

MARY BALDWIN UNIVERSITY
SEXUAL MISCONDUCT POLICY AND PROCEDURES

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Obtaining Information, Support, and Assistance, Filing a Complaint

If you are the complainant of sexual misconduct, there are a number of ways to report the incident as well as a wide array of services, information, support, and assistance you need to ensure your health and safety, both emotional and physical. This infographic provides some information. There is extensive information about our University response policy and resources on our Sexual Misconduct website: www.marybaldwin.edu/title-ix/.

In addition, you can obtain information about reporting and resources from the Title IX Coordinator, phone: 540-887-7230, email: titleix@marybaldwin.edu, by appointment (Staunton Campus) or in Kable House in the Office of Student Engagement.

IMMEDIATELY AFTER THE INCIDENT

You are strongly encouraged to report sexual assault to the Police.

Local Law Enforcement can be reached by calling 911, or for non-emergencies, call the Staunton Police Department at 540-332-3842, located at 116 W Beverley Street, Staunton, VA, or the Augusta County Sheriff's Office at 540-245-5333, located at 127 Lee Hwy, Verona, VA.

The Campus Safety and Security Department is located at 312 Academy Street, Staunton, VA, and is available by phone at 540-887-7000. Campus Safety and Security Officers are available 24 hours/7 days a week.

The Title IX Coordinator is located at Kable House in the Office of Student Engagement, on the Staunton Campus, phone: 540- 887-7230, email: titleix@marybaldwin.edu

SEEKING CONFIDENTIAL COUNSELING SERVICES

Student Health and Counseling Services are located in Kable House. The office is staffed from 9:00 a.m. until 5:00 p.m. Monday through Friday during the academic year, and is available by phone at 540-887-7095.

The Mary Baldwin University Chaplain is located in the Carpenter Academic Building, Room 101, on the Staunton Campus and is available by phone at 540-887-7044. Additional details at www.marybaldwin.edu/chaplain/

SEEKING EMOTIONAL SUPPORT/COUNSELING SERVICES

The Campus Safety can be reached at 540-887-7000 and is available 24 hours a day/7 days a week when the University is in session.

The New Directions Center is a local center in Staunton that provides options for those emotionally, physically, & sexually abused.

Counselors can be reached at 540-886-6800 or 1-800-56-haven.

Virginia Sexual Assault Hotline can be reached at 1-800-838-8238, providing 24-hour/7-days-a-week service.

REPORTING OPTIONS

You have three options for filing a report of Sexual Misconduct, if you wish to do so. You are not required to file a report immediately; however, reporting immediately helps preserve evidence. You may choose to refuse to participate in an investigation. Detailed reporting information is available on our Sexual Misconduct website www.marybaldwin.edu/title-ix/.

Regardless of whether you choose to press criminal charges, you may file for a protective order. There is no charge for petitioning for a protective order. Assistance with protective orders is available through Virginia's I-CAN! System (www.ican.courts.state.va.us/), and the individual courts' contact information is as follows:

[Augusta County Court Services](#)
[Staunton City Court Services](#)

UNIVERSITY OBLIGATIONS

The University will assess allegations of Sexual Misconduct and take any necessary supportive measures deemed necessary to preserve the safety and confidentiality of the University Community. The University will respect and will make every feasible effort to properly preserve the confidentiality of the information shared by and the identities of the parties involved in Sexual Misconduct matters.

Under conditions of potential imminent harm to the community, the University may be required by federal law to inform the community of the occurrence of the alleged incident of Sexual Misconduct.

MARY BALDWIN UNIVERSITY SEXUAL MISCONDUCT POLICY AND PROCEDURES

IMPORTANT INFORMATION FOR INDIVIDUALS WHO MAY BE COMPLAINANTS OF SEXUAL ASSAULT:

If you or someone you know may have been a complainant of Sexual Assault or any other type of Sexual Misconduct prohibited under this Policy, you are strongly encouraged to consult Exhibit A to this Policy and to seek immediate assistance from one or more of the sources listed there.

ARTICLE I. INTRODUCTION

(a) Notice of Nondiscrimination

Mary Baldwin University (the “University”) is required to comply and is committed to complying with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. § 1681 et seq. (“Title IX”), which prohibits discrimination based on sex in educational programs or activities, admission, and employment. Under certain circumstances, Sexual Misconduct (as defined below) constitutes sexual discrimination prohibited by Title IX. Inquiries concerning the application of Title IX may be referred to the University’s Title IX Coordinator or the U.S. Department of Education’s Office for Civil Rights. The University’s Title IX Coordinator is Dr. Todd Long, whose office is located in Kable House on the Staunton Campus. Dr. Long may be contacted by phone at 540-887-7230, by appointment (main campus), or by email at titleix@marybaldwin.edu.

(b) Overview of This Policy

As an important aspect of fulfilling its mission, the University is committed to maintaining and strengthening an environment founded on inclusivity, civility, and respect. The University is committed to providing programs, activities, and an educational environment free from sex discrimination. The University is also committed to fostering a community that promotes prompt reporting of all types of Sexual Misconduct and timely and fair resolution of reports of Sexual Misconduct. In furtherance of that commitment, this Policy sets forth available resources (Exhibit A), describes prohibited conduct (Definitions), and establishes procedures for responding to reports of Sexual Misconduct (Articles II-VI).

The University will make this Policy and information about recognizing and preventing Sexual Misconduct readily available to all prospective and current students, faculty, staff, and parents/legal guardians of the University community. The University will review this Policy on an annual basis and update it as necessary.

(c) Scope of This Policy

This Policy applies to any allegation of Sexual Misconduct made by or against a student or an employee of the University or a third party, regardless of where the alleged Sexual Misconduct occurred, if the conduct giving rise to the report is related to the University's academic, educational, athletic, or extracurricular programs or activities. The University's disciplinary authority, however, may not extend to third parties who are not students or employees of the University.

For Title IX cases, the complainant must be seeking or actively participating in a program or activity, the behavior occurred in the recipient's education program or activity, and in the United States.

In the case of allegations of Sexual Misconduct, unless otherwise stated, this Policy supersedes and applies instead of all other procedures and policies outlined in any other document containing University policies and/or procedures. This Policy applies to all prohibited conduct, outlined in Article II below, that occurs on or off campus, includes on-line or electronic conduct if: the conduct occurred in the context of an employment or education program or activity of the University, had continuing adverse effects on campus, or had continuing adverse effects in an off-campus employment or education program or activity. Examples of covered off-campus conduct include University-sponsored study abroad, research, or internship programs. If prohibited conduct falls under Title IX and meets the location requirement, then it goes through the Title IX grievance procedure.

In determining whether the University has jurisdiction over off-campus conduct that is not part of an educational program or activity of the University, the Title IX Coordinator will consider the seriousness of the alleged conduct, the risk of harm involved, whether both parties are members of the campus community, and whether the off-campus conduct is part of a series of actions that occurred both on and off campus.

The University will offer resources and assistance to community members involved in prohibited conduct, including the complainant and respondent. The University will also assist the reporting party in identifying and contacting external law enforcement agencies and community resources.

(d) Period of Limitations.

A Complaint of Sexual Misconduct may be filed at any time, regardless of the length of time between the alleged Sexual Misconduct and the decision to file the Complaint. However, the University strongly encourages individuals to file Complaints promptly and preserve evidence for a potential legal or disciplinary proceeding. A delay in filing a Complaint may compromise the subsequent investigation, particularly if neither the Complainant nor the Respondent is employed by the University or enrolled as a student at the time.

For a case to be considered under Title IX, the Complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed, at the time of filing a formal complaint.

(e) Training

The University supports an education, training, and awareness program on sexual misconduct prevention and response. We will ensure training on an annual basis for administrators, faculty, staff, and students regarding this policy and regarding sexual misconduct prevention and response.

New residential students and new MBU Responsible Employees receive training in a seminar and complete computer-based training. The Title IX Coordinator, decision-makers, investigators, and individuals who will conduct informal resolutions are required to undergo training; attend initial training and complete annual computer-based training. Online and graduate students, as well as responsible employees, complete annual computer-based training through United Educators.

(f) Definitions

(i) Prohibited Conduct. “Prohibited Conduct” is Sexual Misconduct that, taking into account the totality of the circumstances, is sufficiently serious and significant to warrant adjudication under, and discipline pursuant to, this Policy. Specifically, to determine whether Sexual Misconduct rises to the level of Prohibited Misconduct, consideration will be given to the following criteria: (1) the type, frequency, and duration of the conduct (the more severe the conduct, the less the need to show a repetitive series of incidents, particularly if the harassment is physical), (2) the identity of and relationship between the alleged harasser and the complainant, (3) the number of individuals involved, (4) the age and sex of the alleged harasser and the complainant, (5) the location of the incidents and the context in which they occurred, and/or (6) whether there have been similar incidents.

(ii) Appropriate Divisional Leader. The “Appropriate Divisional Leader” is the Vice President of Student Engagement or their designee who handles a particular appeal or other issue. For Complaints against students or faculty at the Murphy Deming College for Health Sciences, the Appropriate Divisional Leader is the Vice President for Health Sciences. For faculty members, the Appropriate Divisional Leader is the Provost. For Complaints against non-faculty staff members and third parties, the Appropriate Divisional Leader is the Director of Human Resources.

(iii) Title IX Coordinator or Deputy. The “Title IX Coordinator or Deputy” means the person who will manage the complaint as discussed in this policy.

(iv) Campus. “Campus” shall mean (1) any building or property owned or controlled by an institution of higher education located within the same reasonably contiguous geographic area of the institution and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls, and (2) any building or property that is within or reasonably contiguous to the area described in clause (3) that is owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes, such as a food or other retail vendor.

(v) Clery Act. The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”) is a federal statute codified at 20 U.S.C. § 1092(f), with implementing regulations in the U.S. Code of Federal Regulations at 34 C.F.R. 668.46. The Clery Act requires all colleges and universities that participate in federal financial aid programs to keep and disclose information about crime on and near their respective campuses.

(vi) Complainant. A “Complainant” is an individual who is alleged to be the recipient of conduct that could constitute sexual misconduct. The complainant must be participating in or attempting to participate in the educational program or activity of the school with which the formal complaint is filed.

(vii) Formal Complaint. A “Formal Complaint” is a document filed by a complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation.

(viii) Consent. “Consent” is informed, freely and actively given, and mutually understandable words or actions that indicate a willingness to participate in mutually agreed-upon sexual activity. Consent is mutually understandable when a reasonable person would consider the words or actions of the parties to have manifested a mutually understandable agreement between them to engage in certain conduct with each other. Consent cannot be gained by ignoring or acting despite the objections of another. Consent can be withdrawn at any time.

Consent cannot be inferred from:

- 1) Silence, passivity, or lack of resistance alone;
- 2) A current or previous dating or sexual relationship alone (or the existence of such a relationship with anyone else);
- 3) Attire;
- 4) The buying of dinner or the spending of money on a date; or
- 5) Consent previously given (i.e., consenting to one sexual act does not imply consent to another sexual act). Consent is not effective if it is obtained through the use of physical force, violence, duress, intimidation, coercion, or the threat, expressed or implied, of bodily injury. Whether a party used

intimidation or coercion to obtain consent will be determined by reference to the perception of a reasonable person found in the same or similar circumstances. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another person.

Consent may never be given by:

- a) Minors, even if the other participant did not know the minor's age;
- b) Mentally disabled persons, if their disability was reasonably knowable to a sexual partner who is not mentally disabled; or
- c) Persons who are incapacitated (whether as a result of drugs, alcohol, or otherwise), unconscious, asleep, or otherwise physically helpless or mentally or physically unable to make informed, rational judgments. The use of alcohol or drugs does not diminish one's responsibility to obtain Consent and does not excuse conduct that constitutes Sexual Misconduct under this Policy. If at any time during a sexual act any confusion or ambiguity is or should reasonably be apparent on the issue of consent, it is incumbent upon each individual involved in the activity to stop and clarify the other's willingness to continue and capacity to consent. Neither party should make assumptions about the other's willingness to continue.

(ix) Dating Violence. "Dating Violence" means violence committed by a person

- 1) Who is or has been in a social relationship of a romantic or intimate nature with the complainant; and
- 2) Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - a) The length of the relationship,
 - b) The type of relationship, and
 - c) The frequency of interaction between the persons involved in the relationship.

(x) Day. A "day" is a business day, unless otherwise specified.

(xi) Deputy Title IX Coordinator: The University's Deputy Title IX Coordinator works under the oversight of the Title IX Coordinator to assist with the handling of Title IX-related Complaints. The Title IX Coordinator may, at his or her discretion, assign a Deputy Title IX Coordinator as the Title IX Coordinator or Deputy in connection with a given Complaint.

(xii) Domestic Violence. "Domestic Violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabiting with or has cohabited with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant

under the domestic or family violence laws of the Commonwealth of Virginia, or by any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of the Commonwealth of Virginia.

(xiii) FERPA. The Family Educational Rights and Privacy Act ("FERPA") is a federal statute codified at 20 U.S.C. § 1232g, with implementing regulations at 34 CFR Part 99. FERPA protects the privacy of student education records. FERPA grants to parents or eligible students the right to access, inspect, and review education records, the right to challenge the content of education records, and the right to consent to the disclosure of education records.

(xiv) Final Outcome Letter. "Final Outcome Letter" is defined in Section V(b)(iv)(4).

(xv) Hearing Panel. "Hearing Panel" is defined in Section V(b)(i). The Hearing Panel will receive regular training on (1) issues related to Sexual Misconduct, and (2) how to conduct a hearing process that protects the safety of complainants and promotes accountability.

(xvi) Hostile Environment. A "Hostile Environment" exists when the conduct is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the person's education program or activity.

(xvii) Investigative Report. "Investigative Report" is defined in Section IV(c)(iii).

(xviii) Investigator. The "Investigator" is a neutral fact-finder who is designated by the Title IX Coordinator or Deputy to investigate a Complaint. The Investigator will be trained regularly on (1) reasonable and appropriate investigative techniques, (2) issues related to Sexual Misconduct, and (3) how to conduct an investigation that protects the safety of complainants and promotes accountability.

(xix) Intimidation. "Intimidation" is an implied threat or act that menaces or causes reasonable fear in another individual.

(xx) Non-forcible Sex Act. A "Non-forcible Sex Act" is an unlawful sexual act where Consent is not relevant, such as sexual contact with an individual under the statutory age of Consent, as defined by State law, or between persons who are related to each other within degrees wherein marriage is prohibited by law.

(xxi) Personally Identifiable Information. Personally Identifiable Information (as that term is defined by FERPA) includes, but is not limited to

- 1) a student's name;
- 2) the name of a student's parent(s) or other family members;
- 3) the address of a student or a Student's family;

- 4) a personal identifier, such as a student's social security number, student number, or biometric record;
- 5) other indirect identifiers, such as a student's date of birth, place of birth, or mother's maiden name;
- 6) other information that, alone or in combination, is linked or linkable to a specific student and that would allow a reasonable person in the University community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- 7) information requested by a person whom the University reasonably believes knows the identity of the student to whom the education record relates.

(xxii) Rape. "Rape" is the act of sexual intercourse or penetration (anal, oral or vaginal), however slight, with any body part or any object, by a man or a woman upon a man or a woman, without Consent, including vaginal penetration by a penis, object, tongue or finger; anal penetration by a penis, object, tongue or finger; and oral copulation (mouth to genital contact or genital to mouth contact).

(xxiii) Respondent. A "Respondent" is an individual who has been reported to be the perpetrator of conduct that could constitute sexual misconduct..

(xxiv) Responsible Employees. The University's "Responsible Employees" are (1) all non-student University employees not designated as "Strictly Confidential Resources" in Section II(d)(ii)(1) of this Policy, (2) the University's Resident Advisors, and Graduate Assistants.

(xxv) Retaliation. "Retaliation" means any adverse action threatened or taken against a person because they have filed, supported, or provided information in connection with a Complaint of Sexual Misconduct, including but not limited to direct and indirect intimidation, threats, and harassment.

(xxvi) Sexual Assault. "Sexual Assault" means any actual, attempted, or threatened sexual act with another person without that person's Consent. Sexual Assault includes, but is not limited to:

- 1) Rape and attempted Rape;
- 2) Intentional and unwelcome sexual touching (including disrobing or exposure), however slight, with any body part or any object, by a man or a woman upon a man or a woman, without effective Consent, of a person's breasts, buttocks, groin, or genitals (or clothing covering such areas), or coercing, forcing, or attempting to coerce or force another to touch you, themselves, or a third party with any of these body parts or areas when such touching would be reasonably and objectively offensive;

- 3) Any sexual act in which there is force, violence, or use of duress or deception upon the complainant;
- 4) Any sexual act perpetrated when the complainant is unable to give Consent; and
- 5) Sexual intimidation, which includes but is not limited to:
 - a) Threatening, expressly or impliedly, to commit a sexual act upon another person without his or her Consent,
 - b) Stalking or cyber-stalking, and
 - c) Engaging in indecent exposure.

(xxvii) Sexual Exploitation. “Sexual Exploitation” means any act of taking non-consensual, unjust, or abusive sexual advantage of another person for one’s own advantage or benefit or to benefit or advantage anyone other than the person being exploited. Sexual Exploitation includes, but is not limited to:

- 1) Causing or attempting to cause the incapacitation of another person to gain a sexual advantage over such person;
- 2) Prostituting another person (i.e., personally gaining money, privilege, or power from the sexual activities of another);
- 3) Non-consensual videotaping, photographing, or audio-taping of sexual activity and/or distribution of these materials via media such as, but not limited to, the Internet;
- 4) Exceeding the boundaries of Consent (e.g., allowing another person to observe Consensual sex without the knowledge of or Consent from all participants);
- 5) Voyeurism; and
- 6) Knowingly or recklessly transmitting a sexually transmitted disease (including HIV) to another individual.

(xxviii) Sexual Harassment. “Sexual Harassment” is any unwelcome verbal, nonverbal, written, electronic, or physical conduct of a sexual nature. Sexual harassment also includes acts of intimidation, bullying, aggression, or hostility based on gender or gender-stereotyping, even if the acts do not involve conduct of a sexual nature. Examples of Sexual Harassment include instances in which:

- 1) Submission or consent to the behavior is reasonably believed to carry consequences for the individual’s education, employment, on-campus living environment, or participation in a University activity. Examples of this type of sexual harassment include:
 - a) Pressuring an individual to engage in sexual behavior for some educational or employment benefit, or

- b) Making a real or perceived threat that rejecting sexual behavior will carry a negative educational or employment consequence for the individual.
- 2) The behavior is 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 educational program or activity.

Examples of this type of sexual harassment include:

- a) one or more instances of Sexual Assault;
- b) persistent unwelcome efforts to develop a romantic or sexual relationship;
- c) unwelcome sexual advances or requests for sexual favors;
- d) unwelcome commentary about an individual's body or sexual activities;
- e) repeated and unwelcome sexually-oriented teasing, joking, or flirting; and
- f) verbal abuse of a sexual nature.

(xxix) Sexual Misconduct. "Sexual Misconduct" means any unwelcome conduct of a sexual nature, including any conduct or act of a sexual nature perpetrated against an individual without Consent. Sexual Misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual Misconduct can be committed by men or by women, and it can occur between people of the same or different sexes. Sexual Misconduct also includes complicity in Sexual Misconduct. The University encourages reporting of all Sexual Misconduct. Sexual Misconduct includes but is not limited to:

- 1) Dating Violence;
- 2) Domestic Violence;
- 3) Non-forcible Sex Acts;
- 4) Sexual Assault;
- 5) Sexual Exploitation;
- 6) Sexual Harassment; and
- 7) Stalking.

(xxx) Sexual Violence. "Sexual Violence" shall mean physical sexual acts perpetrated against a person's will or against a person incapable of giving consent.

(xxxi) Stalking. "Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- 1) fear for his or her safety or the safety of others; or
- 2) suffer substantial emotional distress.

(xxxii) Strictly Confidential Resources. University employees who work in Counseling Services, Health Services, and Chaplaincy.

(xxxiii) Student. This policy applies to all MBU students, including students enrolled in undergraduate and graduate programs; students attending classes in-residence, commuter, or on-line; and those classified as full-time and part-time students.

(xxxiv) Title IX Coordinator. The University's "Title IX Coordinator" has ultimate oversight responsibility for handling Title IX related complaints and for identifying and addressing any patterns or systemic problems involving Sexual Misconduct. The Title IX Coordinator is available to meet with individuals who are involved with or concerned about issues or University processes, incidents, patterns, or problems related to Sexual Misconduct on campus or in University programs. All allegations involving Sexual Misconduct should be directed to the Title IX Coordinator or other designated University individuals or offices as outlined in the Sexual Misconduct Policy and Procedures.

ARTICLE II. STATEMENTS OF POLICY

(a) Prohibition on Sexual Misconduct

This Policy is designed to protect the rights and needs of Complainants and Respondents. Creating a safe environment is the responsibility of all members of the University community. The University strongly encourages prompt reporting of all types of Sexual Misconduct and is committed to fostering a community that promotes timely and fair resolution of Sexual Misconduct cases. To that end, the University has defined Sexual Misconduct broadly to include any unwelcome conduct of a sexual nature, and the University will investigate all allegations of Sexual Misconduct. However, not all unwelcome conduct of a sexual nature rises to the level of warranting adjudication and/or discipline pursuant to this Policy. Although the University will investigate all allegations of Sexual Misconduct, this Policy uses the term "Prohibit Conduct," as defined in Article I, to identify those acts of Sexual Misconduct that do warrant adjudication under, and discipline pursuant to, this Policy, including acts that are covered under Title IX.

(b) Prohibition on Retaliation

Retaliation against any person for filing, supporting, or providing information in good faith in connection with a Complaint of Sexual Misconduct is strictly prohibited. Violations of this prohibition will result in strong responsive action and will be addressed through this Policy and/or other University disciplinary procedures, as deemed appropriate in the University's discretion. Any person who feels that they have been subjected to Retaliation should make a report to the Title IX Coordinator or Deputy.

(c) Prohibition on Providing False Information

Any individual who knowingly files a false report or Complaint under this Policy, who knowingly provides false information to University officials, or who intentionally misleads University officials who are involved in the investigation or resolution of a report or Complaint may be subject to disciplinary action.

(d) Confidentiality.

(i) Standard of Confidentiality (Applicable to All Complaints). The University will respect and will make every feasible effort to properly preserve the confidentiality of the information shared by and the identities of the parties involved in Sexual Misconduct Matters. All University personnel will explain their reporting obligation (discussed below) before any information is revealed to that employee. In keeping with this respect for confidentiality (and except as outlined in Section II(d)(ii) below), information regarding alleged Sexual Misconduct will generally be disclosed by University personnel only as follows:

- (1) The University's Responsible Employees will (and are obligated to) report information regarding alleged Sexual Misconduct to the Title IX Coordinator. Responsible Employees are (1) all non-student University employees (e.g., faculty, staff, administrators) not designated as "Strictly Confidential Resources", (2) the University's Resident Advisors, and (3) Graduate/Teaching Assistants.
- (2) Responsible Employees will (and are obligated to) handle information regarding alleged Sexual Misconduct in accordance with applicable local, state, and federal laws. For example, under conditions of potential imminent harm to the community, the University may be required by federal law to inform the community of the occurrence of the alleged incident(s) of Sexual Misconduct. Similarly, information regarding the alleged Sexual Misconduct may be used as an anonymous report for data collection purposes under the Clery Act.
- (3) University administrators will share information regarding alleged Sexual Misconduct, as appropriate and necessary, to address and resolve the Complaint at issue, prevent the recurrence of similar Sexual Misconduct, and address the effects of the Sexual Misconduct. Please note that the University cannot control disclosures by students or third parties.

(ii) Strict and Heightened Confidentiality

(1) Strict Confidentiality. Individuals may discuss alleged Sexual Misconduct in strict confidence with University employees working in the following offices ("Strictly Confidential Resources"):

(A) Counseling Services,

- (B) Health Services, and
- (C) Chaplain

This means that Personally Identifiable Information shared with Strictly Confidential Resources is not part of students' or employees' University records and will not be reported to other University personnel, to the Respondent, or to others (unless the disclosing individual gives his or her consent to the disclosure or the law requires it (as may be the case with alleged Sexual Misconduct involving a minor or under conditions of imminent physical harm, for example).

Strictly Confidential Resources are not Responsible Employees and therefore are not required to (and will not, absent direction from the disclosing individual to do so) report incidents of alleged Sexual Misconduct to the Title IX Coordinator. For purposes of clarity, please understand that University employees who are not Strictly Confidential Resources are Responsible Employees. Communications made to Responsible Employees (and others) are not entitled to the same confidentiality protections as those made to Strictly Confidential Resources.

(2) Heightened Confidentiality. If information regarding alleged Sexual Misconduct is shared with a Responsible Employee, the Responsible Employee is obligated to report that information to the University's Title IX Coordinator or a Deputy Title IX Coordinator: The Title IX Coordinator will inform the person requesting heightened confidentiality of the University's limitations on maintaining heightened confidentiality. The University will not proceed without a formal complaint from the Complainant. Please note that the University cannot control disclosures by students or third parties.

(e) Requests to Investigate and Refusals to File a Complaint or to Cooperate. Complainants may (i) request that the University investigate the information or allegation(s) reported, (ii) refuse to file a Complaint, and/or (iii) refuse to cooperate in the investigation and/or resolution of allegation(s). The University takes such requests and decisions seriously; however, such requests and decisions may limit the University's ability to investigate and take reasonable action in response to a Complaint. In such cases, the University will evaluate such requests and decisions in the context of the University's commitment to provide a reasonably safe and non-discriminatory environment.

Regardless of an individual's requests or decisions, Title IX requires the University to take reasonable action when there is actual knowledge, and the Title IX Coordinator or Deputy meets with the complainant to discuss the process and supportive measures.

Additionally, even if the complainant doesn't choose to file a formal complaint, the University will take prompt action to limit the effects of the alleged Sexual

Misconduct and to prevent its recurrence. For instance, the University may issue a "no-contact" order or take other appropriate interim measures to ensure an individual's safety even in the absence of a formal proceeding. The Complaint or other information regarding alleged Sexual Misconduct may also be used as an anonymous report for data collection purposes under the Clery Act.

(f) **Related Misconduct and Limited Immunity.** The University may adjudicate alleged misconduct that is related to the Sexual Misconduct at issue, even if such related misconduct is not, when standing alone, governed by this Policy. The University considers the reporting and adjudication of Sexual Misconduct cases on campus to be of paramount importance. The University does not condone underage drinking or the use of illegal drugs; however, the University may extend amnesty in the case of illegal alcohol or drug use to complainants, witnesses, and those reporting incidents and/or assisting the complainants of Sexual Misconduct, provided that they are acting in good faith in such capacity and, in limited circumstances, may also extend such amnesty to a Respondent.

(g) **Individuals with Disabilities.** The University will make arrangements to ensure that individuals with disabilities are provided appropriate accommodations, to the extent necessary and available, to participate in the steps and procedures outlined in this Policy. Requests for accommodations must be made to Ms. Shelly Irvine in the University's Director of Human Resources Office (located in Room 312 of the Business Office and available by phone at 540-887-7367).

(h) **Records and Report.** The Title IX Coordinator will keep the file in the Maxient database for seven years from the date of the filing of the formal complaint, copies of the written statement of the complainant, the respondent, and the action taken by the University. Any request to access files must be made to the Title IX Coordinator.

ARTICLE III. HOW AND WHERE TO REPORT ALLEGED SEXUAL MISCONDUCT

For information regarding seeking medical assistance and emotional support, as well as important contact information for local law enforcement agencies and hospitals, see Exhibit A attached to this Policy. Because Sexual Misconduct may in some instances constitute both a violation of University policy and criminal activity, and because the University grievance process is not a substitute for instituting legal action, the University encourages individuals to report alleged Sexual Misconduct promptly to campus officials and to law enforcement authorities, where appropriate. Individuals may, however, choose not to report alleged Sexual Misconduct to such campus officials and/or law enforcement authorities. The University respects and supports the individual's decision with respect to reporting; nevertheless, the University may notify appropriate law enforcement authorities if required or warranted by the nature of the allegations at issue.

- (a) Reporting to Local Law Enforcement: Individuals may file a complaint directly with local law enforcement agencies (e.g., the Staunton Police Department or the Augusta County Sheriff's Department) by dialing 911. Individuals may contact any of the following for assistance in filing a complaint with local law enforcement:

(i) The University's Campus Safety Department, 24 hours a day, seven days a week (available by phone at 540-887-7000 and located in the Pannill Student Center, 312 Academy Street, Staunton, VA 24401),

(ii) The University's Title IX Coordinator, Dr. Todd Long (available by phone at 540-887-7230, by appointment (main campus) in Kable House, or by email at titleix@marybaldwin.edu).

Individuals may inform law enforcement authorities about Sexual Misconduct and discuss the matter with a law enforcement officer without making a formal criminal complaint (or a University Complaint). Individuals who make a criminal complaint may also choose to pursue a University Complaint simultaneously. A criminal investigation into the matter does not exempt the University from conducting its own investigation. However, the University's investigation may be delayed temporarily while the Criminal investigators are gathering evidence. In the event of such a delay, the University may take supportive measures when necessary to protect the complainant, respondent, and/or the University community. Neither the results of a criminal investigation nor the decision of law enforcement to investigate or decline to investigate the matter is determinative of whether Actionable Sexual Misconduct, for this Policy, has occurred.

- (b) Reporting to University Administration: Individuals may choose not to report alleged Sexual Misconduct to campus officials. The University respects and supports the individual's decision with respect to reporting; however, if information about Sexual Misconduct comes to the attention of the University, the University will start an investigation once a formal complaint is submitted by the complainant. Anyone wishing to file a report with the university under this Policy should contact one of the following individuals, offices, or file an anonymous report online. The University will investigate once a formal complaint is filed by the complainant. You may seek a formal or informal resolution. The standard of proof is "a preponderance of the evidence," and sanctions may include suspension or job termination.

(i) Title IX Coordinator. The University's Title IX Coordinator and Sexual Misconduct Response Coordinator is Dr. Todd Long, whose office is in Kable House on the Main Campus. Dr. Todd Long may be contacted by

phone, 540-887-7230, by appointment (main campus), or by email at titleix@marybaldwin.edu. A report can be filed 24 hours a day at <https://marybaldwin.edu/title-ix/>

(ii) Mary Baldwin University's Campus Safety Department. The University's Campus Safety and Security Department is located in the Pannill Student Center at 312 Academy Street, Staunton, VA 24401, available by phone at 540-887-7000, 24 hours a day, 7 days a week.

If any of the parties designated above is the Respondent or is otherwise at issue in a Complaint, or if an individual is otherwise uncomfortable making a complaint to one or more of the parties listed above, they may report alleged Sexual Misconduct to any other party or office listed above.

If an employee of the University's Campus Safety Department receives a report of alleged Sexual Misconduct, that employee must notify the University's Title IX Coordinator or a Deputy Title IX Coordinator. Anonymous reports of sexual misconduct can be submitted through the Campus Sexual Misconduct Prevention Reporting Website https://cm.maxient.com/reportingform.php?MaryBaldwin&layout_id=2.

An anonymous report allows you to let the University know that a sexual misconduct incident happened without sharing the name of the complainant. Please fill out as much information as possible, including the level of detail or identifying information regarding the alleged misconduct. An investigation will commence once a formal complaint is filed. An individual may report alleged Sexual Misconduct to a faculty or staff member other than those referenced above. No member of the University community may discourage an individual from reporting alleged incidents of Sexual Misconduct.

A faculty or staff member with any knowledge (including firsthand observation) about a known or suspected incident of Sexual Misconduct must, as soon as reasonably possible, report the incident to the University's Title IX Coordinator or Deputy Title IX Coordinator. (Excluded from this requirement are the University's Strictly Confidential Resources. Also excluded from this requirement are University students who are also employees of the University, except for Resident Advisors.) No employee is authorized to investigate or resolve Complaints without the involvement of the University's Title IX Coordinator or a Deputy Title IX Coordinator.

In summary, you have three options for filing a report of Sexual Misconduct, if you wish to do so. You can also utilize a combination of the options. You are not required to file a report immediately; however, reporting immediately helps preserve evidence. You may choose to refuse to participate in an investigation. Detailed reporting information is available on our Sexual Misconduct website www.marybaldwin.edu/title-ix/.

Regardless of whether you choose to press criminal charges, you may file for a protective order. There is no charge for petitioning for a protective order. Assistance with protective orders is available through Virginia's I-CAN! System (www.ican.courts.state.va.us/), and the individual courts' contact information is as follows:

[Augusta County Court Services](#)
[Staunton City Court Services](#)

ARTICLE IV. PROCEDURES APPLICABLE TO ALL COMPLAINTS OF SEXUAL MISCONDUCT

(a) Overview

- (i) Oversight. The Title IX Coordinator will be responsible for overseeing the prompt, fair, and impartial investigation and resolution of Complaints filed with the University.
- (ii) Conflicts. If any administrator designated by this Policy to participate in the investigation or resolution of a Complaint is the Respondent (including, but not limited to, the Title IX Coordinator), then the Vice President of Student Engagement will appoint another University administrator to perform such person's duties under this Policy. If the Vice President of Student Engagement is the Respondent, then the Title IX Coordinator will appoint another University administrator to perform his duties under this Policy. Title IX Coordinator or Deputies will not be assigned to Sexual Misconduct cases involving staff/students within their division of responsibility at the University.
- (iii) Support Persons/Advisors. The Complainant and Respondent may be accompanied by a support person/advisor of their choice during any meeting or interview held pursuant to this Policy. The support person /advisor may consult with the person he or she is there to support, but may not participate in the meeting or interview by asking or answering questions or by making statements to the interviewer(s). In the case of a non-Title IX hearing, the support person/advisor may not address the Hearing Panel, cross-examine witnesses, or have any other speaking.

For Title IX cases, advisors will do the cross-examination. The complainant and respondent may choose their own advisor. For Title IX cases, the university will provide an advisor for the live hearing if either party does not choose.

- (iv) Timing. The University will make every reasonable effort to ensure that the investigation and resolution of a Complaint occur in as timely and efficient a

manner as possible. The University's investigation and resolution of a Complaint (not including an appeal, if applicable) will generally be completed within 60 calendar days of the receipt of the Complaint, absent extenuating circumstances. Throughout the investigation, the Complainant and the Respondent will receive periodic status updates from the Title IX Coordinator or Deputy.

Any party may request an extension of any deadline by providing the Title IX Coordinator or Deputy with a written request for an extension that includes a reference to the duration of the proposed extension and the basis for the request. The Title IX Coordinator or Deputy may modify any deadline contained in this Policy as necessary and for good cause.

(v) Supportive Measures. If at any point during the complaint, investigative, or disciplinary processes, the Title IX Coordinator deems it necessary for the protection of any member of the University community, the Title IX Coordinator may recommend actions such as those listed below. These actions may be appealed to the Vice President of Student Engagement, whose decision regarding their imposition will be final. Emergency removal can be utilized after a safety and risk analysis, and it is deemed that there is an immediate physical threat related to the behavioral allegations.

1) For student Respondents:

- a) summarily suspending the Respondent from campus housing on an interim basis and/or restricting his or her movement on campus, or
- b) summarily suspending the Respondent;

2) For employee Respondents, requesting that the individual authorized to make personnel decisions regarding the employee at issue:

- a) take such steps as are reasonable, appropriate, and necessary to restrict the Respondent's movement on campus; or
- b) reassign or place on administrative leave such Respondent.

(b) Initial Meeting with the Title IX Coordinator or Deputy. The Title IX Coordinator will begin compiling information as follows:

(i) Complainant's Initial Meeting with the Title IX Coordinator or Deputy. As soon as is practicable, the Title IX Coordinator or Deputy will contact the Complainant to schedule an initial meeting. (If the Complainant is not the person who reported the alleged Sexual Misconduct, the Title IX Coordinator or Deputy will attempt to meet as soon as possible with the person who made the report to gather information from that person.) At this initial meeting, the Title IX Coordinator or Deputy will, as applicable:

- 1) Provide the Complainant a copy of this Policy;

- 2) Explain avenues for formal resolution and informal resolution (mediation) of the Complaint;
- 3) Explain the steps involved in a Sexual Misconduct investigation;
- 4) Discuss confidentiality standards and concerns with the Complainant;
- 5) Provide the Complainant with a Sexual Misconduct Complaint Form (a copy of which is attached to this Policy as Exhibit C) and determine whether the Complainant wishes to file a Complaint. If a formal complaint is filed, the complainant must participate in the University's investigation and resolution of the Complaint.
- 6) Refer the Complainant to the Counseling Center or other resources, as appropriate.
- 7) Discuss protection from, and reporting of, Retaliation; and
- 8) Discuss with the Complainant, as appropriate, possible supportive measures that can be provided to the Complainant during the pendency of the investigative and resolution processes. The University may implement such measures, if appropriate and reasonably available, whether a formal Complaint has been filed (with either campus administrators or law enforcement agencies) or whether an investigation has commenced (by either campus administrators or law enforcement agencies). Supportive measures may include, but are not limited to:
 - a) issuing no-contact orders to prevent any contact between the Complainant, the Respondent, witnesses, and/or third parties;
 - b) escorting the Complainant to ensure that they can move safely between classes, work, and/or activities;
 - c) changing a Complainant's to a different on-campus location and providing assistance from University support staff in completing the relocation;
 - d) arranging to dissolve a campus housing contract and offering a pro-rated refund;
 - e) changing work arrangements;
 - f) rescheduling class work, assignments, and examinations;
 - g) arranging for the Complainant to take an incomplete in a class;
 - h) moving the Complainant or the Respondent from one class section to another (no moves will occur if it does either party any harm);
 - i) permitting a temporary withdrawal from the University;
 - j) providing alternative course completion options;
 - k) providing counseling services; and
 - l) providing academic support services.

Following the initial meeting with the Complainant, the Title IX Coordinator or Deputy will, if applicable, promptly determine the supportive measures to be provided to

the complainant. Such determination will be promptly communicated to the Complainant (and in no event later than the point at which it is communicated to the Respondent) and the Respondent.

(ii) Respondent's Initial Meeting with the Title IX Coordinator or Deputy. If the Complainant files a formal complaint, the Title IX Coordinator or Deputy will schedule an initial meeting with the Respondent and send a written notice to the Respondent that includes the following: (A) Notice of the recipient's grievance process that complies with this section, including any informal resolution process. (B) Notice of the allegations of sexual misconduct potentially constituting sexual harassment as defined in § 106.30, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under § 106.30, and the date and location of the alleged incident, if known. The written notice will include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice will inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section. The written notice will inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process before the initial meeting. The Title IX Coordinator or Deputy will also:

- 1) provide the Respondent a copy of this Policy;
- 2) explain the University's procedures for formal resolution and informal resolution (mediation) of the Complaint;
- 3) explain the steps involved in a Sexual Misconduct investigation;
- 4) discuss confidentiality standards and concerns with the Respondent;
- 5) discuss non-Retaliation requirements with the Respondent;
- 6) inform the Respondent of any supportive measures already determined and being provided to the Complainant that directly affect the Respondent (e.g., changing his or her class schedule, or moving her to an alternate residence hall);
- 7) Refer the Respondent to the Counseling Center or other resources, as appropriate;
- 8) discuss with the Respondent, as appropriate, possible supportive measures that can be provided to the Respondent during the pendency of the investigative and resolution processes (such as those set forth in Section IV(b)(i)(8) of this Policy). The University may implement such measures, if appropriate and reasonably available, whether a formal Complaint has been filed or whether an investigation by either campus administrators or law enforcement agencies has commenced; and

- 9) allow the Respondent to provide a written statement in response to the allegation if the Respondent so desires.

(c) The Investigation

(i) The Title IX Coordinator's Initial Determination. The Title IX Coordinator or Deputy will commence the investigation if the Complainant submits a formal complaint.

(ii) The Appointment of the Investigators. If a formal complaint is submitted, the Title IX Coordinator or Deputy will promptly appoint two Investigators, share their names and contact information with the Complainant and the Respondent, and forward the Complaint to the Investigators. Within three days of such appointment, the Investigators, the Complainant, or the Respondent may identify to the Title IX Coordinator or deputy in writing any real or perceived conflicts of interest posed by assigning such Investigators to the matter. The Title IX Coordinator or Deputy will carefully consider such statements and will assign different individuals as Investigators if it is determined that a material conflict of interest exists.

(iii) The Investigators' Activities and Report. Upon receipt of the Complaint, the Investigators will promptly begin their investigation, taking steps such as

- 1) conducting interviews with the Complainant, the Respondent, and third-party witnesses (including expert witnesses, where applicable) and summarizing such interviews in written form;
- 2) visiting, inspecting, and taking photographs at relevant sites; and
- 3) where applicable, collecting and preserving relevant evidence (in cases of corresponding criminal complaints, this step may be coordinated with law enforcement agencies). Throughout the investigation, the Investigators will remain neutral.

The Investigators will complete a written investigative report that includes items such as summaries of all interviews conducted, photographs, and descriptions of relevant evidence, summaries of relevant electronic records, and a detailed report of the events in question (the "Investigative Report"). The Investigators will share the Investigative Report with the Title IX Coordinator or Deputy, who will send the report to the complainant and respondent, along with their advisors, within which they will have 10 days to respond, and the report should be sent at least 10 days before the hearing. The Complainant and the Respondent will be able to provide a written response to the Investigative Report to the Title IX Coordinator or Deputy. All parties to whom the Investigative Report is distributed pursuant to this Policy must maintain it in confidence; the Investigative Report may only be disclosed as contemplated by this Policy.

(d) Formal Versus Informal Resolution. At any time before the Title IX Coordinator or Deputy provides notice of the hearing in accordance with Section V(b)(iii)(2), the Complainant may elect to resolve their Complaint through the informal resolution (mediation) process in accordance with Article VI of this Policy, provided that (i) the Complainant or respondent requests AND both parties agrees to such resolution, (ii) the Complainant and the Respondent are both students or are both employees of the University, and (iii) the Title IX Coordinator or Deputy determines that informal resolution is an appropriate mechanism for resolving the Complaint. Otherwise, a Complaint that is not closed pursuant to the Title IX Coordinator or Deputy's evaluation of the Investigative Report will proceed to formal resolution in accordance with Article V of this Policy. Employee respondents and student complainants cannot use an informal resolution.

(e) Notation on Academic Transcript of Respondent in Cases of Physical Sexual Acts Without Consent. If a student who is taking or has taken a course at a Campus of the University has been suspended for, has been permanently dismissed for, or withdraws from the University while under investigation for an offense involving Sexual Violence, the University shall include in that student's academic transcript a prominent notation stating that such student was suspended for, was permanently dismissed for, or withdrew from the institution while under investigation for an offense involving Sexual Violence under the institution's code, rules, or set of standards.

Such notation shall be substantially in the following form: "[Suspended, Dismissed, or Withdrew while under investigation] for a violation of Mary Baldwin University's Sexual Misconduct Policy." Upon the filing of a Complaint or the beginning of an investigation, the University shall notify each student that any such suspension, permanent dismissal, or withdrawal will be documented on the student's academic transcript.

Any student who is suspended for Sexual Violence under the University's Sexual Misconduct Policy who is subsequently found not to have committed an offense involving Sexual Violence shall have his or her transcript permanently modified to remove such notation.

Any student who is suspended for Sexual Violence under the University's Sexual Misconduct Policy who subsequently (1) completes the term of the suspension; (2) completes any further conditions of the suspension; and (3) has been determined by the University to be in good standing, according to the University's code, rules, or set of standards governing such a determination, shall have the notation placed in his or her transcript regarding their suspension for a violation of the University's Sexual Misconduct Policy removed.

ARTICLE V. FORMAL RESOLUTION

(a) Respondent's Acknowledgement of Responsibility Prior to Hearing. At any time before the date of their designated hearing, the Respondent may elect to acknowledge their actions and take responsibility for the alleged Sexual Misconduct through an informal resolution only if the complainant agrees. If there is no agreement, then the formal resolution will proceed.

(b) The Formal Resolution Process. In the case of formal resolution, a Hearing Panel will conduct a hearing in which it will interview and question the Complainant, the Respondent, and any witnesses or other third parties whose testimony the Hearing Panel deems relevant.

(i) The Hearing Panel. The Title IX Coordinator or Deputy will appoint the members of the "Hearing Panel." The Hearing Panel will include three faculty and/or staff members and may include other contracted parties as determined by the Title IX Coordinator. For Complaints involving a faculty or staff Respondent, the Title IX Coordinator or Deputy will designate one faculty/staff member of the Hearing Panel as the Chair of the Hearing Panel. The Title IX Coordinator or Deputy will share the Complaint and the Investigative Report with the Hearing Panel, and, if only a portion of the misconduct alleged in the Complaint justifies continuing to the hearing process, the Title IX Coordinator or Deputy will specify which part(s) of the alleged misconduct will be the subject of the hearing. For Title IX-specific cases, the whole case will be heard.

(ii) Notice of the Composition of the Hearing Panel. Promptly after appointing the members of the Hearing Panel, the Title IX Coordinator or Deputy will provide concurrent written notice to the Complainant and the Respondent, setting forth the names of the individuals selected to serve on and chair the Hearing Panel. If only a portion of the alleged misconduct justifies continuing to the hearing process, the Title IX Coordinator or Deputy will also specify in the notice which part(s) of the alleged misconduct will be the subject of the hearing. For Title IX-specific cases, the whole case will be heard.

The parties may challenge the participation of any member of the Hearing Panel by submitting a written objection to the Title IX Coordinator or Deputy within three business days of receipt of the notice of the composition of the Hearing Panel. Such an objection must state the specific reason(s) for the objection. The Title IX Coordinator or Deputy will evaluate the objection and determine whether to alter the composition of the Hearing Panel.

Failure to submit a timely and proper objection will constitute a waiver of any right of objection to the composition of the Hearing Panel. Any changes in the

composition of the Hearing Panel will be provided in writing to both parties before the date of the first hearing.

(iii) Hearing Policies and Procedures

- 1) Submission of Written Materials by the Parties. Within five days of receipt of the notice of composition of the Hearing Panel, the Complainant and the Respondent may provide the Chair of the Hearing Panel with (1) a list of witnesses, if any, that they propose that the Hearing Panel call and a brief description of each proposed witness's connection to and/or knowledge of the issues in dispute, and (2) a written statement of position about the allegations. The parties will be given 10 days between receipt of the report and the hearing to provide the written statement of position. The Hearing Panel also may call witnesses not suggested by the Complainant or the Respondent.
- 2) Notice of the Hearing. Not less than five days but not more than ten days after delivery of notice of the composition of the Hearing Panel to the parties, the Hearing Panel will provide a separate notice to each of the Complainant, the Respondent, and any witnesses of other third parties whose testimony the Hearing Panel deems relevant, requesting such individuals to appear before the Hearing Panel. The notice should set forth, as applicable, the date, time, and location of the hearing. In its notices to the Complainant and the Respondent, the Hearing Panel will provide the names of the witnesses or other third parties that the Hearing Panel plans to call.
- 3) Failure to Appear. If the Complainant or the Respondent fails to appear before the Hearing Panel if requested to do so, and such party was provided proper notice of the hearing as set forth above, then, absent extenuating circumstances, the Hearing Panel will proceed to determine the resolution of the Complaint. If someone does not appear or refuses cross-examination, the hearing panel cannot use any statements made by them about the incident.
- 4) Special Arrangements and/or Accommodations. In addition to disability-related accommodations, the parties may request special arrangements and/or accommodations (for example, the ability to participate remotely) in connection with the hearing. Any such requests must be submitted in writing to the Title IX Coordinator or Deputy.
- 5) No Contact Before the Hearing. The Complainant and the Respondent may not contact each other outside of the hearing, even to discuss the hearing.
- 6) Evidentiary Matters. No new information will be allowed at the hearing—the decision-makers will consider questions by the panel or the advisors as

relevant only if based on facts presented in the investigative report. Any new information admitted at the hearing is at the discretion of the decision-makers and generally limited to information that was otherwise undiscoverable. The decision-makers may also give lesser weight to information that has not been previously shared. Evidence of the past sexual histories of the Complainant and the Respondent will not be permitted at the hearing, with the following exceptions:

- a) 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,
- b) 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.

7) Conduct of the Hearing

- a) Generally. The Hearing Panel will be responsible for asking questions of the parties and the witnesses and developing evidence through testimony. The Chair of the Hearing Panel will resolve any questions concerning procedure or the admission of evidence or testimony (including the relevancy and reliability of the evidence and testimony). Cross-examination is allowed by both advisors. Members of the University community are expected to provide truthful testimony.

(iv) Outcome

- 1) The Decision of the Hearing Panel. Following the conclusion of the hearing, the Hearing Panel will confer and by majority vote determine whether the evidence (including the information provided in and by the Investigative Report, the parties' written statements, if any, the evidence presented at the hearing, and the testimony of the parties and witnesses) establishes that it is more likely than not that the Respondent committed Actionable Sexual Misconduct.
- 2) Sanctions.
 - a) Generally. Sanctions for a finding of responsibility depend upon the nature and gravity of the misconduct, any record of prior discipline for Sexual Misconduct, or both. Sanctions may include, without limitation, withholding a promotion or pay increase, reassigning employment, terminating employment, temporary suspension without pay, compensation adjustments, expulsion or suspension from the University, disciplinary probation, expulsion from campus housing, mandated counseling, and/or educational sanctions deemed appropriate by the Hearing Panel.

The Hearing Panel will determine sanctions, considering whether a given sanction will (a) bring an end to the violation in question, (b) reasonably prevent a recurrence of a similar violation, and (c) remedy the effects of the violation. The Hearing Panel will forward its determinations regarding sanctions to the Title IX Coordinator or Deputy.

b) Implementation of Sanctions. Sanctions imposed are not effective until the resolution of any timely appeal pursuant to Section V(b)(v), below.

- 3) Final Accommodations and Corrective Action. In addition to any sanctions imposed on the Respondent, promptly following the conclusion of the hearing and the Hearing Panel's issuance of a determination of responsibility, the Title IX Coordinator or Deputy will determine the final remedies to be provided to the Complainant, if any, and the Title IX Coordinator or Deputy will communicate such decision to the Complainant and, to the extent that it affects them, to the Respondent. Such accommodations may include, but are not limited to, those listed in Section IV(b)(i)(8) above.

The Title IX Coordinator or Deputy will also take steps, where necessary, to prevent the further harassment of or Retaliation against the Complainant or third parties, such as informing them about how to report subsequent problems, following up with them to ensure that there are no subsequent problems, providing trainings for the school community, and providing Sexual Misconduct or other counseling for the Respondent. The Title IX Coordinator or Deputy will also, where appropriate, take steps to prevent the harassment of the Respondent.

Furthermore, the Title IX Coordinator or Deputy will take prompt corrective action if the Complainant experiences Retaliation or is subjected to further Sexual Misconduct or if the original sanctions imposed on the Respondent are ineffective to protect the safety and well-being of the Complainant, the Complainant, or other members of the University community. In cases involving Sexual Harassment, the Title IX Coordinator or Deputy will also take reasonable steps to eliminate any hostile environment that has been created, such as conducting training and disseminating informational materials. In taking the above-outlined steps, the Title IX Coordinator or Deputy will make every reasonable effort to minimize the burden on the Complainant and/or complainant.

- 4) Final Outcome Letter. Within 5 business days following the conclusion of the hearing, the Title IX Coordinator or Deputy will issue a written decision letter (the "Final Outcome Letter") concurrently to the Respondent and the Complainant. The written determination will include -

- A. Identification of the allegations potentially constituting sexual harassment as defined in § 106.30;
- B. 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;
- C. Findings of fact supporting the determination;
- D. Conclusions regarding the application of the recipient's code of conduct to the facts;
- E. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
- F. The recipient's procedures and permissible bases for the complainant and respondent to appeal.

5) Confidentiality and Disclosure. In order to comply with FERPA, Title IX, and other applicable laws, and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the hearing process is not open to the general public. Accordingly, documents prepared in anticipation of the hearing (including the Complaint, the Investigative Report, the notice of hearing, and the pre-hearing submissions referenced above); documents, testimony, or other information introduced at the hearing; and the Final Outcome Letter may not be disclosed, except as may be required or authorized by law. This does not apply to the complainant and respondent.

(v) Appeals. The Complainant or the Respondent may appeal the decision of the Hearing Panel and/or the sanction imposed on the Respondent within 2 business days from the date of the Final Outcome Letter. The decision of the Hearing Panel and the sanction imposed on the Respondent may, if desired, be appealed simultaneously.

- 1) Appeals of the Decision of the Hearing Panel Regarding Responsibility for Sexual Misconduct. The only permissible grounds for an appeal are:

- a) Procedural irregularity that affected the outcome of the matter;
- b) 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; and

c) The Title IX Coordinator, Deputy, investigator(s), or decision-maker(s) 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.

- 2) Appeals of the Sanctions. The sanctions imposed on the Respondent may be appealed because the severity of the sanction imposed is incommensurate to the gravity of the Sexual Misconduct for which the Respondent was found responsible.

Appeals of the decision of the Hearing Panel must be made in writing to the Appropriate Divisional Leader. The Appropriate Divisional Leader will provide a copy of the written appeal to the Title IX Coordinator or Deputy. The Title IX Coordinator or Deputy will promptly inform the other party (i.e., the Complainant or the Respondent) of the filing of the appeal. Both the complainant and respondent will be allowed to submit a written statement in support of, or challenging, the outcome. The Appropriate Divisional Leader will decide (i) that the decision of the Hearing Panel should stand; (ii) that the decision of the Hearing Panel should be overturned; or (iii) that additional evidence should be obtained before making an appellate determination.

If they determine that the decision of the Hearing Panel should be overturned or that additional evidence should be obtained, they will specify, after consultation with the Title IX Coordinator and other University administrators, as necessary, the appropriate steps to be taken to come to a final resolution of the Complaint.

The Appropriate Divisional Leader will notify the Complainant and the Respondent concurrently of the decision or action describing the result of the appeal and the rationale for the result. When the Respondent is a University employee (either staff or faculty), the Respondent and/or the Complainant may appeal to the President of the University of the Appropriate Divisional Leader's determination about the employee's initial sanction-related appeal. Such appeals must be made in writing to the President of the University, who will provide a copy of the appeal to the Title IX Coordinator or Deputy. The Title IX Coordinator or Deputy will promptly inform the other party of the filing of the second appeal.

The President of the University will, after consulting as necessary with the Title IX Coordinator or Deputy and other University administrators, decide (a) that the decision regarding the initial sanction-related appeal should stand, or (b) that the decision of the Appropriate Divisional Leader should be overturned, in which case he or she will determine the appropriate final resolution of the matter. Before making the decision, the President of the University may request

additional information from the Complainant, Respondent, or other individuals as they see fit. The decision of the President of the University is final.

(vi) Documentation. The University will retain documentation (including but not limited to the written Complaint, notifications, the Investigative Report, any written findings of fact, petitions for appeal, and any written communication between the parties), for at least seven years in Maxient. Documentation about terminations, expulsions, or educational sanctions may be retained indefinitely.

ARTICLE VI. INFORMAL RESOLUTION (MEDIATION)

Informal resolution is only appropriate if (i) the Complainant or Respondent requests it, AND both parties agree to it, (ii) the Complainant and the Respondent are both students or are both employees of the University, and (iii) the Title IX Coordinator or Deputy determines that it is an appropriate mechanism for resolving the Complaint. Informal resolution may not be selected for less than all of the misconduct alleged in the Complaint (for example, the parties may not choose to resolve a claim of Sexual Assault according to the formal resolution process but mediate all other claims). If the parties agree to informal resolution (and informal resolution is appropriate for all of the claims at issue), then all of the claims must be resolved according to the informal resolution process.

Either party has the right to terminate the informal resolution process at any time and proceed with formal resolution. Furthermore, the Title IX Coordinator or Deputy may, where appropriate, terminate or decline to initiate informal resolution and proceed with formal resolution instead. In such cases, statements or disclosures made by the parties in the course of the informal resolution process may be considered in the subsequent formal resolution proceedings.

The informal resolution process will not result in a disciplinary record for the Respondent. However, the facts and details of the allegation(s) and the outcome of the informal resolution may be considered in connection with the evaluation of any subsequent Sexual Misconduct allegations against, and discipline-related decisions involving, the Respondent.

(a) The Presiding Officer. When the Complaint is to be resolved according to the informal resolution process, there will be a mediation overseen by a Presiding Officer. The purpose of the mediation is to allow an opportunity for resolution of the Complaint without using the formal resolution process. The Title IX Coordinator or Deputy will appoint the Presiding Officer.

(b) Notice of the Mediation. Promptly after the Title IX Coordinator or Deputy has appointed the Presiding Officer, the Title IX Coordinator or Deputy will provide concurrent written notice to the Complainant and the Respondent, setting forth (1) the

date, time, and location of the mediation, and (2) the name of the individual selected to serve as the Presiding Officer. If only a portion of the alleged misconduct justifies continuing to adjudication, the Title IX Coordinator or Deputy will also specify in the notice which part(s) of the alleged misconduct will be the subject of the mediation.

Any party may challenge the participation of the Presiding Officer by submitting a written objection to the Title IX Coordinator or Deputy within three days of receipt of the notice of the mediation. Such objection must state the specific reason(s) for the objection. The Title IX Coordinator or Deputy will evaluate the objection and determine whether to change the Presiding Officer. Failure to submit a timely and proper objection will constitute a waiver of any right of objection. Any substitution of the party serving as the Presiding Officer will be provided in writing to both parties before the date of the mediation.

(c) No Contact Prior to Mediation. The Complainant and the Respondent may not contact each other outside of the mediation, even to discuss the mediation.

(d) Attendance. Both the Complainant and the Respondent are expected to attend the mediation. If either party fails to appear at the mediation, and such party was provided proper notice of the mediation as set forth above, then, absent extenuating circumstances, the case will follow the formal resolution process.

(e) The Mediation

(i) Rights of the Parties. During the mediation, the Complainant and the Respondent may:

- 1) confront each other in the presence of, and facilitated by, the Presiding Officer,
- 2) communicate feelings and perceptions regarding the alleged incident and the impact of the alleged incident (either by communicating directly with each other or by communicating indirectly through the Presiding Officer), and/or
- 3) relay wishes and expectations regarding protection in the future.

(ii) Counsel and Advisors

- 1) Students may have an advisor of their choice throughout all parts of the resolution process.

(iii) Resolution. During the mediation, the Presiding Officer will attempt to facilitate the parties' resolution of the Complaint. If the mediation results in a resolution between the parties and the Title IX Coordinator or Deputy finds the resolution to be appropriate under the circumstances (considering the extent to which the resolution will protect the safety of the complainant and the entire school community), the informal disciplinary procedure will be concluded and the

Complaint will be closed. If the parties are unable to resolve, the formal resolution process outlined in Article V of this Policy will promptly commence.

(iv) Additional Options. Alternate options will be provided and offered (as applicable) to include one-on-one coaching, restorative justice, training, counseling, etc.

(f) Privacy and Disclosure. In order to comply with FERPA and Title IX and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the informal resolution process is not open to the general public. Accordingly, documents prepared in anticipation of the mediation (including the Investigative Report and the notice of the mediation) and other information introduced at the mediation may not be disclosed outside of the mediation, except as may be required or authorized by law. The University will retain any documentation of the mediation for at least seven years.

ARTICLE VII. Title IX Policy & Procedures Addendums

(a) Statement of Policy Addenda. The University is also committed to fostering a community that promotes prompt reporting of all types of Sexual Misconduct and timely and fair resolution of reports of Sexual Misconduct. These addenda sets describe prohibited conduct (Definitions) and establish procedures for responding to reports of Title IX violations exclusively (as defined in section c of this article) that are a derivative of the sexual misconduct procedures (Articles II-VI).

(b) Scope of Title IX Policy Addendum. This policy applies to allegations of sexual harassment made by or against a student or an employee of the University where the incident occurs in the university's education programme or activity against a person in the United States whether such programs or activities occur on-campus or off-campus.

(c) Definition of Sexual Harassment. Sexual harassment is defined as any of the following types of misconduct based on sex, all of which jeopardize equal access to education:

- (i) Any instance of quid pro quo harassment by a school's employee;
- (ii) Any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access;
- (iii) Any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

(d) Formal Hearing Process Addendum. The following are the addenda to the formal hearing process

- (i) In the formal hearing process, the hearing panel must permit each party's advisor to ask the other party and any other witnesses all relevant questions and follow-up questions, including those challenging credibility. The questioning must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.
- (ii) At the request of either party, the formal hearing can occur virtually or with the parties in separate rooms, enabling the parties to see and hear each other.
- (iii) Only relevant cross-examination and other questions may be asked of the party or witness. Before a complainant, respondent, or witness answers a cross-examination or other questions, the hearing panel must first determine whether the question is relevant and explain to the party's advisor asking cross-examination questions any decision to exclude a question as not relevant.
- (iv) If a party does not have an advisor present at the hearing, the university will provide, without fee or charge to that party, an advisor of the school's choice who may be, but is not required to be, an attorney to conduct cross-examination on behalf of that party.
- (v) If a party or witness does not submit to cross-examination at the hearing, the panel must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided that the panel cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.
- (vi) Hearings may be conducted with all parties physically present in the same geographic location. Any or all parties, witnesses, and other participants may appear at the live hearing virtually.
- (vii) The university will create an audio or audiovisual recording, or transcript, of any hearing.
- (viii) The hearing panel may dismiss irrelevant questions and evidence about a complainant's prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.

EXHIBIT A: IMPORTANT CONTACT INFORMATION

UNIVERSITY RESOURCES

The University's Title IX Coordinator is Dr. Todd Long, whose office is located in Kable House, Staunton Campus. Dr. Long can be reached by phone at 540-887-7230, by appointment (main campus), or by email at titleix@marybaldwin.edu.

The Campus Safety Department is located at 312 Academy Street, Staunton, VA, and is available by phone at 540-887-7000. Campus Safety Officers are available 24 hours a day/7 days a week.

The Campus Student Engagement On-Call Professional can be reached at 540-430-3563 and is available 24 hours a day/7 days a week when the University is in session.

Student Health and Counseling Services are located in Kable House. The office is staffed from 9:00 a.m. until 4:00 p.m. Monday through Friday during the academic year, and is available by phone at 540- 887-7095 or 540-887-7281.

The Mary Baldwin University Chaplain is located in Carpenter Academic, Room 101 on the Staunton Campus and is available by phone at (540) 887-7044
www.marybaldwin.edu/chaplain/

COMMUNITY RESOURCES

Local Law Enforcement Agencies can be reached by calling 911. Local police departments may offer an immediate advocate who can accompany the complainant to the hospital or to a health provider. For non-emergencies, police may be contacted as follows:

In the City of Staunton:

Staunton Police Department
116 W Beverley Street, Staunton, Virginia
Telephone: (540) 332-3842

In Augusta County (including Fishersville):

Augusta County Sheriff's Office
127 Lee Highway, Verona, Virginia
Telephone: (540) 245-5333

Augusta Health Regional Hospital is located at 78 Medical Center Drive, Fishersville, VA 22939, Main Phone (540) 332-4000.

The Emergency Department can be reached at (540) 332-4444. New Directions Center.

This local center provides options for those emotionally, physically, & sexually abused. Counselors can be reached at 540-886-6800 or 1-800-56-haven. Virginia Sexual Assault Hotline can be reached at 1-800-838-8238, providing 24-hour hour/7 days a week. The Title IX Coordinator or Deputy can provide individuals with recommendations for legal counsel upon request.

SEXUAL MISCONDUCT POLICY AND PROCEDURES

Suggested Actions for Complainants of Sexual Assault

While all types of Sexual Misconduct are inappropriate and taken seriously by the University, actions involving Sexual Assault (as defined in Exhibit B) are particularly concerning. Thus, if you are the complainant of a Sexual Assault, the University's priority is to help you take steps to address your safety, medical needs, and emotional well-being. You are encouraged to take the following actions, as applicable, regardless of whether you have decided whether to pursue criminal or University disciplinary charges.

1. Ensure Your Physical Safety. You may seek help from local law enforcement agencies or by contacting the University's Campus Safety and Security Department. The Campus Safety and Security Department can assist you with contacting local law enforcement and can help you obtain transportation to the local law enforcement office. Campus Safety personnel are on duty at the Campus Safety Department 24 hours a day, seven days a week.
2. Seek Medical Assistance and Treatment; Preserve Evidence. Local options for medical care include Augusta Health Hospital. You must obtain medical attention as soon as possible after a Sexual Assault to determine the possibilities of physical injury and to prevent or treat sexually transmitted diseases (such as HIV). Medical facilities can also screen for the presence of sedative drugs such as Rohypnol or GHB (date-rape drugs). Hospital or University resources can help you contact a support person, such as a family member, a friend, or a roommate.
 - a. If you choose to have an evidence collection kit (or "rape kit") completed, it is important to do so within 5 days. Even if you have not decided to file charges, it is advisable to have the evidence collection kit completed so that you can preserve the options of obtaining a protective order and or filing criminal charges at a later date. Individuals may go directly to the medical facility of their choice or may go to Augusta Health Hospital to complete an evidence collection kit.
 - b. In order to best preserve evidence for an evidence collection kit, it may be advisable to avoid showering, bathing, going to the bathroom, or brushing your teeth before the kit is completed. You should also wear (or take with you in a paper – not plastic – bag) to the hospital the same clothing that

you were wearing during the assault. An evidence collection kit can still be completed even if you have showered or bathed.

3. Obtain Emotional Support. The University's Counseling Center on our Staunton Campus can help students sort through their feelings and begin the recovery process. The professionals at the Counseling Center are trained to provide crisis intervention for short-term and emergency issues. The Counseling Center can also provide referral services for outside providers and law enforcement for MBU students and employees. Counseling is free of charge to all students. In some instances, the law may require the disclosure of information shared by students with counselors. However, absent a legal mandate to the contrary, counseling services are confidential, are not part of students' University records, and will not be reported to other University personnel.
4. Obtain Information / Report Misconduct. You are encouraged to report incidents of Sexual Assault to the University's Title IX Coordinator or other Responsible Employee or offices as outlined in the Sexual Misconduct Policy and Procedures (even if you have filed a report directly with law enforcement). Further information about how to report Sexual Assault is provided in the body of the Mary Baldwin University Sexual Misconduct Policy and Procedures. University personnel can help you access resources (including recommendations for legal counsel, if requested) and can provide you with support and information, including information on the University's procedures for investigating and addressing instances of Sexual Assault.

EXHIBIT B SEXUAL MISCONDUCT COMPLAINT FORM

Information Regarding the Complainant

Today's date:

Name of the Complainant: _____

Complainant's Phone Number/email address: _____

The Complainant is (please check one):

a faculty member (current or former): ☐ []

a student (current or former): ☐ []

a staff member (current or former): ☐ []

not affiliated with the University: ☐ []

Information Regarding the Respondent

Name of the Respondent: _____

The Respondent is (please check one):

a faculty member (current or former): []

a student (current or former): []

a staff member (current or former): []

not affiliated with the University: []

Information Regarding the Alleged Sexual Misconduct

Time and date of the alleged Sexual Misconduct:

Location of the alleged Sexual Misconduct (e.g., building name, address, room):
on campus or off campus:

Witnesses or third parties who may have information regarding the alleged Sexual Misconduct:

Please provide a brief description of the alleged Sexual Misconduct:

You may wish to consider including, among other things, some or all the following information in your description: the gender of the parties, the relationship between the parties, whether one or more of the parties were under the influence of alcohol or drugs at the time of the alleged Sexual Misconduct, whether the Respondent used pressure or force (physical or otherwise) in the course of the alleged Sexual Misconduct, and the frequency (if applicable) of the alleged Sexual Misconduct. Please feel free to use the reverse side of this form or separate pages to continue your description, if desired.

Signature of the Complainant: _____

Appendix A: Definitions

FERPA

The Family Educational Rights and Privacy Act protects the privacy of student education records. (20 U.S.C. § 1232g; 34 C.F.R. Part 99)

OCR

The Office for Civil Rights enforces civil rights laws related to educational institutions, including Title IX and Section 504.

CSA

Campus Security Authority: individuals obligated under the Clery Act to report campus crime statistics.

VAWA

The Violence Against Women Act requires colleges to address sexual violence, dating violence, and stalking through education and policy. (34 C.F.R. § 668.46(j))

Appendix B: Child Sexual Misconduct Reporting

Child Protective Services Reporting

Mary Baldwin University is committed to the safety and protection of all members of its campus community, including minors who participate in university-sponsored programs, summer camps, dual enrollment, or early college initiatives. In accordance with Virginia law, all university employees are considered mandated reporters and must immediately report any suspected child abuse or neglect to Child Protective Services (CPS) at 1-800-552-7096.

The university will ensure timely cooperation with CPS and other appropriate agencies when allegations involve minors. Failure to report may result in institutional or legal consequences.