

MOUNT  VERNON  
NAZARENE UNIVERSITY

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**TITLE IX**  
*Trust & Transparency*

**Sex/Gender-Based Harassment,  
Discrimination and  
Sexual Misconduct Policy**

August 2018

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# How to Get Help

Any member of Mount Vernon Nazarene University (the University) community who has experienced sexual or physical assault is encouraged to immediately seek medical assistance, contact law enforcement to make a report, and make a report to the University.

## EMERGENCY RESPONSE

Campus Safety  
740-399-8686  
740-397-9000, ext. 8686  
[campus.safety@mvnu.edu](mailto:campus.safety@mvnu.edu)

Crisis Hotline  
740-397-9000, ext. 5000

Mount Vernon Police  
740-397-2222

Knox County Sheriff  
740-397-3333

Emergency Law Enforcement Response:  
911 (from anywhere)

## MEDICAL TREATMENT

Knox Community Hospital  
1330 Coshocton Avenue  
Mount Vernon, OH 43050  
740-393-9000  
*Provides medical treatment and sexual assault forensic exams*

New Directions: The Domestic Abuse and Rape Crisis Center of Knox County  
Hotline: 740-397-5525  
*Will accompany to a sexual assault forensic exam*

Student Health Services  
740-397-9000, ext. 4632

Residential Health Advisor  
740-385-0345  
*Health related concerns and non-emergency medical transportation overnight or weekends*

## COUNSELING

Campus Counseling Center  
[counselingcenter@mvnu.edu](mailto:counselingcenter@mvnu.edu)  
740-397-9000, Ext. 4610

New Directions: The Domestic Abuse and Rape Crisis Center of Knox County

Hotline: 740-397-5525

*Will accompany to a sexual assault forensic exam*

### **CONFIDENTIAL RESOURCES**

The resources designated below can provide counseling, information, and support under confidentiality protections.

#### **ON CAMPUS**

Campus Counseling Center  
[counselingcenter@mvnu.edu](mailto:counselingcenter@mvnu.edu)  
740-397-9000, Ext. 4610

University Chaplain  
740-397-9000, Ext. 3713

#### **OFF CAMPUS**

New Directions: The Domestic Abuse and Rape Crisis Center of Knox County  
Rape Crisis Center 24-Hour Hotline: 740-397-4357

Knox County Victim's Assistance  
740-397-3404

National Domestic Violence Hotline (NDV)  
800-799-7233 (SAFE)  
[www.thehotline.org](http://www.thehotline.org)

Ohio Sexual Violence Coalition Domestic Violence  
24 -Hour Hotline: 844-644-6435 (OHIOHELP)

Ohio Hispanic Coalition Domestic Violence  
24-Hour Hotline: 614-746-3534 (Spanish and English)

#### **REPORTING OPTIONS ON CAMPUS *(not confidential)***

This link may be used to file an Incident Report: [titleix@mvnu.edu](mailto:titleix@mvnu.edu)

##### **Christina Jones**

Title IX Coordinator  
Off Campus: 740-399-8250 / On Campus: 740-397-9000, ext. 3250  
[titleix@mvnu.edu](mailto:titleix@mvnu.edu)

##### **Tim Radcliffe**

Title IX Deputy Coordinator  
Off Campus: 740-399-8250 / On Campus: 740-397-9000, ext. 3250  
[titleix@mvnu.edu](mailto:titleix@mvnu.edu)

##### **Campus Safety**

740-399-8686  
740-397-9000, ext. 8686  
[campus.safety@mvnu.edu](mailto:campus.safety@mvnu.edu)

## **TITLE IX COMPLIANCE**

Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex, including sexual and gender-based harassment and violence, in any federal funded education. The University will not tolerate sexual harassment, sexual violence, stalking and intimate partner violence. The University's Title IX Coordinator manages the resolution of all misconduct covered by this policy. To make a report or discuss any aspect of this policy, please contact Title IX Coordinator Christina Jones at 740-399-8250 / [titleix@mvnu.edu](mailto:titleix@mvnu.edu).

## **VAWA COMPLIANCE**

The Violence Against Women Reauthorization Act was signed in 2013. Despite the title, VAWA applies to people of all genders. VAWA added three categories of crimes colleges and universities receiving federal funding are required to report in their annual Clery report: Dating Violence, Domestic Violence, and Stalking. Key protections under VAWA include instituting protective measures, training investigators, reaffirming the right of individuals to decide whether to report or seek assistance from law enforcement and/or campus authorities, and allowing individuals to be accompanied by an advisor of their choice during the process.

Upon receipt of a report, the University will take prompt and effective action by: providing interim remedies and support for individuals who make a report or seek assistance under this policy; conducting a review of the conduct; addressing the safety of the reporting party and the campus community; and as warranted, pursuing resolution through informal resolution or formal disciplinary action against the accused individual. Regardless of whether a reporting party chooses to pursue disciplinary action, the University will take interim measures to protect the parties involved and ensure that all safety, emotional and physical well-being concerns are being addressed. The University will not tolerate retaliation and will take immediate and responsive action to any report of retaliation or any violation of protective interim measures.

## **YOUR CHOICE: CONFIDENTIAL RESOURCES VS. MAKING A REPORT TO THE UNIVERSITY**

There is a distinction between seeking assistance from a confidential resource and making a report to the University through designated reporting options. Confidential resources on campus and in the community have legally protected confidentiality and will not share information about a reporting party (including whether or not that individual has received services) except under limited circumstances. Please refer to Section IV, B of this policy for such circumstances. These include counselors, medical health providers, clergy, and certified rape crisis counselors. In contrast, all other University employees are required to share information with the University's Title IX Coordinator. This allows the University to provide resources and support to a reporting party and to take consistent action to respond to the report as outlined in the Mount Vernon Nazarene University's Sex/Gender-Based Harassment, Discrimination and Sexual Misconduct Policy and Procedures.

# 2018-19 Title IX Policy

- I. PURPOSE AND STATEMENT OF POLICY**
  - II. SCOPE OF POLICY**
  - III. TITLE IX TEAM**
  - IV. PRIVACY AND CONFIDENTIALITY**
  - V. PROHIBITED CONDUCT**
  - VI. RELATED DEFINITIONS AND CONCEPTS**
  - VII. METHODS OF REPORTING**
  - VIII. EDUCATION, PREVENTION, AND TRAINING**
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## **I. PURPOSE & STATEMENT OF POLICY**

Title IX provides that no person in the United States, on the basis of gender, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. The purpose of Title IX is to ensure equal access and fairness for men and women with regard to athletics, employment, admissions, financial aid, publications, educational programs, and student rights.

Sexual and gender-based discrimination interferes with an individual's employment or educational performance and has the purpose or effect of denying or limiting an individual's access to or benefit from educational programs. Thus, the University is committed to fostering a climate free from sexual and gender-based discrimination, harassment and violence, intimate partner violence and stalking through clear and effective policies, education and prevention programs, and prompt and equitable procedures for reports of prohibited conduct under this policy. The University is committed to taking the necessary steps to stop the prohibited conduct, prevent the reoccurrence and address its effects.

Individuals found responsible under this policy may face disciplinary sanctions up to and including dismissal from the University and/or termination of employment. Moreover, the University will not tolerate retaliation against any party participating in a proceeding under this policy. The University encourages all members of its community to participate in the process of creating a safe, welcoming, and respectful environment on campus.

## **II. SCOPE OF POLICY**

This policy applies to all forms of Prohibited Conduct that:

- Occur on campus;

- Occur in the context of any University education or employment activities and programs;
- Have continuing adverse effects on campus, on any member of the University community, or in the context of any University education or employment activities and programs, regardless of where the conduct occurred.

Thus, the Title IX policy applies to all University employees and students, when engaged in University sponsored events on or off University property. This policy will apply to vendors as covered persons while on campus property. Approved volunteers working in sponsored events are also subject to the policy as are invited guests participating in those events.

When University facilities are leased to outside agencies or organizations, and the event is not an official University sponsored event, the leasing organization is responsible to monitor, police, investigate, and sanction violations of Title IX protections.

Regardless of whether off-campus behavior meets any of the above characteristics, the University may hold individuals and groups responsible for off-campus behavior that is prohibited by the Student, Staff or Faculty Handbooks.

Regardless of when, where or with whom the conduct occurred, the University will offer resources and assistance to any individuals who have been affected by Prohibited Conduct.

### **III. TITLE IX TEAM**

#### **A. Title IX Coordinator**

1. The University's Title IX Coordinator oversees compliance with all aspects of the Mount Vernon Nazarene University's Sex/Gender Harassment, Discrimination and Misconduct Policy and Procedures. The Coordinator reports directly to the President of the University. Questions about this policy should be directed to the Title IX Coordinator.

**CHRISTINA JONES**

Title IX Coordinator

Off Campus: 740-399-8250 / On Campus: 740-397-9000, ext. 3250

[titleix@mvnu.edu](mailto:titleix@mvnu.edu)

Mount Vernon Nazarene University

800 Martinsburg Road

Mount Vernon, OH 43050

2. The Title IX Coordinator (the coordinator) shall direct University efforts to comply with and implement its responsibilities under Title IX. Those responsibilities include:
  - a. Knowledgeable and trained in University policies and procedures and relevant and state federal laws;
  - b. Responsible for monitoring full compliance with all procedural requirements, record keeping and timeframes outlined in this policy and procedure;
  - c. Ensuring that the University properly disseminates Title IX information;
  - d. Responsible for overseeing trainings, prevention, and education efforts;
  - e. Available to advise and provide assistance to any University individual, including reporting and/or responding party, about the course of action provided within the policy and procedure;
  - f. Overseeing and supervising the Title IX Team (committee and investigators);
  - g. Overseeing Title IX incidents and ensuring the resolution procedures are implemented promptly and equitably via conducting initial inquiries and assigning investigations to a Title IX Investigation Unit; and
  - h. Identifying and addressing systematic problems that arise during the review of Title IX complaints.
3. Individuals experiencing harassment or discrimination also always have the right to file a formal grievance with government authorities:
  - a. **Office for Civil Rights, Cleveland Office**  
U.S. Department of Education  
1350 Euclid Avenue, Suite 325  
Cleveland, OH 44115  
(216) 522-4970; (216) 522-2573 (fax) | [OCR.Cleveland@ed.gov](mailto:OCR.Cleveland@ed.gov)
4. If an individual believes that the Title IX Coordinator has engaged in Prohibited Conduct or has otherwise behaved inappropriately, the individual shall contact the President of Mount Vernon Nazarene University.

B. Title IX Deputy Coordinator

1. The Deputy Title IX Coordinator will work closely with the Title IX Coordinator to maintain compliance.

**TIM RADCLIFFE**

Title IX Deputy Coordinator

Off Campus: 740-399-8250 / On Campus: 740-397-9000, ext. 3250

[titleix@mvnu.edu](mailto:titleix@mvnu.edu)



Mount Vernon Nazarene University  
800 Martinsburg Road  
Mount Vernon, OH 43050

2. Those responsibilities may include:
  - a. Attending and/or overseeing the Title IX Committee meetings;
  - b. Assisting the Title IX Coordinator with complicated or lengthy inquires, investigations, and resolutions;
  - c. Overseeing the Title IX Investigation Unit;
  - d. Assuming the role of Title IX Coordinator in his/her absence; and
  - e. Working with the President in the event the Title IX Coordinator is a reporting or responding party.

C. Title IX Investigation Unit

The University will use a dual investigator model. Thus, the Title IX Coordinator will designate two investigators to conduct an adequate, reliable and impartial investigation. The Title IX Investigation Unit will consist of at least four trained investigators, preferably two females and two males. Typically, this team will be comprised of current University employees, each of whom will serve for at least a two-year term. However, The University reserves the right to engage an external investigator as one of two assigned investigators as the situation warrants. An investigator used by the University will have specific training in investigating matters of Prohibited Conduct and completing reports. The investigation will be impartial and free from any actual conflict of interest. The assigned unit will generate an investigation report after interviewing witnesses and evidence for both parties. This report will then be provided to the Title IX Coordinator for review and dissemination to the appropriate parties.

D. Title IX Committee

Each committee member will serve for a term of at least two years, excluding the position of Coordinator. The Vice President for Academic Affairs in collaboration with the President will appoint this individual for the Coordinator position to a term agreed upon by all parties. The committee is comprised of the following individuals:

- Title IX Coordinator
- Title IX Deputy Coordinator
- Assistant to the President for Effectiveness and Planning or representative of this office
- Athletic Director
- Campus Safety Representative
- Director of Human Resources or representative of this office

- University Registrar or representative of this office
- Vice President for Student Life or representative of this office
- One athletic coach
- One female student representative
- One male student representative
- One staff representative
- Two faculty members, chosen at-large with alternating terms

The responsibilities of the committee will include but are not limited to:

- Reviewing Title IX policies and procedures and making recommendations for improvements to the Senior Leadership Team;
- Conducting periodic self-evaluations of University programs, policies, and activities to determine compliance with Title IX requirements;
- Assisting with Title IX investigations, when requested;
- Participating in education, prevention, and training events, when needed;
- Assisting the Title IX Coordinator, as needed.

## IV. PRIVACY AND CONFIDENTIALITY

### A. DEFINITIONS

Privacy and confidentiality have distinct meanings under this policy.

**Privacy** generally means that information related to a report of Prohibited Conduct will only be shared with those University employees who “need to know” in order to assist in the active review, investigation, or resolution of the report, including the issuance of interim measures. The University will determine which employees have a legitimate need to know about individual conduct complaints pursuant to the Family Educational Rights and Privacy Act (FERPA) and will share information accordingly.

The University may notify the parents or guardians of any dependent students who are responding parties regarding conduct charges or sanctions, particularly disciplinary probation, loss of housing, suspension and dismissal.

**Confidentiality** means that information shared by an individual with designated campus or community professionals cannot be revealed to any other individual without express permission of the individual or as otherwise permitted or required by law. These designated professionals have the right to maintain privileged conversations under state law. Confidential resources include medical professionals, mental health professionals, rape crisis or domestic violence counselors and clergy.

## B. LIMITS TO CONFIDENTIALITY

### **Ohio Felony Reporting Requirement**

Under Ohio law, all individuals, excluding confidential resources, must report felonies, including sexual violence. Under Ohio Revised Code Section 2921.22, medical professionals, mental health professionals and clergy are not required to report felonies. This legal requirement means that the Title IX Coordinator or Campus Safety must report any felony to the Mount Vernon Police Department. Where the University makes a report to law enforcement under this section, the University will not typically share the names of the involved parties without permission from the reporting party. The University will communicate with the reporting party in advance of any report to law enforcement. The reporting party may choose whether and how to participate in any subsequent criminal investigation.

## C. CONFIDENTIAL RESOURCES

The resources designated below can provide counseling, information, and support. These confidential resources will not share information about a reporting party or responding party without the individual's express permission or as permitted or required above (Limits to Confidentiality).

### **ON CAMPUS**

Campus Counseling Center  
[counselingcenter@mvnu.edu](mailto:counselingcenter@mvnu.edu)  
740-397-9000, Ext. 4610

University Chaplain  
740-392-6868, Ext. 3713

Student Health Services  
740-9000, Ext. 4632

### **OFF CAMPUS**

New Directions: The Domestic Abuse and Rape Crisis Center of Knox County  
Rape Crisis Center 24-Hour Hotline: 740-397-4357

Knox County Victim's Assistance  
740-397-3404

National Domestic Violence Hotline (NDV)  
800-799-7233 (SAFE)  
[www.thehotline.org](http://www.thehotline.org)

Ohio Sexual Violence Coalition Domestic Violence  
24 -Hour Hotline: 844-644-6435 (OHIOHELP)

## V. PROHIBITED CONDUCT

The University prohibits a broad spectrum of behavior, including all forms of sexual and gender-based discrimination, harassment and violence, stalking and intimate partner violence. The following conduct is specifically prohibited under this policy:

- Sexual Harassment
- Sex/Gender Discrimination
- Non-Consensual Sexual Intercourse
- Non-Consensual Sexual Contact
- Sexual Exploitation
- Stalking
- Physical Harm and Intimidation
- Harassment, Bullying or Cyber bullying
- Intimate Partner Violence
- Retaliation

### A. Sexual Harassment

Sexual Harassment is any unwelcome sex-based or gender-based verbal, written, online, and/or physical conduct advance, i.e., request for sexual favors, or other unwanted verbal or physical conduct of a sexual nature when one or more of the following conditions are present:

- Submission to such conduct is made either explicitly or implicitly as a term or condition of employment or education, i.e., “quid pro quo”; or
- Submission to or rejection of such conduct by an individual is used as the basis for employment or education decisions affecting the individual, i.e., “quid pro quo”; or
- Such conduct creates an intimidating, hostile, offensive, or demeaning employment or educational environment.

### **Hostile Environment**

A single incident of Sexual Harassment alone may create a hostile environment if the incident is sufficiently severe. The determination of whether an environment is “hostile” will be based on the totality of the circumstances, including, but not limited to:

- Sufficiently severe, or
- Persistent or pervasive, *and*
- Objectively offensive that it:

- Unreasonably interferes with, denies, or limits someone's ability to participate in or benefit from the University's educational and/or employment, social and/or residential program.

**Totality of Circumstances Factors:**

- The degree to which the conduct affected one or more student's education;
- The type, frequency, and duration of the conduct;
- The identity of and relationship between the alleged harasser and the subject(s) of the harassment;
- The number of individuals involved;
- The age and sex of the alleged harasser and the subject(s) of the harassment;
- The size of the school, location of the incidents, and the context in which they occurred;
- Other incidents at the school; or
- Incidents of gender-based, but non-sexual harassment

**B. Sex/Gender Discrimination**

Discrimination occurs when a behavior or policy has the purpose or effect of restricting or denying an individual's or group's access to opportunities, programs, or resources in relation to sex or gender, in a manner that interferes with an individual's working, academic, residential, or social environment or athletic participation or performance.

Examples of discrimination include but are not limited to:

- Treated differently in determining whether such person satisfies any requirement or condition for the provision of any aids, benefits, or services;
- Provided different aid, benefits, or services;
- Provided aid, benefits, or services in a different manner;
- Denied any aids, benefits or services;
- Subjected to separate or different rules of behavior, sanctions or other treatment;
- Discriminated against by providing significant assistance to any agency, organization or person which discriminates on the basis of sex in providing any aid, benefit, or service to students, faculty or staff;
- Otherwise limited in the enjoyment of any rights, privileges, advantages or opportunities with regard to aids, benefits or services; or
- Treated differently with regard to terms, conditions or benefits of employment, or in the recruitment, consideration or selection thereof.

When these or other forms of discrimination are based on sex or gender, the conduct will be resolved under this policy.

Discrimination on the basis of sex/gender in employment is permissible in situations where sex/gender is a bona fide occupational qualification reasonably necessary to the normal operation of the University. Note that the federal regulations regarding Title IX include certain exceptions, such as single-gender housing, athletic participation and chorus participation that do not constitute Sex/Gender Discrimination. These limited permissible exceptions, found in Title 34 of the Code of Federal Regulations, Part 106, will be considered when determining whether Prohibited Conduct occurred under this policy.

### C. Non-Consensual Sexual Intercourse

Non-Consensual Sexual Intercourse is defined as having or attempting to have sexual intercourse with another individual:

- Any sexual intercourse, however slight, with any object by a person upon another person;
- By force or threat of force;
- Without consent; or
- Where that individual is incapacitated.

Penetrative examples of sexual intercourse include but may not be limited to: vaginal or anal penetration, however slight, with a body part (e.g., penis, tongue, finger, hand) or object, or oral penetration involving mouth to genital contact or mouth to anus contact.

Non-penetrative examples of sexual intercourse may include, but may not be limited to: exposed genitals rubbing against each other, rubbing one's exposed genitalia against parts of another individual's body, or rubbing another's exposed genitalia.

### D. Non-Consensual Sexual Contact

Non-Consensual Sexual Contact is defined as having sexual contact with another individual:

- Any intentional touching, however slight, with any object, by a person upon another person,
- By force or threat of force;
- Without consent; or
- Where that individual is incapacitated.

*Sexual contact* includes any intentional touching of the intimate parts of another, causing another to touch one's intimate parts, or disrobing or exposure of another without permission. Intimate parts may include the breasts, genitals, buttocks, groin, mouth or any other part of the body that is

touched in a sexual manner. Sexual contact may be over the clothes or skin-to-skin.

#### E. Sexual Exploitation

Sexual Exploitation is knowingly, intentionally or purposefully taking advantage of the sexuality of another person without consent or in a manner that extends the bounds of consensual sexual activity without the knowledge of the other individual for any purpose, including sexual gratification, financial gain, or personal benefit. Examples of Sexual Exploitation include but not limited to:

- Observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
- Non-consensual streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved;
- Non-consensual recording of individuals in locations in which they have a reasonable expectation of privacy, such as restrooms, locker rooms, or dorm rooms, regardless of whether the images captured reveal sexual activity or nudity;
- Prostituting another individual;
- Exposing one's genitals in non-consensual circumstances;
- Removal of a condom, without consent, during sexual intercourse;
- Knowingly exposing another individual to a sexually transmitted infection or virus without that individual's knowledge; and
- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity, e.g., by using alcohol or other drugs (such as Rohypnol or GHB).

#### F. Stalking

Stalking occurs when a person engages in a course of conduct or repeatedly commits acts toward another person, under circumstances that demonstrate either of the following:

- Placing the person in reasonable fear of bodily injury to oneself or others, or of damage to their property; or
- Reasonably causing substantial emotional distress to the person.

Cyber-stalking is a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used. Cyber-stalking is considered stalking under this policy if it meets either of the conditions above.

#### G. Physical Harm and Intimidation

Physical harm and/or intimidation include threatening, or causing physical harm, written or verbal abuse or other conduct that threatens or endangers the health or safety of any person; or implied threats or acts that cause an unreasonable fear of harm in another. Examples include but are not limited to: hitting, choking, or otherwise contacting another person in a physically aggressive manner. These acts may be directed at the individual and/or the individual's property and possessions. When these acts occur in the context of a romantic or sexual encounter, or intimate partner violence or when the behavior is perpetrated on the basis of sex or gender, the conduct will be resolved under this policy.

#### H. Harassment Bullying or Cyber bullying

Harassment, bullying or cyber bullying are defined as repeated and/or severe aggressive behavior likely to intimidate, threaten, or intentionally hurt, control or diminish another person, physically or mentally that includes, but is not limited to: creating web pages with a negative focus; posting insults or lewd photos on social networking sites; and/or spreading rumors with malicious intent. When these acts occur in the context of a romantic or sexual encounter or intimate partner violence, or when the behavior is perpetrated on the basis of sex or gender, the conduct will be resolved under this policy.

#### I. Intimate Partner Violence

Intimate Partner Violence (including dating violence and domestic violence) includes any act of violence or threatened act of violence that occurs between individuals who are involved or have been involved in a sexual, dating, spousal, domestic, or other intimate relationship. Intimate Partner Violence may include any form of Prohibited Conduct under this policy.

The University will evaluate the existence of an intimate relationship based upon the reporting party's statements and taking in to consideration the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

#### J. Retaliation

Retaliation is any real or perceived act or attempt to take an adverse action against or seek retribution from any individual or group of individuals involved in the investigation and/or resolution of a report under this policy. Retaliation can take many forms, including, but not limited to: social aggression, damage to property, abuse, violence, threats, and intimidation.



Retaliation may also include attempting to interfere with an investigation. This may include attempting to influence a witness, trying to alter evidence, and/or presenting knowingly false information in an investigation.

Conduct not typically considered retaliation includes, but may not be limited to, making an allegation of misconduct, filing a complaint, serving as a witness, assisting a reporting party or responding party, or otherwise participating in an investigation and/or resolution of alleged conduct as defined in this policy.

Any individual or group of individuals, including but not limited to, reporting party or responding party, can be held accountable for retaliation under this policy.

## **VI. RELATED DEFINITIONS AND CONCEPTS**

### **A. CONSENT**

Consent must be informed, knowing and voluntary (freely given) via affirmative action through clear words or actions, that creates mutually understandable permission regarding the conditions of sexual activity. It cannot be obtained by use of force, compelling threats, intimidating behavior, or coercion. It cannot be given by someone known to be – or who should be known to be mentally or physically incapacitated.

- Consent is active, not passive
- Silence, in and of itself, cannot be interpreted as consent
- Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding willingness to engage in (and the conditions of) sexual activity.
- Consent to any one form of sexual activity cannot imply consent to future sexual acts.
- Consent can be withdrawn once given, as long as that withdrawal is clearly communicated.
- In order to give consent, one must be of legal age.

### **B. INCAPACITATION**

One is incapacitated by some mental or cognitive impairment, injury, or when one is asleep or unconscious. Sexual activity with someone you know to be or should know to be incapacitated constitutes a violation of this policy.

- Incapacitation can occur mentally or physically, from developmental disability, by alcohol or other drug use, or blackout.
- The question of what the responding party should have known is objectively based on what a reasonable person in the place of the

responding party, sober and exercising good judgment, would have known about the condition of the reporting party.

- Incapacitation is a state where someone cannot make rationale, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, why or how” of their sexual interaction).
- This policy also covers a person whose incapacity results from mental disability, sleep, unconsciousness, involuntary physical restraint, or from the taking of rape drugs.

Evidence of incapacity will come from context clues, such as:

- Slurred speech
- Bloodshot eyes
- The smell of alcohol on the breath
- Shaky equilibrium
- Vomiting
- Outrageous or unusual behavior
- Unconsciousness (including blackout)

### C. FORCE

Force is the use or threat of physical violence or intimidation to overcome an individual's freedom of will to choose whether or not to participate in sexual activity. There is no requirement that a party resists the sexual advance or request. Consent cannot be obtained by force.

### D. COERCION

Coercion is the use of unreasonable and persistent pressure to compel another individual to initiate or continue sexual activity against an individual's will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats and blackmail. Coercion may be emotional, intellectual, psychological or moral.

### E. IMPACT OF ALCOHOL AND DRUGS

Alcohol and drugs have the ability to lower inhibitions, affect the decision making process, impact the awareness of consequences, and impact a person's ability to consent to sexual activity. Sexual assaults on university campuses across the nation frequently take place in the presence of alcohol and/or drugs. The important question that arises in sexual assault cases involving alcohol and/or drugs is whether the individual **accused** of sexual assault knew, or should have known, that the individual complaining that he/she was sexually assaulted was **incapacitated** due to the use of alcohol

and/or drugs and was therefore unable to consent to engaging in sexual activity with the accused.<sup>i</sup>

Incapacitation is defined as a state beyond that of intoxication. The reporting party asserting that he or she was incapacitated cannot prove incapacitation. Instead incapacitation is proven by a totality of the evidence. The presence of some or all of following factors shows that the initiator of sexual activity (the responding party) knew or should have known that his or her partner was incapacitated:

- The initiator of sexual activity (the responding party) knew his or her partner was drinking and/or using drugs and may have known how much and what kind;
- The partner was stumbling or otherwise exhibited loss of equilibrium;
- The partner exhibited slurred speech or word confusion;
- The partner had bloodshot, glassy, or unfocused eyes;
- The partner exhibited any signs of alcohol poisoning;
- The partner was vomiting, especially repeatedly;
- The partner was disoriented, or confused as to time, place, etc.; or
- The partner lost consciousness.<sup>ii</sup>

When determining whether an individual had the capacity to consent to sex, the University considers the following two questions:

- Did the individual initiating sexual activity (the responding party), know that his or her partner was incapacitated?
- If not, should a sober, reasonable person in the same position as the initiator of sexual activity (the responding party) have known that his or her partner was incapacitated?<sup>iii</sup>

If, through the course of the investigation, the University determines that the answer to either of these questions is “yes,” then effective consent to sexual activity is not present.

Determining whether an individual is incapacitated from drugs and/or alcohol is difficult; therefore, the University strongly recommends that you err on the side of caution before engaging in sexual activity with a partner who is under the influence of alcohol and/or drugs. When in doubt, make the assumption that a partner is incapacitated and therefore unable to give consent for sexual activity. Likewise, for the individual initiating sexual activity, the responding party, being under the influence of alcohol and/or drugs is **never** a defense to a complaint of sexual assault. <sup>iv</sup>

Remember, if in doubt, the safest (and most respectful) thing to do is **not** engage in sexual activity: Walk out.

## E. PRESERVATION OF EVIDENCE

The University encourages all individuals to seek assistance from a medical provider and/or law enforcement agency immediately after an incident of sexual misconduct. This is the best option to ensure preservation of evidence and to begin a timely investigative and remedial response. The University will assist any MVNU community member in getting to a safe place and will provide transportation to the hospital, coordination with law enforcement, and information about the University's resources and complaint processes.

Individuals who are recipients of sexual violence, domestic violence, or dating violence should do everything possible to preserve evidence by making certain that the crime scene is not disturbed. There is a limited window of time (typically 72 to 96 hours) following an incident of sexual assault to preserve physical and other forms of evidence.

Preservation of evidence may be necessary for proof of the crime or in obtaining a protection order. Recipients of sexual violence, domestic violence, or dating violence should not bathe, urinate, douche, brush teeth, or drink liquids until after they are examined and, if necessary, a rape examination is completed by a Sexual Assault Nurse Examiner (SANE). Clothes should not be changed or if removed, the garments should be secured in a paper bag.

It is also important to take steps to preserve evidence in cases of stalking, to the extent such evidence exists. In cases of stalking, evidence is more likely to be in the form of letters, emails, text messages, etc. rather than evidence of physical contact and violence. Taking the steps to gather evidence immediately does not commit an individual to any course of action. The decision to seek medical attention and gather any evidence will remain confidential and preserve the full range of options to seek resolution through the MVNU's complaint processes or through the pursuit of criminal action.

The Title IX Coordinator or investigator will work in collaboration with the University's Information Technology Services Department to ensure that any potential electronic evidence of sexual misconduct is preserved.

## VII. METHODS OF REPORTING

The University encourages prompt reporting of sexual misconduct — in person or by submitting an online [Incident Report](#). The following information about reporting can be found in greater detail in the *Mount Vernon Nazarene University's Sex/Gender-Based Harassment, Discrimination and Sexual Misconduct Procedures*.

### A. PROVISIONS

1. Amnesty

The University community encourages the reporting of misconduct and crimes by victims and witnesses. Sometimes, victims or witnesses are hesitant to report to University officials or participate in resolution processes because they fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident. It is in the best interests of this community that victims choose to report to University officials, and that witnesses come forward to share what they know. To encourage reporting, the University pursues a policy of offering victims of misconduct and witnesses amnesty from minor policy violations related to the incident. Such minor policy infractions may be but are not limited to: underage drinking, substance abuse, cohabitation, minor property damage, and the like. However, significant policy violations that could endanger or harm the community (e.g., drug dealing) will not be excused.

Sometimes, students are hesitant to offer assistance to others for fear that they may get themselves in trouble (for example, a student who has been drinking underage might hesitate to help take a sexual misconduct victim to Campus Safety). The University pursues a policy of amnesty for students who offer help to others in need. While policy violations cannot be overlooked, the University will provide educational or therapeutic options, rather than punishment, to those who offer their assistance to others in need.

2. Advisors

All parties are entitled to an advisor of their choosing to guide and accompany them throughout campus resolution process. The advisor may be a friend, mentor, family member, or any other supporter a party chooses to advise them who is both eligible and available. People who will be called as witnesses may not serve as advisors.

The advisor is a silent and non-participating presence, solely there to observe and provide support during the investigative process. They are expected to refrain from interference with the University's investigation and resolution.

3. Anonymity

Where a person makes a report but requests that a name or other identifiable information not be shared with the responding party, or that no formal action be taken, the

University's ability to respond may be limited by the request. The University will balance this request with its obligation to provide a safe and non-discriminatory environment for all of the University's community members.

## B. REPORTING OPTIONS

It is important for reporting parties to understand that, with limited exceptions, all University employees (faculty, staff, administrators) are expected to immediately report actual or suspected sexual misconduct, including sexual harassment, discrimination, and violence to appropriate University officials. In order to make informed choices, it is important to be aware of confidential sources and mandatory reporting requirements of non-confidential sources when consulting campus resources.

On campus, some resources may maintain confidentiality – meaning they are not required to report actual or suspected sexual misconduct, including sexual harassment or discrimination, to appropriate University officials - thereby offering options and advice without any obligation to inform an internal or external agency or individual unless a survivor has requested information to be shared. Other resources exist for an individual to report crimes and policy violations and these resources will take action when an incident is reported to them.

### 1. Confidential Reporting Options on campus

If the reporting party would like the details of an incident to be kept confidential, the reporting party may speak with:

- Campus Counseling Center  
[counselingcenter@mvnu.edu](mailto:counselingcenter@mvnu.edu)  
740-397-9000, Ext. 4610
- University Chaplain  
740-392-6868, Ext. 3713
- Student Health Services  
749-397-9000, Ext. 4632

### 2. Non-Confidential Reporting Options on campus

All University employees (except those who are designated as confidential resources) are considered "**responsible employees**" under Title IX and are required to share all known information related to a report, including the identities of the parties, with the Title IX Coordinator. In addition, student employees/volunteers who have responsibility for the welfare of other students, e.g.,

Student Residents (RA), are required to report all known information. Other student employees who receive information within the context of their jobs are required to report to the Title IX Coordinator or Deputy.

- **Title IX Coordinator**  
Christina Jones  
Off Campus: 740-399-8250 / On Campus: 740-397-9000, ext. 3250  
[titleix@mvnu.edu](mailto:titleix@mvnu.edu)
- **Title IX Deputy Coordinator**  
Tim Radcliffe  
Off Campus: 740-399-8250 / On Campus: 740-397-9000, ext. 3250  
[titleix@mvnu.edu](mailto:titleix@mvnu.edu)
- Reports can also be made directly to Campus Safety (24-hour availability) during non-business hours.  
740-399-8686  
740-397-9000, ext. 8686  
[campus.safety@mvnu.edu](mailto:campus.safety@mvnu.edu)

### 3. Anonymous Reporting

Any individual may make an anonymous report concerning an act of Prohibited Conduct. A report can be made without disclosing one's own name, identifying the responding party, or requesting any action. Depending on the level of information available about the incident or the individuals involved, anonymous reporting may limit the University's ability to respond or take further action.

Anonymous reports can be submitted through the University's website. Follow-up communications with the person submitting the anonymous report are not possible unless contact information is provided.

As with all other reports, anonymous reports will be shared with the Title IX Coordinator. Where there is sufficient information, the University will ensure that anonymous reports are reviewed and included for compliance with the Clery Act.

Employees who have a duty to report information to the Title IX Coordinator under this policy may not make such reports anonymously.

## C. REPORTING CONSIDERATIONS

1. False or Malicious Reports

Students and employees will not suffer adverse consequences as a result of reporting a matter involving sexual misconduct in good faith. However, the protocol shall not be used to initiate frivolous or malicious charges without regard to the truth. After the completion of remediation efforts, if the Title IX Coordinator concludes that the reporting party's allegations were false or malicious, the coordinator may recommend disciplinary action against the reporting party, up to and including expulsion or termination from the University.

2. Timeliness of Report

In order to maximize the University's ability to respond promptly and effectively, all those impacted by Prohibited Conduct are encouraged to report as soon as possible. There is no time limit on reporting violations of this policy, though prompt reporting by responsible employees is expected. If the reporting party is no longer a student or employee at the time of the report, the University may not be able to take disciplinary action against the responding party, but it will still seek to meet its Title IX obligation by providing support for the reporting party and taking other appropriate action to eliminate, prevent and address the effects of the Prohibited Conduct. The University will also assist a reporting party in identifying external reporting options.

## **VIII. Education, Prevention and Training**

The University recognizes that the most effective way to achieve a community free of sexual and gender-based discrimination, harassment, violence, intimate partner violence and stalking is to equip all community members with the skills to recognize and prevent these prohibited forms of conduct. The University is also committed to the protection of minors and the prevention of child abuse.

Throughout the year the University will make reasonable efforts to offer educational programs to promote awareness of sexual and gender-based harassment and violence, stalking and intimate partner violence. Prevention programs include an overview of the University's policies and procedures, relevant definitions, including Prohibited Conduct, consent, discussion of the impact of alcohol and illegal drug use, safe and positive options for bystander intervention, and information about risk reduction. Incoming first-year students and new employees will receive primary prevention and awareness programming as part of their orientation.



The Title IX Coordinator is responsible for oversight, coordination, and assessment of prevention and training programs on campus, in collaboration with appropriate departments and personnel.

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<sup>i</sup> Massachusetts Institute of Technology (MIT). (n.d.). Title IX: Preventing and Addressing Sexual Misconduct at MIT: Use of Alcohol and Other Drugs. Retrieved from <https://titleix.mit.edu/reporting/alcohol>, ¶ 1.

<sup>ii</sup> Association of Title IX Administrators (ATIXA). (2014, April24). ATIXA Tip of the Week: Sex and Booze. Retrieved from [https://atixa.org/wordpress/wp-content/uploads/2012/01/ATIXA-Tip-of-the-Week-04\\_24\\_141.pdf](https://atixa.org/wordpress/wp-content/uploads/2012/01/ATIXA-Tip-of-the-Week-04_24_141.pdf), pp. 1-2.)

<sup>iii</sup> Massachusetts Institute of Technology (MIT). (n.d.). Title IX: Preventing and Addressing Sexual Misconduct at MIT: Use of Alcohol and Other Drugs. Retrieved from <https://titleix.mit.edu/reporting/alcohol>, ¶ 2.

<sup>iv</sup> Massachusetts Institute of Technology (MIT). (n.d.). Title IX: Preventing and Addressing Sexual Misconduct at MIT: Use of Alcohol and Other Drugs. Retrieved from <https://titleix.mit.edu/reporting/alcohol>, ¶ 1.