaint of any alleged policy violation or against any person cooperating in the fact-finding (including testifying as a witness) of any alleged violation of this Code.

#### 12. Appendix 1: Applicable State Laws

This section includes California definitions related to and referenced in the defined prohibited conduct under this Policy.

#### **Sexual Assault Related Crimes**

**Rape:** Cal. Pen Code § 261:

(a) Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances:

- (1) Where a person is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act.
- (2) Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.
- (3) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused.
- (4) Where a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, "unconscious of the nature of the act" means incapable of resisting because the victim meets any one of the following conditions:
  - (A) Was unconscious or asleep.
  - (B) Was not aware, knowing, perceiving, or cognizant that the act occurred.
  - (C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(D) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

(5) Where a person submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief.

(6) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(7) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(b) As used in this section, "duress" means a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total circumstances, including the age of the victim, and his or her relationship to the defendant, are factors to consider in appraising the existence of duress.

(c) As used in this section, "menace" means any threat, declaration, or act which shows an intention to inflict an injury upon another.

**Rape of a Spouse:** Cal. Pen Code § 261:

(a) Rape of a person who is the spouse of the perpetrator is an act of sexual intercourse accomplished under any of the following circumstances:

(1) Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.

(2) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known, by the accused.

(3) Where a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(A) Was unconscious or asleep.

(B) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(4) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(5) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(b) As used in this section, “duress” means a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total circumstances, including the age of the victim, and his or her relationship to the defendant, are factors to consider in appraising the existence of duress.

(c) As used in this section, “menace” means any threat, declaration, or act that shows an intention to inflict an injury upon another.

**Statutory Rape:** Cal. Pen Code § 261.5

Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator if the person is a minor. For the purposes of this section, a “minor” is a person under the age of 18 years and an “adult” is a person who is at least 18 years of age.

**Sexual Battery:** Cal. Pen Code § 243.4

(a) Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery.

(b) Any person who touches an intimate part of another person who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated, if the touching is against the will of the person touched, and if the touching is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery.

(c) Any person who touches an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuse, and the victim is at the time unconscious of the nature of the act because the perpetrator fraudulently represented that the touching served a professional purpose, is guilty of sexual battery.

(d) Any person who, for the purpose of sexual arousal, sexual gratification, or sexual abuse, causes another, against that person’s will while that person is unlawfully restrained either by the accused or an accomplice, or is institutionalized for medical treatment and is seriously disabled or medically incapacitated, to masturbate or touch an intimate part of either of those persons or a third person, is guilty of sexual battery.

**Incest:** Cal. Pen Code § 285

Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who intermarry with each other, or who being 14 years of age or older, commit fornication or adultery with each other

**Stalking:** Cal. Pen Code § 246.9

Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking.

**Domestic Assault/Dating Violence Related Crimes**

**Domestic Battery:** Cal. Pen Code § 243

When a battery is committed against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant’s child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship.

**Corporal Injury to a Spouse or Cohabitant:** Cal. Pen Code § 273.5

Any person who willfully inflicts corporal injury resulting in a traumatic condition upon a victim who is one or more of the following:

- (1) The offender’s spouse or former spouse.

- (2) The offender's cohabitant or former cohabitant.
- (3) The offender's fiancé or fiancée, or someone with whom the offender has, or previously had, an engagement or dating relationship

**B. Prohibited Discrimination, Harassment & Sexual Misconduct Outside the Scope of Title IX**

Alleged Conduct will be evaluated by the Title IX Coordinator to determine whether it will be investigated under the Student Code of Conduct or Employee Code of Conduct if it is determined prior to a Formal Complaint or after the dismissal of a Formal Complaint under the MBKU Title IX Policy, that the Respondent is a student or employee of MBKU and the alleged conduct meets one or more of the following:

1. the alleged conduct does not fall within the definition of Sexual Harassment as defined in the [Title IX Policy](#),
2. the alleged conduct, if proved, would constitute a violation of Sexual Harassment as defined in the Title IX Policy and did not occur in the Education Program or Activity of MBKU but would have a substantial impact on MBKU,
3. the alleged conduct, if proved, would violate the definition of Sexual Harassment as defined in the Title IX Policy and did not occur in the U.S.,
4. the Complainant is not participating in or attempting to participate in MBKU's Education Program or Activity, AND/OR
5. the alleged conduct, if proved, would constitute any of the following:
  - 5.1 **Non-Title IX Sexual Harassment:** Unwelcome verbal or physical behavior which is directed at an individual based on sex, when these behaviors are sufficiently severe or pervasive to have the effect of unreasonably interfering with an individual's educational experience, working conditions, or living conditions by creating an intimidating, hostile, or offensive environment.
  - 5.2 **Sexual Exploitation:** Any act whereby one individual violates the sexual privacy of another or takes unjust or abusive sexual advantage of another who has not provided consent.