

# **GWYNEDD MERCY UNIVERSITY**

## **SEXUAL MISCONDUCT POLICY**

I.

### **NOTICE OF NONDISCRIMINATION:**

As a recipient of Federal funds, Gwynedd Mercy University is required to comply with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. § 1681 et seq. (“Title IX”), and the Code of Federal Regulations 34 Part 106, which prohibits discrimination on the basis of sex in educational programs or activities, admission and employment. Under certain circumstances, Sexual Misconduct (as defined below) constitutes sexual discrimination prohibited by Title IX. In addition, the University complies with the Violence Against Women Reauthorization Act of 2022 (“VAWA”). Inquiries concerning the application of Title IX and VAWA may be referred to the University’s Title IX Coordinator or to the U.S. Department of Education’s Office for Civil Rights. Gwynedd Mercy’s Title IX Coordinator is Tia Brown who may be contacted by phone at 215-646-7300 ext. 21140 or by e-mail at brown.t8@gmercyu.edu. The coordinator may also be visited in person in the Title IX Office adjacent to the Rotelle Lounge in the Griffin Complex.

### **INTRODUCTION**

Gwynedd Mercy University is committed to creating and maintaining a campus and online environment where safety, health, and well-being are priorities for all. Sexual misconduct includes a variety of acts that are perpetrated against another without consent or when an individual is unable to freely give consent. Accordingly, the University will not tolerate any form of sexual misconduct, including sexual assault, sexual harassment, sexual exploitation, dating violence, domestic violence, and stalking. All forms of sexual misconduct are serious offenses with serious consequences. In addition to violating the University’s Student Code of Conduct or University employment policies, some forms of sexual misconduct are both criminal and civil offenses that are punishable by law. Students found responsible for sexual misconduct may face disciplinary actions up to and including expulsion. Faculty and staff found responsible for sexual misconduct may face disciplinary actions up to and including termination. This policy applies to all Gwynedd Mercy University campuses and online programs. The policy also applies to any program sponsored by Gwynedd Mercy University which may be on campus, off campus, or virtual.

Gwynedd Mercy University acknowledges that the First Amendment privilege of freedom of speech and expression of ideas is a necessary component of the academic environment. There is an expectation that all forms of communication will adhere to the values of our Mercy tradition.

Sexual Misconduct, which includes incidents of Sexual Harassment, Hostile Environment caused by Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, Sexual Exploitation, and Stalking, as defined in Section III below, in the University’s educational, residential and employment environment is unacceptable, subverts the mission of the institution and threatens the careers, educational experience, and well-being of Gwynedd Mercy University students, faculty, and staff. It undermines authority and collegial relationships and generates suspicion, conflict, and ill feelings. Accordingly, no member of the University community or its contractors, consultants, or vendors doing business or providing services to the University shall engage in any form of Sexual Misconduct as defined

within this policy. Any person who feels that they have been the victim of Sexual Misconduct is encouraged to make a report to the University. See Section V for reporting options.

**The Sexual Misconduct Policy has been developed to:**

- Educate students, faculty and staff about shared values and expectations regarding sexual behavior;
- Define sexual misconduct as a range of behaviors prohibited by the Student Code of Conduct, Faculty and Staff Handbooks;
- Clarify the difference between the criminal process that might be pursued through district attorneys and police and the procedures for addressing reports of sexual misconduct violations under the Gwynedd Mercy University Sexual Misconduct Policy;
- Describe and communicate the rights of those who report violations and those who are accused of violating the Sexual Misconduct Policy;
- Provide guidance on what a person should do if they have been sexually assaulted or victimized;
- Ensure compliance with appropriate state and federal regulations, including Title IX, the Jeanne Clery Act, and the Violence Against Women Act;
- Identify campus and community resources for complainants and alleged respondents.

The policy addresses sexual misconduct as a violation of the Gwynedd Mercy University Student Code of Conduct and/or the Faculty and Staff Handbooks. All incidents of sexual misconduct should be reported within 24 hours or as soon as reasonably feasible to the Title IX Coordinator. If you have been the victim of a sexual assault, please report the incident as soon as you are able to do so. Sexual misconduct violates Title IX of the Education Amendments of 1972. This means that a victim may file a complaint with the Gwynedd Mercy University Title IX Coordinator:

Tia S. Brown  
Griffin Complex, Rotelle Lounge  
215-646-7300 Ext.21140  
brown.t8@gmercyu.edu

Complaints may also be filed with the U.S. Department of Education, Office of Civil Rights:

Philadelphia Office  
Office of Civil Rights  
U.S. Department of Education  
The Wanamaker Building  
100 Penn Square East, Suite 515  
Philadelphia, PA 19107-3323  
Telephone: 215-656-8541  
FAX: 215-656-8605; TDD: 800-877-8339  
Email: [OCR.Philadelphia@ed.gov](mailto:OCR.Philadelphia@ed.gov)

## II.

### **Title IX Coordinator Responsibilities:**

All sexual misconduct complaints will be processed by the Office of the Title IX Coordinator. The Title IX Coordinator will oversee all Deputy Coordinators, Title IX Investigators and investigations. The Coordinator will also conduct investigations. The Title IX Coordinator will secure and maintain all records of investigations, adjudications, and resolutions related to alleged violations of the Sexual Misconduct Policy. The Title IX Coordinator is responsible for developing, implementing, and documenting training for all students, staff and faculty, and third parties on the campus and online programs. This training will cover the topics contained within the Sexual Misconduct Policy and guidance received from the Office of Civil Rights. The Title IX Coordinator will be the liaison between the university and the Office of Civil Rights when required.

The policy and procedures addressed here are in addition to, and not a replacement for, any legal options that may be available. Any criminal process is separate from proceedings at the University level. Those interested in pursuing a criminal investigation should contact the Office of Public Safety and Security (215-646-7300 Ext. 21522) or dial 911 for the police.

### **Immediate Need of Information and Care:**

If you are in need of immediate information or care, please refer to the resources section XI and seek a resource you are comfortable with as soon as you are able. The resources section lists support for victims and alleged respondents. A reporting person may also contact the Title IX Coordinator and request interim measures which may be put in place.

Interim measures can be provided to students, faculty, and staff by contacting the Title IX Coordinator. The office will work in conjunction with the Vice President for Student Services and Dean of Students, Director of Housing and Residence Life, Counselors, Director of Accessibility Services and any other campus entity required to design and implement the appropriate interim measures for students. Interim measures for faculty and staff will be coordinated through the Office of Human Resources.

### **Student interim measures may consist of the following:**

- Housing reassignment to ensure that the complainant and alleged respondent are not in close proximity;
- Limitations on contact between parties (referred to as a “No Contact Orders”);
- An escort to ensure the complainant’s safety;
- Reassignment of classes to ensure that the complainant and alleged respondent are not attending the same class,
- Counseling services;
- Medical services;
- Academic support such as tutoring;
- Withdrawal from a class without penalty;
- Adjustments to on-campus transportation, parking, or work;
- Other remedies and/or measures not listed can be considered to ensure the safety of all involved parties.

**Faculty and Staff interim measures may consist of the following:**

- Limitations on contact between parties (referred to as a “No Contact Order”);
- Escort to ensure complainant safety;
- Adjustments to on-campus transportation parking or work;
- Other remedies and/or measures not listed can be considered to ensure the safety of all involved parties.

**III.**

**WHAT IS SEXUAL MISCONDUCT?**

The Sexual Misconduct Policy at Gwynedd Mercy University covers a variety of acts that are perpetrated against another without consent or when an individual is unable to give consent freely. The Sexual Misconduct Policy is aligned with the Student Code of Conduct. Anyone can be a victim. Sexual misconduct includes, but is not limited to, the following prohibited behaviors:

- Sexual Harassment
- Sexual Assault
- Sexual Exploitation
- Stalking
- Dating Violence
- Domestic Violence
- Retaliation

**SEXUAL HARASSMENT or GENDER BASED HARASSMENT**

Sexual harassment is defined as any unwelcomed sexual advances, requests for sexual favors, and other harassing conduct of a sexual nature whether intentional or not. The unwanted conduct can be verbal, non-verbal, graphic, gestures, or physical. Sexual harassment occurs when the conditions for (1) and/or (2), below, are present:

Gender Based Harassment includes harassment based on gender, sexual orientation, or gender identity which may include acts of intimidation, aggression, or hostility, whether verbal, non-verbal, graphic, physical or otherwise, even if the acts do not involve conduct of a sexual nature, when the conditions for (1) and/or (2), below, are present:

**(1) QUID PRO QUO: This for That**

- Submission to the unwelcome conduct is made either explicitly or implicitly a term or condition of an individual’s employment or status in a course, program, or activity; or
- Submission to or rejection of the unwelcome conduct by an individual is used as the basis for an academic or employment-related decision affecting such an individual.

## **(2) HOSTILE ENVIRONMENT:**

- The unwelcome conduct is sufficiently severe, persistent, or pervasive as to substantially limit or interfere with an individual's work, educational performance, participation in extra-curricular activities, or equal access to the University's resources and opportunities; or
- Such contact, act or acts that create an intimidating, hostile, or abusive living, working, or educational environment.

## **SEXUAL ASSAULT**

Sexual assault is any type of sexual conduct or contact that occurs without the explicit consent of the recipient.

### **Non-consensual sexual contact is:**

- Any intentional sexual touching that is without consent, however slight, with any object or body part by a person of any gender, age, or sexual orientation.

### **Non-consensual Sexual intercourse is:**

- Any sexual penetration (anal, oral, vaginal), however slight, with any object or body part by a person of any gender, age, or sexual orientation, that is without consent.

## **SEXUAL EXPLOITATION**

Sexual exploitation occurs when a person takes non-consensual or unjust sexual advantage of another for their own advantage or benefit, or to benefit another person other than the one being exploited.

Examples of sexual exploitation include, but are not limited to:

- Non-consensual videoing, photographing, or audio-taping of sexual activity;
- Non-consensual distribution of a video, photograph, or sound recording of sexual activity;
- Non-consensual photographing or videoing of nudity;
- Non-consensual distribution of a nude photograph or video recording; going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);
- Engaging in peeping or indecent exposure;
- Inducing incapacitation through alcohol or drugs in order to sexually assault another person (whether or not sexual contact actually takes place); an example could include spiking someone's drink.

## **STALKING**

Stalking is defined as engaging in a course of conduct directed at a specific person(s) that would cause a reasonable person to: (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

Cyberstalking is a form of stalking where a person engages in a course of conduct using applications (apps), e-mail, texts or other electronic communications to pursue or track another person that would

cause a reasonable person to: (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

**Stalking can include:**

- Unwanted phone calls;
- Unwanted letters, e-mails, social media messages (e.g. Twitter, Snapchat, Instagram, etc.) or other forms of communication/messaging;
- Unwanted or threatening gifts;
- Pursuing or following a person without their consent;
- Unwanted appearances at a person's residence, school, or work;
- Surveillance or other types of observation;
- Use of electronic devices or software to track or obtain private information.

**DATING VIOLENCE**

Dating violence is defined as abuse committed by a person, past or present, involved in a social, sexual, or romantic relationship with the victim. Dating violence can include a range of behaviors that may include physical violence, sexual violence, emotional violence, and economic violence.

Dating Violence can include:

- Physical assault (such as shoving, kicking or punching);
- Verbal abuse (such as belittling or calling names);
- Controlling behavior (such as not letting the victim see friends);
- Sexual abuse (such as forced kissing, hugging or sexual contact);
- Psychological abuse (such as threatening to hurt the victim or family or friends, or instill fear).

**DOMESTIC VIOLENCE**

Domestic violence is defined as abuse committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabited with the victim as a spouse or someone similarly situated to a spouse, or by any other person from whom the victim is protected under the domestic or family violence laws.

Domestic Violence can include:

- Physical assault (such as shoving, kicking or punching);
- Verbal abuse (such as belittling or calling names);
- Controlling behavior (such as not letting the victim see friends and/or family, telling the victim what to wear);
- Sexual abuse (such as forced kissing, hugging or sexual contact);
- Psychological abuse (such as threatening to hurt the victim or family or friends, or instill fear).

## **RETALIATION**

Retaliation is defined as taking adverse action against an individual making a complaint under this policy or against any person cooperating in the investigation of a complaint under this policy. Retaliation includes intimidation, threats, harassment, and other adverse action including adverse job action and adverse academic action against any such complainant or third party.

## **INTIMIDATION**

Intimidation is defined as implied threats or acts that cause an unreasonable fear of harm in another.

## **CONSENT**

Consent is an informed decision made freely and actively by all parties. Conduct will be considered “without consent” if no clear consent, verbal or nonverbal, is given. Because sexual misconduct is defined as sexual activity that is undertaken without consent, each participant must obtain and give consent to each sexual act.

Consent is an affirmative decision to engage in mutually acceptable sexual activity, and consent is given by clear actions or words. People are strongly encouraged to talk with each other before and during any sexual interaction. Relying solely upon non-verbal communication can lead to miscommunication.

It should be noted that in some situations an individual’s ability to freely consent is taken away by another person or circumstance. Examples include when an individual is significantly impaired due to alcohol or other drugs, scared, physically forced, passed out, intimidated, coerced, mentally or physically impaired, beaten, threatened, isolated, or confined.

Individuals with cognitive disabilities cannot give consent to sexual activity if they cannot understand the act, nature, consequences [risks] including both negative and positive or extent of the sexual situation in which they find themselves. The cognitive disability of the victim must be known (or reasonably knowable) to the non-disabled sexual partner, in order to hold them responsible for the violation.

Under Pennsylvania law, consent can never be given by minors under the age of 16. Statutory provisions also prohibit sexual activity with minors under the age of 16 where there is 4 or more years’ difference in age between the parties.

The following are clarifying points:

- Consent is required each and every time there is sexual activity;
- At any and all times when consent is withdrawn or not verbally agreed upon, the sexual activity must stop immediately;
- Consent to some levels of sexual activity does not imply consent to all levels of sexual activity. Each new level of sexual activity requires consent;
- The person(s) who initiate(s) a new level of sexual activity is responsible for asking for consent;
- A current or previous dating or sexual relationship with the initiator (or anyone else) does not constitute consent;
- Being intoxicated does not diminish one’s responsibility to obtain consent;
- Bodily movements and non-verbal responses such as moans are not consent;
- Silence, passivity, or lack of active resistance is not consent;

- Intentional, or voluntary use of alcohol/drugs does not imply consent to sexual activity;
- Seductive dancing or sexy/revealing clothing does not imply consent to sexual activity;
- Anyone under the age of 16 cannot give consent;
- Use of agreed upon forms of communication such as gestures or safe words is acceptable, but must be discussed and verbally agreed upon by all parties before sexual activity occurs.

## **INCAPACITATION**

Incapacitated persons cannot give consent. One who is incapacitated as a result of alcohol or other drug consumption (voluntarily or involuntarily), or who is unconscious, unaware, or otherwise helpless, is incapable of giving consent. One must not engage in sexual activity with another whom one knows (or should reasonably know) to be incapacitated. Physically incapacitated persons are considered incapable of giving effective consent when they lack the ability to appreciate the fact that the situation is sexual, and/or cannot rationally and reasonably appreciate the nature and extent of that situation.

Examples of incapacitation include:

- Unconsciousness,
- Sleeping,
- Fright - immobility due to fear (tonic immobility)
- Physical or psychological pressure or force,
- Intimidation/threats, verbal or physical to include electronic means of communication.

Incapacitation can also result from:

- A psychological health condition,
- A physiological health condition,
- Intoxication by means of voluntary or involuntary use of any drug, intoxicant or controlled substance.

## **IV.**

### **MEDICAL CARE and EVIDENCE COLLECTION**

An individual who has been the victim of sexual violence is urged to seek medical care as soon as possible. Even if a victim does not want to report the assault, medical attention is still needed to check for injuries, sexually transmitted infections, or pregnancy. Victims of sexual assault are strongly encouraged to undergo a forensic examination by a trained professional to ensure proper medical attention. Victims who undergo evidence collection do not have to press charges.

In addition to receiving proper medical attention, consider the following:

- Time is a factor in the collection of evidence. Post-assault forensic evidence (commonly referred to as a “rape kit”) is best collected within 72 hours of the assault. Victims should go to the hospital as soon as possible after the assault.
- A Crime Victim Advocate from the Crime Victims’ Center of Montgomery County can accompany the victim to the hospital to provide support and answer questions on what to expect. To obtain an advocate, call 610-692-7273. The Hospital Emergency room will contact the Crime Victims’ Center, if desired.

- Victims should not bathe or douche as this will destroy evidence that supports a legal case against the alleged respondent.
- The hospital will keep the clothes worn during the assault as evidence. Victims should bring a change of clothes to the hospital, or take the clothes they were wearing during the assault in a brown paper bag to the hospital.
- If the use of a “date rape drug” is suspected, the hospital can take a urine sample for evidence collection.
- For more information about evidence collection go to: [www.rainn.org/get-information/sexual-assaultrecovery/rape-kit](http://www.rainn.org/get-information/sexual-assaultrecovery/rape-kit).

Post-assault forensic evidence collection is not available at the University’s Health and Wellness Center. Victims should use a local hospital for comprehensive medical care after an assault.

The Department of Public Safety (215-646-7300 Ext. 21522) will assist with transportation to the hospital if needed. In an emergency, contact local emergency services by calling 911.

The University’s Health and Wellness Center, 215-646-7300, Ext. 21306, can assist students with arranging counseling services and/or medical referrals as needed.

**Hospital Contact Information:**

- Abington Hospital – Jefferson Health, 1200 Old York Rd., Abington, PA 19001, 215-481-2000
- Abington Lansdale Hospital- 100 Medical Campus Drive, Lansdale, PA 19446, 215-368-2100

**V.**

**HOW AND WHERE TO REPORT AN INCIDENT OF SEXUAL MISCONDUCT**

Gwynedd Mercy University strongly encourages prompt reporting of sexual offenses to the police, but recognizes that individuals who experience sexual misconduct have the right to decide whether to file a criminal report with the police, the University, an anonymous report, or no report at all. Anyone may report an incident online. The online form can be found on the web page under Policies and Title IX. Please click **here** for the form.

**Here are a few things to know about filing a report:**

- Anyone can file a report whether they are a victim, witness, or concerned third party.
- Victims have the option to file both a criminal report with the police and a report with the University’s Title IX Coordinator.
- Filing a report does not mean that you have to be involved in a police investigation or talk to the alleged respondent.
- A victim has the right to request a victim’s advocate to go with them when filing a report with the police or with the University.

- The intentional filing of a false report will not be tolerated. It is a violation of the Student Code of Conduct and Employment Policies. Intentionally filing a false report may also violate state criminal laws and civil defamation laws. The intentional filing of a false report or false statement may lead to dismissal for a student or separation from the University for a member of the faculty or staff.

**To file a complaint for a Title IX violation:**

Sexual misconduct is a form of sex discrimination prohibited by Title IX of the Education Amendments of 1972. A Title IX investigation is separate from a criminal investigation by the police and courts. Victims of any form of sex discrimination, sexual misconduct or gender-based harassment are encouraged to report the incident to the Title IX Coordinator or Deputy Coordinator (contact information below). An electronic formal complaint form can also be completed on the Title IX webpage of the University's website.

Title IX Coordinator:

Tia S. Brown  
Griffin Complex, Rotelle Lounge  
brown.t8@gmercyu.edu  
215-646-7300 Ext. 21140

Deputy Coordinator:

Dr. Mindy MacRone-Wojton  
Siena Hall Room 1110  
215-646-7300 Ext. 21482  
macronewojton.m@gmercyu.edu

**To file a report with Gwynedd Mercy University's Department of Public Safety:**

Call the Department of Public Safety (215-646-7300 Ext. 21522) or contact any Public Safety officer directly for assistance. **To file a police report:**

Those who want to press criminal charges against an alleged respondent should contact the Department of Public Safety (215-646-7300 Ext. 21522), dial 911, or contact the police in the area where the assault took place. If the incident occurred off-campus or online, the Office of Public Safety will assist the complainant in filing the complaint in the appropriate jurisdiction.

Criminal charges can be filed against any alleged respondent, including non-members of the Gwynedd Mercy University community. Criminal charges of sexual assault are entirely separate from violations of the Student Code of Conduct and Employee Policies.

Filing a formal report with the police is necessary when a victim would like to initiate a criminal investigation by the police. Anyone who has been sexually assaulted may choose to pursue both criminal prosecution and university disciplinary processes.

## **Truthfulness/Limited Immunity for Alcohol and Other Drug Violations**

Individuals may be hesitant to report conduct which they have experienced or witnessed, to participate in an investigation and/or grievance proceeding, or to speak truthfully because they fear University disciplinary action due to their own consumption of alcohol or other drugs at or near the time of the incident. While the University does not condone underage drinking or use of illicit drugs, the University may extend limited immunity from punitive sanctioning in the case of illegal alcohol/drug use to victims, witnesses and those reporting incidents and/or assisting the victims of sexual offenses, provided that they are acting in good faith in such capacity.

## **Anonymous Reporting to the University**

Although the University encourages victims and witnesses to talk to someone, the University provides an online webpage for anonymous reporting. The system will notify the user (before they enter information) that entering personally identifying information may serve as notice to the University for the purpose of triggering a Title IX investigation.

## **Reporting to a “Responsible Employee”**

In addition to filing a formal report with the Title IX Coordinator, Title IX Deputy Coordinator, or with the Office of Public Safety and Security, any member of the University community has the option to formally report an incident of Sexual Misconduct, Retaliation or Intimidation to a “Responsible Employee” of the University. **A “Responsible Employee” is a University employee who has the duty to report incidents of Sexual Misconduct or other student misconduct, or is an individual who a student could reasonably believe has this authority or duty.**

When a member of the University community tells a responsible employee about an incident of Sexual Misconduct, Retaliation or Intimidation, the individual has the right to expect the University to take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably.

A responsible employee must report to the Title IX Coordinator within three days all relevant details about the alleged Sexual Misconduct– including the names of the complainant and alleged respondent(s), any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident. Any responsible employee who knew about a violation of this policy and took no action to stop it or failed to report the prohibited act may be subject to disciplinary action.

To the extent possible, information reported to a responsible employee will be shared only with people responsible for handling the University’s’ response to the report. A responsible employee should not share information with law enforcement without the victim’s consent or unless the victim has also reported the incident to law enforcement. Before a victim reveals any information to a responsible employee, the employee should ensure that the victim understands the employee’s reporting obligations and, if the victim wants to maintain confidentiality, direct the victim to confidential resources.

If the victim wants to tell the responsible employee what happened but also maintain confidentiality, the employee should tell the victim that the University will consider the request, but cannot guarantee that the University will be able to honor it. In reporting the details of the incident to the Title IX Coordinator, the responsible employee will also inform the coordinator of the victim’s request for

confidentiality. The Title IX Coordinator will weigh the request for confidentiality against the potential safety risks of the campus community.

Responsible employees will not pressure a complainant to request confidentiality, but will honor and support the complainant's wishes. Responsible employees will not pressure a complainant to make a full report if they do not wish to report.

Note: A "student of the University" is any student who is registered at the University or enrolled at the University: (a) at the time of the alleged Sexual Misconduct, and (b) at the time a report of Sexual Misconduct is filed; and is either: registered to be enrolled or is currently enrolled at the University on a full-time basis, or registered to be enrolled or is currently enrolled at the University on less than a full-time basis and is not an employee of the University. Solely for purposes of this definition, the term "employee of the University" does not include students who are employed by the University through a work-study or similar program.

#### **Professional and Pastoral Counselors:**

Professional, licensed counselors and pastoral counselors who provide mental-health counseling to members of the University community (and including those who act in that role under the supervision of a licensed counselor) are not required to report any information about an incident to the Title IX Coordinator without the complainant's permission. The offices and individuals that provide confidential mental-health counseling to members of the University community are set forth in this section.

#### **Reporting to Non-Professional Counselors and Advocates**

Non-professional individuals who work or volunteer in the Health and Wellness Center, including front desk staff, can generally talk to a complainant without revealing any personally identifying information about an incident to the University. A complainant can seek assistance and support from these individuals without triggering a University investigation that could reveal the complainant's identity or that the complainant has disclosed the incident.

While maintaining a complainant's confidentiality, these individuals or their office are required to report the nature, date, time, and general location of an incident to the Title IX Coordinator. This limited report – which includes no information that would directly or indirectly identify the complainant – helps keep the Title IX Coordinator informed of the general extent and nature of sexual violence on/off campus or online so the Coordinator can track patterns, evaluate the scope of the problem, and formulate appropriate campus-wide responses. Before reporting any information to the Title IX Coordinator, these individuals will consult with the complainant to ensure that no personally identifying details are shared with the Title IX Coordinator.

A complainant who speaks to a professional or non-professional counselor or advocate must understand that, if they want to maintain confidentiality, the University will be unable to conduct an investigation into the particular incident or pursue disciplinary action against the alleged respondent.

A complainant who at first requests confidentiality may later decide to file a complaint with the University or report the incident to local law enforcement, and thus have the incident fully investigated. These counselors and advocates will provide the complainant with assistance if the complainant wishes to do so.

Note: While these professional and non-professional counselors and advocates may maintain a complainant's confidentiality, they may have reporting or other obligations under state law (e.g., abuse of a minor, etc.). Moreover, health care providers are required under Pennsylvania law to report sexual assaults to local law enforcement.

Finally, if the University determines that the alleged respondent(s) pose a serious and immediate threat to the University community, the Chief of Public Safety will issue a timely warning to the community. Any such warning will not include any information that identifies the complainant.

### **Reporting Options Outside the University**

- Privileged and Confidential Communications:

Off-campus or outside counselors, advocates, and health care providers will also generally maintain confidentiality and not share information with the University unless the victim requests the disclosure and signs a consent or waiver form. Confidential off campus resources are also set forth in the University and Off Campus Resources section XI.

**Note:** While off-campus counselors and advocates may maintain a victim's confidentiality they may have reporting or other obligations under state law (e.g., abuse of a minor, etc.). Moreover, health care providers are required under Pennsylvania law to report sexual assaults to local law enforcement.

- Filing a Complaint with Law Enforcement

Any member of the University community who has experienced an incident of Sexual Misconduct involving potential criminal conduct has the option to report the conduct to a law enforcement agency that has jurisdiction over the location where the incident occurred. If the conduct is reported to the University, the individual will be informed of their option to also report any potential criminal activity to law enforcement.

The University and the police/legal system work independently from one another. Individuals can file reports with the University, with law enforcement, with either system or neither. Because the standards for finding a violation of criminal law are different from the standards in this policy, criminal investigations or reports are not determinative of whether or not a criminal sexual offense under this policy has occurred. Please refer to the University and Off Campus Resources Section XI, for assistance in filing a report with local law enforcement.

- Filing with External Agencies

In addition to the University's internal remedies, members of the University community should also be aware that the Office of Civil Rights investigates and prosecutes complaints of prohibited sex discrimination. This agency may be contacted as follows:

#### **United States Department of Education, Office for Civil Rights**

Region III Office  
150 S. Independence Mall West Suite 372  
Public Ledger Building Philadelphia, PA 19106-9111  
(215) 656-8541  
E-mail: [OCR.Philadelphia@ed.gov](mailto:OCR.Philadelphia@ed.gov)

Complaints with the Office for Civil Rights must be filed within one hundred eighty (180) days of the last act that the complainant believes was discriminatory. There is no time limit for making a report to the University.

Employees, Employment Applicants, Volunteers and other Third Parties: In addition, employees, applicants for employment and other third parties may also file a formal complaint of sex discrimination with the following agencies:

**Pennsylvania Human Relations Commission**

333 Market Street, 8th Floor  
Harrisburg, PA 17101  
(717) 787-9780

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

801 Market Street, Suite 1300  
Philadelphia, PA 19107-3127  
1-800-669-6820

**SEXUAL MISCONDUCT INCIDENT REPORT FORM**

The Sexual Misconduct Incident Report Form may be found on the University website under Policies in the Title IX section.

The Sexual Misconduct Incident Report Form is used to collect statistical information, which must be passed along to Public Safety for publication in the annual Campus Security Report as required by the Jeanne Clery Act. Such information helps to provide the community with a clear picture of the extent and nature of campus crime in order to ensure greater safety. No names or other personally identifying information is used in the Campus Security Report, which can be found on the Office of Public Safety website.

Anonymous reports are used to collect information on instances of sexual misconduct. The information is useful for assessing the danger the incident represents to the community at large. In addition, information is also used for assessment purposes to ensure that Gwynedd Mercy University is maintaining a campus/online climate that is safe and supportive and providing adequate resources for students.

The University has a legal obligation to investigate anonymous reports of sexual misconduct to the extent feasible. It is not usually possible to conduct a formal investigation of anonymous reports of sexual misconduct, or in situations where a complainant requests confidentiality, or when a person making a report asks that the complaint not be pursued; however, the University has a responsibility to take action to prevent misconduct. In the event of anonymous reports of sexual misconduct, or if the person making the report asks that the complaint not be pursued, the Title IX Coordinator will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality, which may include meeting with the alleged respondent to provide notification of the allegations and the possible repercussions if a formal complaint is brought forward.

## **CONFIDENTIALITY AND REPORTING POLICY**

Gwynedd Mercy University understands the amount of strength and courage that is required to come forward and disclose an incident of sexual misconduct. Be it harassment, assault, sexual exploitation, stalking or dating violence, the university takes your right to privacy seriously. Because the safety of our students, faculty and staff is of our utmost concern, we are not always able to grant complete confidentiality in a sexual misconduct case, however, we will, to the extent possible, do our best to protect your privacy while meeting the University's legal obligations. The Title IX Coordinator will weigh the request for confidentiality against the potential safety risks of the University community. If a complaint must be pursued to ensure the safety of the University community, the complainant will be notified of that decision prior to the initiation of any investigation. No action will be taken without the complainant being notified of the decision/need to move forward with an investigation.

**There are some resources that provide confidentiality on- and off-campus. They are as follows:**

### **On-Campus:**

*Counseling Services* [215-641-5571]

*Health and Wellness Center* [215-646-7300 x21306]

*Mercy Center* [215-646-7300 x21590]

### **Off-Campus:**

- Victims' Services Center of Montgomery County [610-692-0932], Hot Line [1-888-521-0983]
- Women's Center of Montgomery County [1-800-773-2424]
- Rape, Abuse, and Incest National Network (RAINN) [1-800-656-4673]
- Women Organized Against Rape (WOAR), 215-985-3315
- WOAR 24 hour Crisis Hotline - 215-985-3333
- Philadelphia Sexual Assault Response Center, 215-425-1625
- Network of Victim Assistance (NOVA), 215-343-6543
- NOVA, 24 hour Crisis Hot Line, 1- 800-675-6900

More information about these organizations can be found in Section XI.

Under Title IX, the University has an obligation to investigate all incidents of sexual misconduct, and make complainants aware of the resources available to them, while striving to respect the privacy and confidentiality of the complainant. Consistent with this and related obligations under Title IX, the confidentiality of all parties to the complaint of sexual misconduct will be observed by University personnel to the extent possible. The University's obligation to protect the safety of its community members and record statistics may result in not being able to permit complete confidentiality, but the University shall take the necessary measures to ensure that the information shared is limited to those individuals required to know pursuant to law, regulation or University policy. In life-threatening situations, confidentiality is not legally possible and University employees will contact emergency personnel immediately.

The University will not inform students' parents or guardians of their involvement in a situation involving sexual misconduct unless they are in major medical jeopardy. However, students are strongly encouraged to inform their parents or guardians. University officials will directly inform a student's parents or guardians only when requested in writing to do so by the student.

All reported instances of sexual misconduct will be investigated promptly, thoroughly, and equitably with appropriate response taken to ensure a safe and nondiscriminatory environment for all students, faculty, and staff. The Title IX Coordinator's office is a neutral fact finding entity. The dignity and well-being of the parties involved in a reported incident will be maintained at all times. The complainant shall be treated with respect and the alleged respondent will be presumed to be not responsible until proven otherwise. Any decision of responsibility or non-responsibility will only be made by the Hearing Officer after all facts have been documented and reviewed.

## **VI.**

### **FEDERAL TIMELY WARNING REPORTING OBLIGATIONS**

Victims of sexual misconduct should be aware that university administrators must issue timely warnings for incidents reported that pose a substantial threat of bodily harm or danger to members of the University community. The University will ensure that a complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions for themselves.

#### **Mandatory Reporting of Suspected Child Abuse Under Pennsylvania law:**

Any person(s) employed by a private institution of higher education who, in their professional or official capacity, have reason to suspect that a child is an abused or neglected child, are required to report the matter immediately to Child Protective Services via ChildLine, a toll-free child abuse and neglect hotline at 1-800-932-0313. The University also requires that the information be immediately shared with the Title IX Coordinator and the Chief of Public Safety so that the University can ensure timely compliance with this law and enhance the protection of children. It is the University's intent to act quickly regarding all suspected child abuse. For the purposes of this reporting obligation, a child is any individual under the age of 18, and the suspected abuse may involve physical, sexual or other forms of abuse or neglect, regardless of the identity of the suspected perpetrator. The duty to report is triggered by reasonable suspicion or belief. There is no requirement that you have actual evidence of abuse, nor is it the responsibility of any employee, student, or volunteer to investigate Sexual Misconduct Policy. This is the role of Child Protective Services and law enforcement authorities, who are best positioned to do so. In the event that the abuse was not alleged to have occurred in Pennsylvania, Public Safety, in consultation with the Title IX Coordinator, will assist in identifying the correct jurisdiction for reporting.

### **UNIVERSITY DISCIPLINARY PROCEDURE**

Any member of the Gwynedd Mercy University community can file a complaint against a student, faculty member, staff member, or third party. Sexual Misconduct Policy allegations are entirely separate from a criminal investigation by the police, and any complainant may file a criminal complaint with police in addition to a Student Code of Conduct violation. Complaints can also be filed with the U.S. Department of Education, Office of Civil Rights by phone at 215-656-8541.

## **INTERIM MEASURES**

Interim measures can be provided to students, faculty or staff by contacting the Title IX Coordinator who will work in conjunction with appropriate University personnel to implement the interim measure.

Students may request some of the following:

- Housing reassignment to ensure that victim/complainant and alleged respondent are not in close proximity;
- Limitations on contact between parties (referred to as a (“No Contact Directive”));
- An escort to ensure the complainant’s safety;
- Reassignment of classes to ensure that the complainant and respondent are not attending the same class,
- Counseling services;
- Medical services;
- Academic support such as tutoring;
- To withdraw from a class without penalty; adjustments to on-campus transportation, parking, or work;

Faculty and Staff may request some of the following:

- Limitations on contact between parties (referred to as a “No-Contact Directive”);
- Escort to ensure complainant safety;
- Adjustments to on-campus transportation parking or work;
- Other remedies and/or measures not listed can be considered to ensure the safety of all involved parties in the case and the University community.

Note: Failure to comply with the terms of interim protections may be considered a separate violation of the University’s Sexual Misconduct policy. Allegations of violations will be addressed through the Vice President for Student Services and Dean of Students Office for a student violation or the Human Resources Office for a faculty or staff violation.

## **EMERGENCY REMOVAL**

34 CFR Section 106.44(c) enables an institution to respond quickly to an emergency. An institution may remove a respondent on an emergency basis whether a grievance process is underway or not. This section does not impose a temporal restriction on when an emergency removal may be considered and implemented, because risks arising from sexual harassment can occur at any time. The immediate threat must be to the “physical health or safety” of one or more individuals, who may be the respondent, the complainant, or any other individual (such as a third-party witness).

The respondent has the right to receive notice of the emergency removal and an immediate opportunity to challenge the action. The Department does not prescribe specific post-removal procedures to provide the required notice and effectuate the opportunity to challenge, leaving the institution with the appropriate discretion to select and implement the respondent’s rights under the circumstances. The notice should be sufficiently detailed to alert the respondent to the specifically identified emergency threat of physical safety or harm that compelled the removal decision. Nothing in the regulations precludes placing the burden of proof on the respondent to show that the emergency removal decision was incorrect.

## **RETALIATION**

Gwynedd Mercy University prohibits retaliation against any person for using this reporting procedure, or for filing, testifying, assisting or participating in any investigation or proceeding involving allegations of sexual harassment or misconduct. Any retaliatory behavior should be reported immediately to the Title IX Coordinator. Any person, including third parties, who violates this retaliation policy, will be subject to discipline, up to and including termination if they are an employee, and/or expulsion if they are a student.

## **VII.**

### **AFTER A REPORT IS SUBMITTED**

Once a sexual misconduct report is submitted, the complainant will be contacted by the Title IX Coordinator for a meeting to determine the appropriate course of action to be taken. If an investigation needs to be conducted it will also be determined if the investigation needs to be of an informal or formal nature. NOTE: Any decision to proceed in an informal manner will only take place if both parties are in agreement to proceeding in this manner. The investigation will begin within five (5) days of the receipt of the initial report. The Title IX Coordinator or Title IX Deputy Coordinator will appoint trained investigators who will conduct a fact-finding investigation with all involved parties and witnesses.

### **TIMELINE**

The Office of Civil Rights U.S. Department of Education requires all investigations of alleged Title IX violations to be conducted within a reasonable time frame. Gwynedd Mercy University will make every reasonable attempt to resolve complaints within a 60-day timeframe. However an investigation and resolution may run beyond 60 days due to a variety of factors which might impact the time frame.

Any delay of the investigation will be documented. Both the complainant and alleged respondent will be notified of the progress of the investigation throughout the process, to include unforeseen delays.

### **INVESTIGATION PROCEDURES.**

Upon receipt of a formal report or knowledge of an incident of sexual misconduct, retaliation or intimidation occurring between members of the University community, the Title IX Coordinator (or a trained designee) will begin an initial assessment of the incident by meeting with the complainant and then the alleged respondent as follows:

#### **Meeting with Complainant, Review of Complainant Rights**

Within two (2) business days of receiving a report, the Title IX Coordinator (or an appropriately trained designee) will meet with the complainant to provide information about this policy, including a listing of their rights. In addition, the Title IX Coordinator (or trained designee) will:

- Provide the complainant with a complaint form which, if they agree to disclose the information, details information regarding the allegation, including the name of the alleged respondent and the date, location and general nature of the alleged misconduct (the complainant may either complete the complaint form or may choose to dictate the information to the Title IX Coordinator or designee, who will confirm the accuracy of their documentation with the complainant/victim);

- Explain avenues for formal and informal resolution of the complaint, including a description of the University's investigation procedures and an explanation of how the procedures works;
- Explain the steps involved in a Sexual Misconduct investigation;
- Explain the importance of preserving any relevant evidence or documentation in the case;
- Discuss confidentiality standards and concerns with the complainant;
- Determine whether the complainant wishes to pursue an informal or formal resolution through the University, law enforcement, both or no resolution of any kind;
- Refer the complainant to on and off-campus support services, as appropriate;
- Discuss with the complainant, as appropriate, possible interim measures or academic accommodations that can be provided to the complainant during the course of the investigative and resolution processes. The University may extend an interim measure to an individual if requested, appropriate, and reasonably available, whether a formal complaint has been filed or whether an investigation by either the University or law enforcement agencies has commenced.
- Advise the complainant of their rights to an advocate;
- Advise the complainant of their rights during the investigation and adjudication process;
- Explain the live hearing process and the cross-examination procedures which will be employed during this process.

#### **Meeting with Alleged Respondent, Review of Rights**

The Title IX Coordinator (or an appropriately trained designee) will take steps to meet with the alleged respondent to provide information about this policy, including a listing of rights, within two (2) business days of meeting with the complainant. In addition, the Title IX Coordinator or designee will:

- Discuss the presumption of non-responsibility until such time as the investigation may reveal otherwise;
- Provide the alleged respondent with sufficient information consistent with state and federal privacy laws and, if applicable, the complainant's request for confidentiality, to allow them to respond to the substance of the allegation, if possible including the name of complainant and the date, location and nature of the alleged misconduct;
- Advise the alleged respondent to seek legal counsel before making any written or oral statements when the allegations, if true, might constitute criminal conduct. Those facing allegations may wish to obtain legal advice about how this process could affect any criminal case in which they are or may become involved;
- Explain the University's procedures for formal and informal resolution of the complaint, including a description of the University's Sexual Misconduct Policy and an explanation of how the procedures work;
- Explain the steps involved in a Sexual Misconduct investigation;
- Explain the importance of preserving any relevant evidence or documentation in the case;
- Discuss confidentiality standards and concerns with the alleged respondent;
- Inform the alleged respondent of any interim measures or academic accommodations already determined and being provided to the complainant and the alleged victim (if not the complainant) that directly affect the alleged respondent (e.g., changing their class schedule, or moving them to an alternate residence hall);
- Refer the alleged respondent to on or off-campus support services, as appropriate;

- Discuss with the alleged respondent as appropriate, possible interim measures that can be provided during the investigative and resolution processes. The University may extend interim measures to an individual if requested, 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. See “Interim Measures” in Section VI for additional information;
- Advise the alleged respondent of their right to an advocate;
- Advise the alleged respondent of their rights during the investigation and adjudication process;
- Advise alleged respondent if they choose not to participate or refuse to answer a complaint, such non-participation will not prevent the matter from proceeding;
- Explain the live hearing procedures and the cross-examination procedures which will be employed during the hearing.

### **Informal Resolution**

In instances where it is deemed possible and safe, the Title IX Coordinator or Deputy Coordinator assigned to the case may choose to attempt to resolve reports of Sexual Misconduct through informal means. If, based on the facts of the case, it is determined that an informal resolution may be appropriate, the Title IX Coordinator or Deputy Coordinator will discuss this option with the complainant during the initial meeting. If the complainant agrees, the Title IX Coordinator or Deputy Coordinator will discuss informal resolution with the alleged respondents during the initial meeting. Consent from both parties is required to proceed further in the informal resolution process.

If informal resolution is determined to be appropriate and the parties agree to proceed, the Title IX Coordinator or Deputy Coordinator will ask the complainant to submit a written statement within five (5) days of the decision to engage in an informal resolution. The Title IX Coordinator or Deputy Coordinator will share the complainant’s statement with the alleged respondent who will have five (5) days to submit a written response to the Title IX Coordinator or Deputy Coordinator.

The Title IX Coordinator or Deputy Coordinator will then meet separately with both parties to present and discuss an informal resolution based on the information available.

In the informal resolution process, the Title IX Coordinator will identify possible resolutions based upon the facts initially presented to the complainant and the alleged respondent.

- If a resolution is reached to the satisfaction of both the complainant and the alleged respondent, the matter will be considered completed.
- If these efforts are unsuccessful, the formal investigation process will commence.

Informal resolution will typically be completed within thirty (30) business days of the initial report as is reasonable and practicable. In circumstances when it is not reasonable and practicable to complete the informal process in this time frame, both the complainant and the alleged respondent will be notified in writing regarding the delay and anticipated completion.

It is not necessary to pursue informal resolution first in order to make a formal resolution complaint, and anyone participating in informal resolution can stop that process at any time and request a formal resolution.

## **Formal Resolution**

When either an attempt at informal resolution fails or the reported incident involves an allegation of Sexual Assault, Dating Violence, Domestic Violence, Sexual Exploitation, or a serious violation of the Sexual Misconduct Policy, the Title IX Coordinator will assign an investigator to conduct an impartial, thorough and prompt investigation. Note: In some cases it may be necessary for the Title IX Coordinator or Deputy Title IX Coordinator to actively participate in the investigation. Any investigator assigned to the case will be impartial and fully trained with respect to Title IX and the University's investigation procedures and Sexual Misconduct policy. The investigation will begin within five (5) days of receipt of the initial report.

## **Conflicts of Interest**

The University requires any individual participating in the investigation, hearing process, sanctioning or appeal determinations to disclose to the Title IX Coordinator any potential or actual conflict of interest. If a complainant or alleged respondent believes that any individual involved in the process has a conflict of interest, they may make a request to the Title IX Coordinator that the individual not participate. Any request should be submitted to the Title IX Coordinator within three (3) days of identification of the conflict of interest. The request must include a description of the conflict. If the Title IX Coordinator determines that a conflict of interest exists, the University will take steps to address the conflict in order to ensure an impartial process.

## **Investigator's Report**

The purpose of the investigation is to discover and document facts and circumstances of the alleged incident and to accept all evidence offered by the complainant and the alleged respondent. The investigation of a complaint will be conducted in a timely manner, and will be completed within fifty days unless there are extenuating circumstances based on the case. The investigation will result in a written report detailing the investigation. The report will include a summary of the complaint, complainant(s), alleged respondent(s), witnesses, dates and times of interviews, a listing of all relevant materials collected (evidence), and the investigator's assessment of the evidence gathered.

The investigator's findings will be in writing and will be provided to both the complainant and to the alleged respondent. The report will be used as evidence by the Hearing Officer to determine whether the alleged Sexual Misconduct occurred. Both the complainant and the respondent will have access to review the report and prepare a response to it. A copy of the final report will be provided to the complainant and respondent.

# **VIII.**

## **HEARING PROCESS**

Once the complainant and alleged respondent have reviewed the final investigation report, the document will be submitted to the Hearing Officer. The Hearing Officer will then set a date and time for a live hearing within ten (10) business days following receipt of the report. Once the parties have been advised of the hearing date the Hearing Officer will request from both parties a copy of the questions to be presented during the hearing. The questions will be reviewed for relevancy. These must be submitted

to the Hearing Officer for review ten (10) days prior to the hearing date. The Hearing Officer will return a copy the questions and any amendments within five (5) days of the hearing date.

1. The hearing officer is an individual who has not yet been involved with the Title IX inquiry involving the respondent, in any way, including any investigation, support services and/or interim measures offered to any party or any the earlier decision-making or informal resolution process under the University's policies. The hearing officer is also the decision maker.
  - a. The hearing officer controls the hearing, makes rules regarding conduct and is solely responsible for determinations of credibility and relevance. A hearing officer may accept any evidence either party wishes to offer unless the hearing officer determines that the evidence is not relevant in which case the hearing officer may exclude the offered evidence. The hearing officer must evaluate evidence and testimony objectively, including both inculpatory and exculpatory evidence, and may determine how much weight, if any, to give any evidence accepted at the hearing.
  - b. In determining credibility, the hearing officer must treat all persons equitably and must not base any credibility determinations on a person's status as a complainant, respondent, or witness, for example.
  - c. The hearing officer will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and to offer inculpatory and exculpatory evidence.
  - d. The hearing officer may institute rules of decorum and should ensure that all parties treat all other with civility.
  - e. If the hearing officer determines that they have a conflict of interest or bias for or against complainants or respondents generally or a specific participant, the hearing officer must recuse them self and ask the Title IX Coordinator to appoint a new hearing officer.
  - f. The hearing officer will not require any party to disclose information protected under a legally recognized privilege, and will not allow, rely upon or otherwise use questions or evidence that constitute or seek disclosure of information protected under a legal recognized privilege, unless the person holding such privilege has waived the privilege. Legally recognized privileges may include the attorney-client privilege, the spousal privilege, and the doctor-patient privilege, for example. An individual's treatment records should not be disclosed without the written prior consent of the individual.
  - g. The hearing officer should not allow questions or evidence about a complainant's prior sexual behavior or sexual predisposition, unless one of two limited exceptions applies: (1) the questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or (2) 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.

2. The hearing will be conducted in separate rooms with technology enabling the decision maker and the parties simultaneously to observe and hear the witnesses answering questions.
3. A stenographic, audio or audiovisual record of the hearing will be kept and maintained for seven years.
4. The university carries the burden of proof. To establish responsibility, the university may show that the respondent violated its policies by the preponderance of the evidence. This means that the university must establish that it is more likely than not that the policy violation occurred and that the respondent is responsible for the violation.
5. Notwithstanding any earlier investigation or sanctions meeting, the purpose of the hearing is to determine responsibility anew. Therefore, the hearing officer/decision maker will presume that the respondent is not responsible unless and until the university meets its burden to show that they are responsible for conduct that violates the university's policy.
6. The parties may each have an advisor. If either party does not have an advisor, the university will provide an advisor. The advisor's role is limited as set forth below.
  - a. The advisor may accompany the party to any grievance proceeding, hearing or related meeting or proceeding, and provide the party with the opportunity to question and cross exam witnesses.
  - b. At the hearing, the advisor is permitted to ask each witness relevant questions. At the hearing, cross examination is conducted directly, orally and in real time by the party's advisor, but never by a party personally.
  - c. Only relevant questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. A hearing officer may ask any advisor to explain why any question may be relevant, but the advisor is not to engage in argument.
  - d. Advisors do not make arguments at the hearing. Advisors do not make opening statements, closing statements, or arguments about the relevancy of a question posed by the other party's advisor. However, the hearing officer may allow each party equal opportunity to make a statement in their own words.
7. If a party or witness does not submit to cross-examination at the live hearing, the decision-maker will not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. The prohibition on reliance on "statements" applies not only to statements made during the hearing, but also to any statement of the party or witness who does not submit to cross-examination. "Statements" has its ordinary meaning but would not include evidence (such as videos) that do not constitute a person's intent to make factual assertions, or to the extent that such evidence does not contain a person's statements. See the examples provided below.

- a. A respondent's alleged verbal conduct, that itself constitutes the sexual harassment at issue, is not the respondent's "statement" because the verbal conduct does not constitute the making of a factual assertion to prove or disprove the allegations of sexual harassment; instead, the verbal conduct constitutes part or all of the underlying allegation of sexual harassment itself.
  - b. Where a complainant alleges that the respondent said to the complainant: "If you go on a date with me, I'll give you a higher grade in my class," and at the live hearing, the respondent does not submit to cross-examination, then the decision maker is not precluded from relying on the complainant's testimony that the respondent said those words to the complainant. The words described by the complainant, allegedly attributed to the respondent, are themselves the misconduct that constitutes sexual harassment (i.e., a recipient's employee conditioning an educational benefit on participation in unwelcome sexual conduct, often referred to as quid pro quo harassment) and are not the respondent's "statement" (i.e., the respondent's intent to make a factual assertion).
8. Prior to the hearing, the university will make all relevant evidence it has collected available to the parties equally.
9. The hearing officer may require that the university and the parties exchange witness lists as well as areas of inquiry for each witness prior to the hearing.
10. The Decision. The hearing officer will issue a written determination regarding responsibility which typically will also do all of the following:
  - a. Identify the allegations of sexual harassment asserted against the respondent.
  - b. Describe the procedural steps taken by the university from the receipt of the formal complaint through the determination, including the notifications if any to the parties, interviews with parties and witnesses, methods used to gather evidence, hearings held and the witnesses who appeared at the hearing.
  - c. Make findings of fact supporting the determination.
  - d. Make conclusions regarding whether the conduct violated the university's Sexual Misconduct Policy.
  - e. Include a statement of and rationale for the result as to each allegation, including whether the university has met its burden to show that that the respondent is responsible for the conduct and the alleged policy violations.
  - f. Include a statement of and rationale for any disciplinary sanctions imposed on the respondent and whether remedies designed to restore or preserve equal access to the university's education programs or activities will be provided by the university to the complainant.
  - g. Include a statement describing the university's procedures and permissible bases for the parties to appeal the decision maker's decision.

- h. Include a statement reminding the participants of the university's policies prohibiting retaliation.

11. The university will provide the written determination to the parties simultaneously.

### **Sanctioning: Student**

The Vice President for Student Services and Dean of Students will meet with the alleged respondent within five (5) days of the live hearing. The Vice President for Student Services and Dean of Students will at that time advise the alleged respondent of the sanction(s) to be imposed. The Vice President for Student Services and Dean of Students will also present the alleged respondent written documentation of the sanction(s) and the rationale for imposing said sanction(s). Dependent upon the nature and severity of the incident in question the sanction(s) will be tailored accordingly. If a party feels the sanctioning is inappropriate, they have the option of exercising their right of appeal. Sexual Misconduct Policy violations are aligned with sanctions contained within the Student Code of Conduct.

The Vice President for Student Services and Dean of Students will also meet with the complainant and provide them with documentation of the sanctions. When applying sanctions, the Vice President for Student Services and Dean of Students may consider:

- Severity of the violation;
- Academic records and class year;
- Previous discipline record including that which is public record;

Sanctions for students may include Disciplinary Reprimand, Disciplinary Probation, Deferred Suspension, Suspension or Expulsion. The sanction may also include an educational task that is designed to benefit the individual, campus, or community.

### **Sanctioning: Faculty/Staff/Third Party**

The Title IX Coordinator or Deputy Title IX Coordinator overseeing the case will refer the matter for sanctioning as follows:

- *If Respondent is a Staff Member, Third Party or Volunteer:* The Vice President for Finance and Administration, in consultation with the Title IX Coordinator, will determine the appropriate disciplinary sanction.
- *If Respondent is a Faculty Member:* The Vice President for Academic Affairs, in consultation with the Title IX Coordinator, will determine the appropriate disciplinary sanction.

The disciplinary sanction rendered will be issued within five (5) days following the receipt of the panel's written decision or the alleged respondent's admission of responsibility. Consideration may be given to the nature of and circumstances surrounding the violation, prior disciplinary violations, precedent cases, the University's safety concerns, or any other information deemed relevant by the appropriate vice president. Copies of the decision will be provided to the complainant and respondent, as well as the Title IX Coordinator and Deputy Coordinator as applicable, via hand delivery, mail or e-mail.

Sanctions for faculty or staff may include, Disciplinary Reprimand, Disciplinary Probation, suspension or permanent separation from Gwynedd Mercy University.

Sanctions for third parties may include restricted access to Gwynedd Mercy University or separation from the University.

If the sanction is accepted by both the complainant and respondent, the appropriate vice president will implement it, and act promptly and effectively to remedy the effects of the admitted conduct upon the complainant and the community.

When the University is unable to conduct a full investigation into a particular incident (i.e., when the complainant insists on confidentiality, when it received a general report of Sexual Misconduct without any personally identifying information, etc.), the Title IX Coordinator will pursue remedies for the broader University population in an effort to limit the effects of the conduct at issue and prevent its recurrence.

**\*Note:** The University does not permit an alleged student respondent to withdraw if they have a complaint pending for violation of this policy. Should a student decide to leave and not participate in the investigation and/or hearing, the process will nonetheless proceed in the student's absence to a reasonable resolution and that student will not be permitted to return to Gwynedd Mercy University unless all sanctions have been satisfied. A hold may be placed on the student's account to prohibit re-enrollment and the release of transcripts.

### **Right to Appeal:**

#### **Student Appeal:**

Once written notification of the resolution has been provided, either the complainant or the respondent will have the opportunity to appeal the outcome. Any appeal must be submitted in writing to the Title IX Coordinator within ten (10) calendar days of being notified of the outcome of the investigation and must set forth the grounds upon which the appeal is based. **The only grounds for appeal are as follows: a procedural error that significantly impacted the outcome, to consider new evidence unavailable during the original investigation, or the sanctions imposed are substantially disproportionate to the severity of the violation.**

The Title IX Coordinator will refer the appeal to the Appeals Board who shall resolve the appeal. Neither the complainant nor the respondent will be entitled to a hearing in connection with any appeal. Both parties will be informed in writing of the outcome of any appeal within fourteen (14) days of the date by which all requested information is received, unless the University determines that additional time is required. The appeal decision is final.

#### **The Appeal Board:**

The Appeal Board will have three members drawn from a small group of specially trained administrators, faculty or staff. Both parties will be provided the names of the Appeal Board and should notify the Title IX Coordinator if there are any conflicts of interest. All Board members will receive Title IX training from experts in the field at least once a year. In addition to training on how the appeal process works, the training will include specific instruction about how to approach sensitive issues that may arise in the context of Sexual Misconduct.

#### **Faculty/Staff/Third Party Appeal:**

If a faculty, staff, or third party rejects the sanction/responsive action, the decision may be appealed in writing to the Office of the President. The appeal must be filed within five (5) calendar days of the

receipt of the sanctioning decision. **The only grounds for appeal are as follows: a procedural error that significantly impacted the outcome, to consider new evidence unavailable during the original investigation, or the sanctions imposed are substantially disproportionate to the severity of the violation.**

Faculty and staff appeals will be resolved in accordance with any applicable procedures found in this Policy or other applicable procedure regarding discipline or corrective measures actions taken against employees.

Upon receipt of an appeal, the President will review the appeal and render a decision in writing within ten (10) days of the appeal.

**\*Note:** When the alleged respondent is a volunteer or third party, the Vice President for Business and Finance's sanctioning decision may not be appealed by either party.

## **FALSE REPORT**

The intentional filing of a false report will not be tolerated. It is a violation of the Student Code of Conduct and Faculty and Staff Handbook policies. Intentionally filing a false report of any policy violation, may lead to expulsion or separation from the University. The intentional filing of a false report may also violate state criminal laws and civil defamation laws.

## **IX.**

### **Coordination with Law Enforcement**

As noted earlier, the University and the police/legal system work independently from one another. Individuals can file reports with the University, with law enforcement, with either system, both, or neither. Because the standards for finding a violation of criminal law are different from the standards in this policy, criminal investigations or reports are not determinative of whether or not this policy has been violated.

If a report is filed with both the University and law enforcement, the University will proceed with its normal Title IX investigation process. The University, however, may need to temporarily delay its fact-finding portion of the investigation while law enforcement is gathering initial evidence. This delay typically takes three to ten calendar days, although it may be longer in certain instances.

If a delay in the University's Title IX investigation occurs, the University will take interim measures to protect the complainant in the educational or work setting as applicable. Moreover, the Title IX Coordinator will continue to update the parties on the status of the investigation and inform them when the University's Title IX investigation resumes, which will occur promptly after law enforcement notifies the University that it has completed its evidence gathering stage of the criminal investigation. The University will not, however, delay its investigation until the ultimate outcome of the criminal investigation or the filing of any charges.

### **Sharing of Records and Information with Law Enforcement:**

The University will share with law enforcement, when appropriate, any information or records permitted to be released under any exception to the privacy protections of the Family Educational Rights and Privacy Act (FERPA), including the Health and Safety Emergency exception and/or

records/information otherwise protected by any other state laws or local ordinances. It should be noted that FERPA applies only to records created by the University and to information derived from tangible records. FERPA does not protect the confidentiality of information in general and, therefore, does not apply to the disclosure of information derived from a source other than an education record, even if education records exist which contain that information. As a general rule, information that is obtained through personal knowledge or observation and not from an education record is not protected from disclosure under FERPA. Thus, a verbal report of an offense of violence or sexual assault can and must be reported to the appropriate law enforcement agency.

The Department of Public Safety and local law enforcement will exchange, in as timely a manner as is practicable, police investigatory information and copies of police/incident reports reporting any alleged offense of violence or sex offense - including nonpublic information (e.g., the name of uncharged alleged suspect(s)).

In those instances when a student is an alleged suspect of a crime of violence or sexual assault, the University will provide to local law enforcement the name of the student found responsible for violating the University's Code of Student Conduct; the Code of Student Conduct violation, and the final results of the disciplinary proceedings.

In the event there is a concern that some information/record regarding a sexual assault may not be shared because of FERPA constraints, the University's legal counsel will be consulted.

## **X.**

### **Training and Reporting**

Sexual Misconduct prevention training, which includes training with respect to sexual assault offenses, is required for members of the Gwynedd Mercy University community according to the following schedule:

- All incoming students - annually;
- All returning students - annually;
- New full-time faculty and staff, within six months of hire;
- All members of the Athletic Department per Title IX and NCAA compliance standards
- All Responsible Employees - annually;
- All Administrators, Deans, and Directors - annually;
- All Victim advocates - annually;
- Title IX Coordinator, Deputy Coordinator, and Investigators – annually;
- All Public Safety and Security officers – annually;
- Faculty and student prevention and awareness campaigns – periodic.

### **Employee Training**

Training for employees includes practical information about how to prevent and identify Sexual Misconduct, including same-sex Sexual Misconduct; the behaviors that may lead to and result in Sexual Misconduct; the attitudes of bystanders that may allow conduct to continue; the potential for re-victimization by responders and its effect on the victim; appropriate methods for responding to a victim who may have experienced an incident of Sexual Misconduct, including the use of nonjudgmental

language; the impact of trauma on victims; and, as applicable, the person(s) to whom such misconduct must be reported. The University's training also explains Responsible Employees' reporting obligations, including what should be included in a report and any consequences for the failure to report and the procedure for responding to a victim's request for confidentiality, as well as provide the contact information for the University's Title IX Coordinator. The University also trains Responsible Employees to inform victims of: the reporting obligations of Responsible Employees; the victim's option to request confidentiality and available confidential advocacy, counseling, or other support services; and the victim's right to file a Title IX complaint with the University and to report a crime to campus or local law enforcement.

### **Student Training**

At a minimum, the following topics (as appropriate) are covered during the University's Sexual Misconduct student training:

- Title IX and what constitutes sexual assault (including same-sex assaults), domestic violence, dating violence and stalking pursuant to the University's Sexual Misconduct Policy,
- How the University analyzes whether conduct is unwelcome under Title IX and the Campus Sexual Violence Elimination Act;
- How the University analyzes whether unwelcome sexual misconduct creates a hostile environment;
- Reporting options, including formal reporting and confidential disclosure options; Identification of the offices or individuals with whom victims can speak confidentially and the offices or individuals who can provide resources such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance – both on campus, online and in the community;
- Identification of those employees who are considered "Responsible Employees"; The University's investigation procedures used to process Sexual Misconduct complaints;
- Possible sanctions relating to Sexual Misconduct and the availability of protective orders and other interim measures;
- Effects of trauma, including neurobiological changes;
- The role alcohol and drugs often play in Sexual Misconduct incidents, including the deliberate use of alcohol and/or other drugs to perpetrate Sexual Assault and other forms of Sexual Misconduct;
- Strategies and skills for safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual assault or stalking against a person other than such individual;
- How to report criminal Sexual Misconduct incidents to University or local law enforcement and the ability to pursue law enforcement proceedings simultaneously with a Title IX grievance; and
- Title IX's protections against retaliation and intimidation;
- Notification about the steps that victims should take to preserve evidence of a or sexual assault and/or stalking;

The University's training also encourages students to report incidents of Sexual Misconduct. The training also highlights that the University's primary concern is student safety, and the use of alcohol or drugs never makes the survivor at fault for an incident of Sexual Misconduct.

## **ANNUAL REPORT**

The Title IX Coordinator maintains an annual report documenting: (1) the number of reports or complaints received pursuant to this policy; (2) the categories of those involved in the allegations; (3) the number of policy violations found; and (4) examples of sanctions imposed for policy violations.

## **XI.**

### **UNIVERSITY AND OFF CAMPUS RESOURCES**

#### **ON CAMPUS**

Title IX Coordinator Tia Brown	Griffin Complex, Rotelle Lounge	215-646-7300 Ext. 21140 brownt8@gmercyu.edu
Deputy Title IX Coordinator Dr. Mindy MacRone-Wojton	Siena Hall 1110	215-646-7300 Ext. 21482 macronewojton.m@gmercyu.edu
Office of Public Safety	St. Brigid Hall	215-646-7300 Ext. 21522
Chief of Public Safety Joanna Gallagher	St. Brigid Hall	215-646-7300 Ext. 21785 Gallagher.j@gmercyu.edu
Director of Counseling Services Pamela Moore	Griffin Complex, Student Services Suite	215-646-7300 Ext. 21571 Moore.p@gmercyu.edu
Director of Health and Wellness Donna Ferguson	Loyola Hall	215-646-7300 Ext. 21306 Ferguson.d@gmercyu.edu
Campus Ministry (for students) Jeff Wallace	Mercy Hall	215-646-7300 Ext.21592 wallace.j@gmercyu.edu
VP for Student Services and Dean of Students Josh Stern	Griffin Complex, Student Services Suite	215-646-7300 Ext. 21566 Stern.j@gmercyu.edu
Director of Residence Life Michelle Murray	Loyola Hall	215-646-7300 Ext. 21460 murray.m@gmercyu.edu

## OFF CAMPUS

### Law Enforcement

Local Law Enforcement	911
Lower Gwynedd Township Police Department	215-646-5303
North Wales Borough Police Department	215-699-9279
PA Child Protective Services	1-800-932-0313

### Advocacy Agencies

Victim's Services Center Montgomery County	610-277-0932 24 Hour Hotline: 1-888-521-0983
Woman Against Rape (WOAR)	215-985-3315 24 Hour Hotline: 215-985-3333
Philadelphia Sexual Assault Response Center	215-425-1625
Network of Victim Assistance (Nova)	215-343-6543 24 Hour Hotline: 1-800-675-6900
Rape, Abuse, and Incest National Network (RAINN)	1-800-656-4673
Mazzoni Center Philadelphia	215-563-0652
National Domestic Violence (NDV) Hotline	1-800-799-7233
Employee Assistance Program (For Employees)	1-800-538-3543

### Medical Services

Abington Hospital- Jefferson Health	1200 Old York Rd. Abington PA, 19001	215-481-2000
Abington Lansdale Hospital	100 Medical Campus Drive Lansdale PA, 19446	215-368-2100

*All contact information for the listed resources was confirmed at the time of the Policy's adoption. Up to date contact information can always be found on the University's Website*