

## Sexual Misconduct Policy

### I. INTRODUCTION

**A. Purpose.** Saint Mary's University of Minnesota is committed to providing an environment that is free from the physical and emotional threat of sexual misconduct, including sexual assault and other forms of sexual violence. Saint Mary's University has a zero tolerance for sexual misconduct in any form.

As a Lasallian Catholic institution of higher education, the university believes in the inherent dignity and worth of every student and employee. As such, the university strives to create an environment where the dignity of each person is respected and honored. Sexual assault and other forms of sexual misconduct violate the dignity of the person and are inconsistent with the mission and values of the university.

The university believes that no person should bear the effects of sexual misconduct alone. When such conduct occurs, the university's paramount concern is for the safety and well-being of those impacted.

Saint Mary's University of Minnesota will investigate and promptly seek the equitable resolution of all allegations of sexual misconduct.

**B. Scope.** This policy applies to all students, faculty, and staff of the university. Other individuals or organizations engaging in or conducting activities associated with the university or doing business at or with the university are required to comply with the provisions of this policy. All university community members will abide by this policy at all times while on campus. In addition, all university community members will abide by this policy when off-campus if they are engaged in activities sponsored by the university or which otherwise relate to the university or its business. Such activities include, but are not limited to, professional meetings, classes, online classes, practica, seminars, study abroad programs, and all other activities involving or relating to the university.

### C. Definitions.

- 1. Sexual Misconduct.** Sexual misconduct incorporates a variety of behaviors, including sexual assault, sexual violence, stalking, domestic violence, dating violence, sexual exploitation, sex-based cyber harassment, and any other conduct of a sexual nature that is nonconsensual or has the purpose or effect of threatening, intimidating, coercing or interfering with the rights of another person or persons. Photographs, video, or other visual or auditory records of sexual activity made or shared without explicit consent constitute sexual misconduct, even if the activity documented was consensual.

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2. **Non-consensual sexual intercourse.** Any sexual intercourse by any person upon another without consent and/or by force. It includes oral, anal and vaginal penetration, to any degree, with any object. It is referred to as “sexual assault” in this policy.
2. **Non-consensual sexual contact.** Any intentional sexual touching with any object, by any person upon another, without consent and/or by force. Sexual touching is contact of a sexual nature.
3. **Sexual assault.** Sexual contact, including but not limited to penetration, without consent. Sexual assault is a form of sexual violence.
4. **Sexual contact.** For purposes of this policy, sexual contact shall have the same meaning as it has under Minnesota law. "Sexual contact" includes, but is not limited to, the intentional touching by the respondent of the complainant's breasts, inner thighs, genitals and/or groin area, whether clothed or unclothed; or the coerced touching by the complainant of another's intimate parts. Sexual contact also includes the intentional removal or attempted removal of clothing covering the complainant's intimate parts.
5. **Sexual Exploitation.** For purposes of this policy, sexual exploitation occurs when one person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:
  - Invasion of sexual privacy;
  - Prostituting another person;
  - Non-consensual digital, video or audio recording of nudity or sexual activity;
  - Unauthorized sharing or distribution of digital, video or audio recording of nudity or sexual activity;
  - Engaging in voyeurism;
  - Going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you having consensual sex);
  - Knowingly exposing someone to or transmitting an STD or HIV to another person;
  - Intentionally or recklessly exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals;
  - Sexually-based stalking and/or bullying may also be forms of sexual exploitation

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6. **Consent.** For purposes of this policy, consent shall have the same meaning as it has under Minnesota law. “Consent” is defined as:
- Words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. Consent must be informed and freely and actively given.
  - Consent requires more than the existence of a prior or current social or sexual relationship between the actor and the complainant.
  - Consent to one sexual act does not imply consent to another. Consent has to be specific to the act. Past consent to sexual activity does not imply ongoing future consent. Consent can be revoked at any time. Although consent does not need to be verbal, verbal communication is the most reliable form of asking for and gauging consent.
  - Simple silence, the lack of a negative response, or failure to resist is not consent. It is the responsibility of the actor to obtain consent to any and all sexual involvement that occurs.
  - The use or threatened use of force or other forms of coercion or intimidation take away a person’s ability to give consent to sexual contact. Consent is not present when another person fears the consequences of not consenting. Coercion includes intimidation, threats, misuse of authority, manipulation, tricking or bribing with actions and/or words.
  - A person who is asleep, unconscious or substantially impaired by drugs, alcohol, disability, or other means, or who lacks full knowledge or information of what is happening cannot consent to a sexual act. This is true regardless of whether the person voluntarily or involuntarily consumed the drugs or alcohol. Use of drugs or alcohol by the accused, however, is not a defense against allegations of sexual misconduct and does not diminish personal accountability or criminal liability.
  - A person who has not reached the legal age of consent may not give consent. The legal age of consent may vary depending on the circumstances and the applicable state law.
  - Where there is otherwise credible evidence to support a finding of nonconsent, corroborating testimony is not required.

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6. **Dating Violence.** Dating violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship. Any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.
  
7. **Domestic Violence.** Domestic violence includes felony or misdemeanor crimes of violence 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 cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Minnesota, or by any other person against an adult or youth victim who is protected from that person's acts under domestic or family violence laws. Any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.
  
8. **Stalking.** Stalking means engaging in conduct which the individual knows or has reason to know would cause the victim under the circumstances to feel frightened, threatened, oppressed, persecuted, or intimidated, and causes this reaction on the part of the victim regardless of the relationship between the actor and victim. In addition, stalking means engaging in a course or pattern of unwelcome and unwanted conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or to suffer substantial emotional distress. Stalking behavior includes, but is not limited to:
  - Repeated, unwanted, intrusive, and frightening communications by phone, mail, and/or email;
  - Repeatedly leaving or sending victim unwanted items, presents, or flowers;
  - Following or lying in wait for the victim at places such as home, school, work, or recreation place;
  - Making direct or indirect threats to harm the victim, the victim's children, relatives, friends, or pets;
  - Damaging or threatening to damage the victim's property;
  - Posting information or spreading rumors about the victim on the internet, in a public place, or by word of mouth;
  - Unreasonably obtaining personal information about the victim by accessing public records, using internet search services, hiring private investigators, going through the victim's garbage, following the victim, contacting victim's friends, family work, or neighbors, etc.

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- Directly or indirectly, or through third parties, manifesting a purpose or intent to injure the person, property, or rights of another by the commission of an unlawful act;
- Following, monitoring, or pursuing another, whether in person or through any available technological or other means;
- Returning to the property of another if the actor is without claim of right to the property or consent of one with authority to consent;
- Repeatedly making telephone calls, sending text messages, or inducing a victim to make telephone calls to the actor, whether or not conversation ensues;
- Making or causing the telephone of another repeatedly or continuously to ring; or
- Repeatedly mailing or delivering or causing the delivery by any means, including electronically, of letters, telegrams, messages, packages, through assistive devices for people with vision impairments or hearing loss, or any communication made through any available technologies or other objects.

For purposes of this subdivision, a "pattern of stalking conduct" means two or more acts within a five-year period. "Substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or professional treatment or counseling.

Any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

### **D. Other Important Terms.**

- 1. Complainant** - A complainant is usually an individual filing a complaint of a violation of this sexual misconduct policy. In some cases (such as, e.g., cases in which a person involved in an incident of alleged sexual misconduct, domestic violence, dating violence, stalking, or related retaliation does not wish to participate in the process but the university decides that the alleged misconduct needs to be investigated), the university may pursue an investigation and adjudication under this policy without a designated complainant.
- 2. Respondent** - A respondent is an individual whose alleged conduct is being investigated to determine if it is in violation of this policy.
- 3. Community and institutions** - refers to Saint Mary's University of Minnesota and in the case of community, all of its students, faculty and staff.
- 4. Campus** refers to the grounds of the Saint Mary's University of Minnesota.

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5. **Student** refers to any person enrolled at Saint Mary's University of Minnesota whether undergraduate or graduate.
6. **Responsible Employees** have a duty to report incidents of sexual misconduct to the university's Title IX Coordinator or designees. Responsible employees at the university include all faculty or staff members, including residential life staff, who are not medical or counseling professionals or clergy, with the exception of temporary hourly employees or adjunct faculty. The Title IX Coordinator, the Vice President for Mission, the Dean of Students, the Associate Vice President for Enrollment Management and Student Services, and the Director of Human Resources have the authority to redress sexual misconduct under the university's policies.
7. **Advisor** refers to the individual chosen by a student, staff or faculty member involved in a sexual misconduct proceeding to serve as his or her advisor. The role of the advisor is to advise and assist the student, staff or faculty member during the course of the investigation or disciplinary process. The advisor may accompany the student, staff or faculty member to all meetings relating to the investigation or disciplinary process. The advisor may not address the investigator or adjudicator, and may not interrupt or otherwise delay the investigation or disciplinary process.
8. **Third Party** refers to an individual or entity who is not a member of the campus community but whose activities bring them into contact with members of the campus community, including, but not limited to, visitors to campus, alums, and prospective students and prospective employees.
9. **Title IX Coordinator** is the official from the university who has been appointed by the university to address issues of gender-based discrimination and sexual misconduct. The Title IX Coordinator is responsible for general oversight of issues related to sexual misconduct and sex discrimination, helps to process complaints of sexual misconduct and sex discrimination, and assists with general education and compliance efforts.

## II. THE LAW

Sexual assault and other forms of sexual misconduct are forms of sex discrimination. Not only are they prohibited by this policy, but they are also prohibited by various laws, including Title IX of the Education Amendments of 1972 and the Minnesota Human Rights Act. Saint Mary's University of Minnesota will be guided in its resolution of sexual misconduct allegations by its mission and values, as well as by law.

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In addition, some forms of sexual misconduct are crimes. The university will assist all parties complaining of sexual misconduct, such as sexual assault or sexual violence, who want to make a criminal complaint. Victims of crimes in Minnesota have certain rights. Information about victims' rights is available from the Minnesota Department of Public Safety, Office of Justice Programs:  
<https://dps.mn.gov/divisions/ojp/help-for-crime-victims/Pages/default.aspx>. The victim may assert these rights by contacting the local County Attorney's Office.

### **III. SEXUAL MISCONDUCT -- RISK REDUCTION TIPS**

Risk reduction tips can often take a victim-blaming tone, even unintentionally. Only those who commit sexual violence are responsible for those actions. The university offers the tips below with no intention to victim-blame, with recognition that these suggestions may nevertheless help you to reduce your risk of experiencing a non-consensual sexual act. Below, suggestions to avoid committing a non-consensual sexual act are also offered:

- If you have limits, make them known as early as possible.
- Tell a sexual aggressor “NO” clearly and firmly.
- Try to remove yourself from the physical presence of a sexual aggressor.
- Find someone nearby and ask for help.
- Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of sexual misconduct:

- Understand and respect personal boundaries.
- DON'T MAKE ASSUMPTIONS about consent.
- Don't take advantage of someone's drunkenness or altered state, even if they willingly consumed alcohol or substances.
- Realize that your potential partner could feel intimidated or coerced by you.
- Silence, passivity, or non-responsiveness cannot be interpreted as an indication of consent.

### IV. CONFIDENTIALITY and REPORTING OPTIONS

The university encourages individuals to report incidents of sexual misconduct so that they can get the support they need, and so that the university can respond appropriately. Certain university employees may maintain confidentiality, but most cannot. Although strict confidentiality may therefore not be guaranteed, in all cases the university will handle information in a sensitive manner and will endeavor to protect the privacy of individuals to the extent it can do so consistent with its obligations to respond to reports of sexual misconduct.

This section is intended to inform students, faculty, staff and covered third parties of the various reporting and confidential disclosure options available to them, so that they can make informed choices about where to go for help.

#### A. Confidential Resources

A confidential resource is an individual who is legally and ethically bound to keep confidential all information shared with them in the course of providing counsel and support, except under the circumstances noted below. The university understands that the decision to come forward may be difficult and that individuals may wish to seek assistance from someone who can offer confidential information and support, and who can provide assurances that what is disclosed will not be acted on except in the circumstances outlined below. (For a list of confidential resources, see Appendix A, below.) In general, the law recognizes and protects the confidentiality of communications between a person seeking care and a medical or mental health professional, religious advisor or trained sexual assault advocate. The medical, mental health, and religious professionals at the university and their off-campus counterparts respect and protect confidential communications from students, faculty, and staff to the extent they are legally able to do so. These professionals may have to breach a confidence, however, when they perceive a serious risk of danger or threat to any person or property. In addition, medical and mental health professionals may be required by law to report certain crimes (e.g., any allegation of sexual and/or physical abuse of a person under 18). These exceptions to confidentiality are governed by the law of the state in which the confidential resource is located. In addition, these resources will submit anonymous, aggregate statistical information for Clery Act crime statistics purposes to the Director of Campus Safety unless they believe it would be harmful to a specific student.

An individual who speaks to a confidential resource 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 perpetrator. However, confidential resources may assist the individual in

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receiving other forms of protection and support, such as victim advocacy, academic accommodations, disability, health or mental health services, and changes to living, working, or transportation arrangements. An individual who initially 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 confidential resources will help to direct the individual to the appropriate resources in the event that the individual wishes to file an internal complaint with the university or report to the police

### B. Non-Confidential Resources

Non-confidential resources are all faculty or staff members, including residential life staff, who are not medical or counseling professionals or clergy, and are therefore not permitted to honor requests for confidentiality. Non-confidential faculty or staff who learn of an incident of sexual misconduct involving a student are required to report that information to the Title IX Coordinator, the Dean of Students, or the Associate Vice President for Enrollment Management and Student Services, and they are “responsible employees” to this extent. The Title IX Coordinator, the Dean of Students, and the Associate Vice President for Enrollment Management and Student Services are “responsible employees” for the purposes of redressing reports of sexual misconduct.

Faculty and staff who are Campus Security Authorities are required to report certain sex offenses and other crimes to the Department of Public Safety for the purpose of compliance with the Clery Act crime statistics reporting.

Employees with supervisory responsibility are expected to report all incidents of sexual misconduct involving employees to the Title IX Coordinator and/or to Human Resources.

General inquiries to university officials about policies or procedures, and conversations in which the alleged perpetrator is not identified by name or by implication from the circumstances, may remain private. Otherwise, individuals who want to maintain confidentiality should seek a confidential resource.

### C. Disclosure to Responsible Employees and Requests for Confidentiality

When a responsible employee learns of an incident that could constitute sexual misconduct involving a student, faculty or staff member or covered third party, the responsible employee will report to the Title IX Coordinator. The report will include relevant details about the incident of which they are aware, including the names of the parties, any witnesses, and any other relevant facts, including the date, time, and specific location of the alleged incident.

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To the extent possible, information reported to a responsible employee will be shared with others only to the extent necessary to respond to the situation and support the parties and in accordance with state and federal law. Examples include individuals who are responsible for processing, investigating, adjudicating, and responding to sexual misconduct reports, deans, program directors, supervisors, Human Resources staff, and campus safety or other campus security personnel who are responsible for reporting campus crime statistics and issuing timely warnings under the Clery Act.

### D. Evaluation of Requests for Confidentiality

If a complainant does not wish for his or her name to be shared, does not wish for an investigation to take place, or does not want a disciplinary action to be pursued, the complainant may make such a request to the Title IX Coordinator, Dean of Students, the Associate Vice President for Enrollment Management and Student Services or the Associate Vice President for Human Resources who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. When weighing a complainant's request for confidentiality or that no investigation or discipline be pursued, the Title IX Coordinator or other appropriate university official will consider a range of factors, including the following:

- a. The increased risk that the alleged perpetrator will commit additional acts of sexual or other violence, such as:
  - ✓ whether there have been other sexual misconduct complaints about the same alleged perpetrator;
  - ✓ whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of sexual misconduct
  - ✓ whether the alleged perpetrator threatened further sexual misconduct or other violence against the victim or others;
  - ✓ whether the alleged sexual misconduct was committed by multiple perpetrators;
- b. whether the alleged sexual misconduct was perpetrated with a weapon;
- c. whether the alleged victim is a minor;
- d. whether the university possesses other means to obtain relevant evidence of the sexual misconduct (e.g., security cameras or personnel, physical evidence);
- e. whether the alleged victim's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.

The presence of one or more of these factors could lead the university to investigate and, if appropriate, pursue disciplinary action. If none of these factors is present, the university will likely respect the victim's request for confidentiality and will offer interim supports and remedies to the complainant and the community, but will not

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otherwise pursue formal action. A complainant has the right, and can expect, to have reports taken seriously by the university when formally reported, and to have those incidents investigated and properly resolved through these procedures.

### E. Denial of Requests for Confidentiality

If the university determines that it cannot maintain a complainant's confidentiality, the university will inform the complainant prior to starting an investigation (unless extenuating circumstances are present) and will, to the extent possible, only share information with those individuals who are responsible for the university's response to the incident. The university will not require the complainant to participate in any investigation or disciplinary proceeding, nor will it require the complainant to personally report any information to law enforcement authorities. It will remain up to the complainant to choose whether they personally want to participate in notifying law enforcement authorities, or would rather not do so.

If when responding to reports of sexual misconduct, the university determines it is obligated to take any action that would involve disclosing a complainant's identity to the respondent, or an action from which the complainant's identity may be easily determined by the respondent, the complainant's will be informed before the action is taken unless extenuating circumstances are present. If the complainant requests that the respondent be informed that the complainant requested that there be no investigation or disciplinary action, the university will endeavor to honor this request and inform the respondent that the university made the decision to investigate the matter.

The university may take steps to limit the effects of the alleged sexual misconduct and prevent its reoccurrence without initiating an investigation or revealing the identity of the complainant. Those steps may include increased monitoring, supervision or security at locations or activities where the misconduct occurred, the provision of training and education for students and employees, the publication of the university's applicable policies, the conduct of climate surveys on sexual misconduct. The university will remain ever mindful of the complainant's well-being, and will take ongoing steps to protect the victim from retaliation or harm and work with the victim to create a safety plan.

### F. Acceptance of Confidentiality Request

If the university determines that it can respect the complainant's request for confidentiality, the university will take action to assist the complainant, to the extent possible. The university may take steps to limit the effects of the alleged sexual misconduct and prevent its reoccurrence without initiating an investigation or revealing the identity of the complainant. Those steps may include increased

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monitoring, supervision or security at locations or activities where the misconduct occurred, the provision of training and education for students and employees, the publication of the university's applicable policies, the conduct of climate surveys on sexual misconduct. The university will remain ever mindful of the complainant's well-being, and will take ongoing steps to protect the complainant from retaliation or harm and work with the complainant to create a safety plan.

Individuals should be aware that if the university honors their request for confidentiality, this may limit the university's ability to fully respond to the incident, including pursuing disciplinary action against the respondent.

### G. Federal Statistical Reporting Obligations

Certain campus officials - those deemed Campus Security Authorities - have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be shared with the Office of Campus Safety (Winona) and the Office of Campus Security (Twin Cities) for publication in the Annual Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Campus Security Authorities include: vice presidents, deans, program directors, campus safety or security personnel, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

### H. Federal Timely Warning Reporting Obligations

If the university determines that the alleged perpetrator(s) pose a serious and immediate threat of bodily injury or danger to members of the university community, Campus Safety (Winona campus) or Campus Security (Twin Cities campus) may be called upon to issue a timely warning to the 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 in light of the danger.

### I. Disclosure to Law Enforcement

In certain circumstances, the university may need to report an incident to law enforcement authorities. Such circumstances include but are not limited to incidents that warrant the undertaking of safety and security measures for the protection of

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the individual and/or the campus community, or situations in which there is clear and imminent danger and/or a weapon may be involved.

### **V. RETALIATION**

The university strictly prohibits retaliation against any person who complains in good faith of a sexual misconduct policy violation. In addition, the university strictly prohibits retaliation against any respondent. Finally, the university strictly prohibits retaliation against any person because of their good faith involvement in an investigation or hearing as part of the complaint process. Encouraging others to retaliate also violates this policy. The interim measures outlined herein are not considered retaliation.

Retaliation is any materially adverse action, or threat thereof, against an individual because of the individual's good faith report or complaint of a potential policy violation or his/her good faith participation in an investigation or hearing. Retaliatory acts may include, but are not limited to: adverse changes in employment status or opportunities; adverse academic action; adverse changes to academic, educational and extra-curricular opportunities; harassment; intimidation; acts or comments intended to embarrass the individual; and seeking out or attempting to discover the parties and witnesses involved in a report or complaint process for the purpose of influencing their participation or testimony or taking adverse action against them. Retaliatory conduct by university community members and third-parties is prohibited regardless of whether it occurs on or off campus, in person, or through social media, e-mail, or other form of communication. Retaliation by campus authorities, the respondent, organizations affiliated with the respondent, other students, and other employees is prohibited.

Any retaliation should be reported to the Title IX Coordinator immediately. The university cannot stop retaliation unless it knows about it.

Those who harass a witness, a complainant or the respondent after a report is made will be subject to appropriate disciplinary action.

### **VI. INTERIM MEASURES**

The Title IX Coordinator or his or her designee may provide interim measures intended to address the short-term effects of sexual misconduct, i.e., to redress harm to the alleged victim and the community and to prevent further violations. The university will keep interim measures and actions as private as possible.

These measures may include, but are not limited to:

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- No Contact Orders restricting encounters and communications between the parties
- Academic accommodations, including but not limited to deadline extensions, incompletes, course changes or late drops, or other arrangements as appropriate;
- Residential accommodations, including but not limited to arranging for new housing, or providing temporary housing options, as appropriate;
- Changing transportation or working arrangements or providing other employment accommodations, as appropriate;
- Assisting the individual in accessing support services, including, as available, victim advocacy, academic support, fair and respectful counseling, disability, health or mental health services, visa and immigration assistance, student financial aid services, and legal assistance
- Informing the individual of the right to report a crime to local law enforcement and/or seek orders of protection, restraining orders, or relief from abuse orders from United States courts or courts outside of the United States as applicable, and providing assistance if the individual wishes to do so. Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the community
- Providing campus escorts
- Information about resources at a new institution if the complainant elects to transfer.

The university may suspend a student, employee or organization, on an interim basis, pending the completion of the sexual misconduct investigation, particularly when in the judgment of the Title IX Coordinator or his or her designee, the safety or well-being of any member(s) of the campus community may be jeopardized by the presence on-campus of the respondent or the ongoing activity of a student organization whose behavior is in question. In all cases in which an interim suspension is imposed, the student, employee or student organization will be given the opportunity to meet with the Title IX Coordinator or his or her designee prior to such suspension being imposed, or as soon thereafter as reasonably possible, to show cause why the suspension should not be implemented. The Title IX Coordinator or his or her designee has sole discretion to implement or stay an interim suspension and to determine its conditions and duration. Violation of an interim suspension under this policy is grounds for expulsion or termination.

During an interim suspension, a student or employee may be denied access to university housing and/or the university campus/facilities/events. As determined by the Title IX Coordinator or his or her designee, this restriction can include classes and/or all other university activities or privileges for which the student or employee

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might otherwise be eligible. The university will maintain as confidential any accommodations or protective measures, provided confidentiality does not impair the university's ability to provide the accommodations or protective measures.

### VII. REPORTS of CRIMINAL SEXUAL MISCONDUCT to LAW ENFORCEMENT.

Members of the university community who believe they have been subject to criminal sexual misconduct by a stranger or by someone they know (or who believe that another crime has occurred) are strongly encouraged to notify Campus Safety on the Winona campus, Campus Security on the Twin Cities campus and/or local law enforcement authorities immediately so that the alleged assailant can be apprehended if still in the area and so that law enforcement is able to gather evidence. Time is a critical factor for evidence collection and preservation.

#### If Sexually Assaulted, You Should Get Care at a Hospital Emergency Room

Why should a victim of sexual assault get emergency care?

- \* to treat physical injuries,
- \* to obtain preventive treatment for sexually transmitted diseases,
- \* to get emotional support,
- \* to gather evidence,

Reports of criminal sexual misconduct may be filed with the appropriate police department. A report is a record of the sexual assault. The report may lead to an investigation by the police and contact with the offender.

Campus Safety on the Winona campus and Campus Security on the Twin Cities campus are available to assist a complainant who wants to make a report to law enforcement. If a student or employee wishes to make a report of sexual misconduct to the local police, the student or employee should contact Campus Safety (Winona campus) or Campus Security (Twin Cities campus). Personnel in those offices will assist the student or employee in making contact with the local police. Staff members are available to accompany the student or employee to meetings with the local police if the student or employee so desires. In addition, Campus Safety on the Winona campus, Campus Security on the Twin Cities campus, or local law enforcement can ensure that the individual has access to appropriate medical treatment and tests, crisis counseling, information, and other support services.

Once a report is made, the authorities will immediately commence an investigation into the circumstances surrounding the sexual assault. The matter may be referred to the County Attorney's Office for a determination on whether criminal charges should be filed. A statute of limitations exists for the criminal prosecution of most sexual assaults. Realistically, however, if too much of a delay occurs between the sexual assault and the report to the law enforcement

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authorities, information from the witnesses may be difficult to obtain and evidence may be destroyed.

The university is a member of the Winona County Sexual Assault Interagency Council. As such, it follows the Winona County Adult Sexual Assault Response Protocol which can be found at <http://www.winonacountysaic.com/wp-content/uploads/2011/02/saic-protocol.pdf>. More information about the Winona County Sexual Assault Interagency Council can be found at <http://www.winonacountysaic.com/>.

### **VIII. OTHER POLICY CONSIDERATIONS**

#### **A. Attempted violations**

In most circumstances, the university will treat attempts to commit sexual misconduct as if those attempts had been completed.

#### **B. False Reports**

The university will not tolerate intentional false reporting of incidents. It is a violation of university policy to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

#### **C. Amnesty from Student Conduct Policies**

At times, students hesitate to report the occurrence of sexual misconduct to university officials because they are concerned that they themselves, or witnesses to the misconduct, may be found responsible for violations of university policy on the personal use of drugs or alcohol. While these violations are not condoned by the university, the importance of dealing with alleged sexual misconduct outweighs the university's interest in addressing these violations. Accordingly, the university will not refer students to the disciplinary process for these violations if they make a complaint of sexual misconduct in good faith or are named as witnesses to such an incident.

### **IX. INVESTIGATION/COMPLAINT PROCEDURE**

#### **A. General**

The information in the sections below, except as noted, applies to the university students, staff, faculty and covered third parties who wish to report a complaint of sexual misconduct against a university student, staff or faculty member, through university's processes.

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All the university students, faculty members, staff members and covered third parties have the right to pursue sexual misconduct complaints beyond the university, and are encouraged to use local, state, or federal enforcement agencies, including local police, as applicable, regardless of whether they choose to file a complaint on campus.

The university will not wait for the conclusion of a criminal investigation or proceeding to begin its own investigation and resolve complaints under this policy. The university will, however, comply with valid requests by law enforcement for cooperation in a criminal investigation. As such, the university may need to delay temporarily an investigation under this policy while law enforcement is in the process of gathering evidence. Once law enforcement has completed its gathering of evidence, the university will promptly resume and complete its investigation. The university may also take interim measures to promote the safety and well-being of the complainant and the school community while law enforcement is gathering evidence.

### **B. Complaints**

Any university student, faculty member, staff member or covered third party who has reasonable cause to believe that sexual misconduct has occurred or is occurring should report this information to the immediate attention of any of the following individuals: the Title IX Coordinator, the Vice President for Mission, Dean of Students, the Associate Vice President for Enrollment Management and Student Services or the Director of Human Resources.

A complaint may be made verbally or in writing and will ultimately need to be recorded in written form by the complainant or a member of the staff involved with the investigation.

The university's procedures for handling reports of sexual misconduct will be prompt, fair and impartial from the initial investigation to the final result, in that they will be:

- Completed within reasonably prompt timeframes as designated in the university's policies, which timeframes may be extended for good cause and/or due to extenuating circumstances, with written notice to the complainant and the respondent of the delay and the reason for the delay;
- Conducted in a manner that is consistent with the university's policies and transparent to the complainant and the respondent, including timely notice of meetings at which the complainant or respondent may be present, and providing the complainant, the respondent, and appropriate university officials with any information that will be used during the university's process; and
- Conducted by officials who do not have a conflict of interest or bias for or against the complainant or the respondent.

## Sexual Misconduct Policy

- Conducted in such a manner that campus authorities do not suggest that the complainant is at fault or should have acted in a different way.

### Rights of Complainants

Individuals whose complaints of sexual misconduct are being investigated and adjudicated by the university can anticipate that:

- They will be treated with sensitivity, dignity, and respect and in an unbiased manner by all involved administrators, investigators and adjudicators. University personnel will never suggest that the complainant is at fault or should have acted in a different manner.
- They will have their incident taken seriously.
- They will determine when to repeat a description of the sexual misconduct incident.
- They will be informed in writing that their complaint is being investigated, and of any other related policy violations being explored through this investigation.
- They will be provided with written notification of the university's Sexual Misconduct Policy, which includes notification of the university's Sexual Misconduct Policy, which includes notification to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid services, and other services available for complainants, both on campus and in the community, and which also includes notification of options for, and available assistance in, changing academic, living, transportation, and working situations or protective measures if so requested by the complainant and if such accommodations are reasonably available, regardless of whether the complainant chooses to report a crime to campus public safety or law enforcement.
- They will be afforded the same rights and opportunities as the respondent throughout the investigation and adjudication process.
- They will be given periodic status updates throughout the investigation and adjudication process.
- They may access the university and/or external resources for fair and respectful medical and counseling services at any time.
- They may choose to pursue a formal complaint with external law enforcement authorities or other federal or state agencies at any time, or they may decline to do so.
- They will be promptly assisted by campus authorities, as requested, in notifying the appropriate law enforcement officials of a sexual assault incident.
- They will be assisted by campus personnel in being shielded, at their request, from unwanted contact with the respondent, including but not limited to the transfer of the respondent to alternative classes or to alternative housing, if alternative classes or housing are available and feasible.

## **Sexual Misconduct Policy**

- They will be promptly assisted by campus authorities in notifying the appropriate law enforcement officials and disciplinary authorities of a sexual assault incident.
- They will be promptly assisted by campus authorities, in filing criminal charges or making a report with local law enforcement officials in sexual assault cases.
- They will be assisted by campus authorities in preserving materials relevant to a campus disciplinary proceeding for a sexual assault complaint.
- They may be accompanied by an advisor of their choice to any meeting, interview or proceeding that they are attending regarding the investigation and adjudication process.
- They will have access to the description of the sexual misconduct incident.
- They will be notified of any hearings.
- They will have report investigated and responded to in a timely fashion
- They will be informed about resources at a new institution if they elect to transfer.
- They will be informed in writing, simultaneously with the respondent, of:
  - the adjudication result, to the extent permitted by law;
  - any applicable procedures to appeal the result of the university's disciplinary proceedings, to the extent they are available;
  - any change to the result following an appeal; and
  - when such results become final.
- If the respondent has a right to appeal the result under applicable university policies, the complainant will have the same right. The complainant will receive written notice of any applicable appeal procedures at the time the complainant receives notice of the result.
- They may retain legal counsel at any time. An attorney who wishes to communicate with the university about a case may contact the university's general counsel directly. An attorney who is asked to serve as an advisor during this process is subject to the same restrictions applicable to all advisors

### Rights of Respondents

Individuals responding to complaints of sexual misconduct that are being investigated and adjudicated by the university can anticipate that:

- They will be treated with sensitivity, dignity, and respect and in an unbiased manner by all involved administrators, investigators and adjudicators.
- They will be informed in writing that a complaint of sexual misconduct against them is being investigated, and of any other related policy violations being explored through this investigation.
- They will be advised of the university's Sexual Misconduct Policy.
- They will be afforded the same rights and opportunities as the complainant throughout the investigation and adjudication process.

## Sexual Misconduct Policy

- They will be given periodic status updates throughout the investigation and adjudication process.
- They may access university and/or external resources for fair and respectful medical and counseling services at any time.
- They will have access to the description of the sexual misconduct incident.
- They will be notified of any hearings.
- They may be accompanied by an advisor of their choice to any meeting, interview or proceeding that they are attending regarding the investigation and adjudication process.
- They will be informed in writing, simultaneously with the complainant, of:
  - the adjudication result, to the extent permitted by law;
  - any applicable procedures to appeal the result of The university's disciplinary proceedings, to the extent they are available;
  - any change to the result following an appeal; and
  - when such results become final.
- If the complainant has a right to appeal the result under applicable university policies, the respondent will have the same right. Written notice of any applicable appeal procedures will be provided to the respondent at the time the respondent receives notice of the result.
- They may retain legal counsel at any time. An attorney who wishes to communicate about a case with the university may contact the university's general counsel directly. An attorney who is asked to serve as an advisor during this process is subject to the same restrictions applicable to all advisors

### C. Complaint Receipt and Review

When one of the individuals designated in Section IX.B or their designee who will be involved in the university's handling of and response to particular incidents of alleged sexual misconduct prohibited by this policy (hereinafter referred to "the investigator") receives actual notice - i.e., a written or oral complaint or report directed to the investigator - of conduct that may constitute sexual misconduct as defined by this policy, the university will initiate the following process, except as otherwise provided below:

1. The investigator will promptly determine whether the report or complaint alleges conduct that may be prohibited by this policy.
2. Prior to an investigation or adjudication, the investigator, Title IX Coordinator and/or designee will consider the complainant's request for confidentiality, if any, in accordance with the section on *Confidentiality* above.
3. If it is determined that the complaint will be investigated and adjudicated, the investigator or his/her designee will facilitate this process.
4. In cases where the respondent is a **student**, if the investigator becomes aware, at any point prior to or during the investigation and adjudication process, of additional allegations against the respondent that, if proven, could constitute

## Sexual Misconduct Policy

violations of other non-academic policies, including harassment or discrimination, these allegations may be investigated and adjudicated in accordance with the procedures set forth herein. The decision to investigate and adjudicate other alleged policy violations is within the sole discretion of the investigator.

In cases where the respondent is a **faculty or staff member**, if the investigator becomes aware, at any point prior to or during the investigation and adjudication process, of additional allegations against the respondent that, if proven, could constitute violations of other university policies, these allegations may be investigated and adjudicated in accordance with the procedures set forth herein. The decision to investigate and adjudicate other alleged policy violations is within the sole discretion of the investigator.

In all cases the parties will receive written notification if the investigator determines that additional possible policy violations will be investigated and adjudicated in accordance with the procedures set forth herein.

5. In cases where the investigator believes that the allegations, if proven, would not constitute a violation of this policy, the complainant will be advised of other judicial and support options as appropriate, and no further investigation will be pursued under this policy. If new information is subsequently provided to the investigator, this decision may be reevaluated.

### D. Investigation Overview

1. The investigator will provide a copy of this policy to the complainant and respondent, and will inform both parties in writing that the university is investigating and adjudicating the possibility that the respondent may have committed sexual misconduct. The parties will also be given notice of any additional possible policy violations being investigated and adjudicated in relation to the incident.
2. Should a respondent who has been notified of an investigation/adjudication fail to cooperate with the investigator, the investigation may proceed, a finding may be reached, and a sanction may be imposed based on the information available.
3. A No Contact Order is normally issued to restrict contact and communication between the complainant and respondent for the duration of the investigation. In particularly serious cases, temporary removal of a student or employee from campus, or any other interim measures deemed necessary for the protection of the parties or third parties may be initiated by the university at any time.
4. Interim measures, if requested and reasonably available, may be made to protect parties on an interim basis. These measures may be taken regardless of

## **Sexual Misconduct Policy**

whether a complainant pursues a complaint under this policy. (See *Interim Measures*.)

5. The university may choose to discontinue an investigation at any time. The complainant may request that an investigation be discontinued at any time. The university will attempt to honor the wishes of the complainant. However, to accommodate cases where compelling evidence suggests significant individual or community safety concerns, the decision to discontinue an investigation is within the sole discretion of the university.
6. To the extent permitted by law, the complainant and respondent will be afforded the same rights and opportunities throughout the investigation and adjudication process, including the opportunity to recommend witnesses and submit evidence. However, investigation logistics, including but not limited to the sequence of interviews, the decision to interview particular witnesses, and the decision to allow or consider evidence offered by the parties, are within the discretion of the investigator.
7. Complainants and respondents are entitled to the same opportunities to have an advisor of their choice present at any interviews, meetings or proceedings that they are attending related to the investigation and adjudication process under this policy. Such advisors may advise the complainant or respondent privately, but cannot act as speaking advocates at a meeting. An investigator or other university representative may terminate meetings and proceed with the investigation or adjudication based on otherwise available information if advisors refuse to comply with these requirements.
8. If a complainant or respondent is concerned that another person involved in the investigation or adjudication may be biased or have a conflict of interest, the person should inform the investigator of that concern immediately. If this concern involves the investigator, the complainant or respondent should inform the Title IX Coordinator. The investigator or Title IX Coordinator, as applicable, will consider the concern and inform the parties of a decision as to whether an alternate will be named.

### **E. Investigation**

1. All investigations will be appropriate under the circumstances, and be prompt, thorough, fair, equitable, objective and impartial.
2. The university's investigation and adjudication process does not require or permit the complainant and respondent to interact or communicate directly or indirectly with each other concerning the process or the matter under investigation at any time. The parties are therefore not permitted to question or cross-examine each other during the course of the investigation.
3. The investigator is authorized to contact any and all individuals with potentially relevant information. The university recognizes, however, that individuals who are bound by legal privileges may not be able to disclose privileged information, unless an exception applies. The investigator is

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authorized to access relevant records, except those legally protected as confidential or privileged, and may collect any additional evidence relevant to the complaint. The nature and scope of the investigation is within the discretion of the investigator.

4. The complainant and respondent will be asked to identify all relevant evidence they would like the investigator to review, as well as witnesses they would like the investigator to interview. The investigator is not required to consider the evidence submitted or interview any particular witness, even if identified by one of the parties. However, in determining whether to interview witnesses or review evidence, the investigator should consider such factors as equity, fairness, thoroughness, and impartial treatment of both parties.
5. All participants in the investigation are expected to cooperate fully by providing complete, accurate, and truthful information. They may also be expected to sign statements or other documents memorializing the information they provided, and may be asked to keep the substance of the interview confidential. Failure to cooperate fully with the investigator may subject the individual to the full range of disciplinary actions, as applicable.
6. Formal rules of evidence do not apply in the process described herein. In cases where an evidentiary or procedural question arises in connection with the investigation or adjudication process, the investigator may make a determination or refer the matter to the Title IX Coordinator or other appropriate university official for a decision. The evaluation of evidence by the investigator includes consideration of its relevance, materiality, and credibility.
7. When the investigator determines that sufficient information has been collected to allow the investigator to make a recommended finding, the complainant and respondent may review the witness statements and other relevant materials. Both will have an opportunity to respond to this information in writing within seven days.
8. The investigator will pursue additional investigation if it is deemed that any of the content of either party's response warrants further inquiry.
9. The complainant, the respondent and their advisor(s) may not copy, share, describe, and/or otherwise disseminate these materials, and are similarly precluded from otherwise disclosing their contents to others. It is the responsibility of the complainant and respondent to ensure that their advisors are aware of and agree to these restrictions.

### **F. Determination and Sanction**

1. The investigator will submit a final report to the designated adjudicator. The final report will include the investigator's recommended finding of whether the policy or policies under investigation have been violated, the investigator's rationale, and investigation materials, including both parties' written responses. The investigator's recommendation will be based on the

## **Sexual Misconduct Policy**

preponderance of evidence standard, i.e., whether it is more likely than not that the policy was violated.

2. The adjudicator is responsible for making the determination of whether any university policy under investigation has been violated. The adjudicator is not bound by the investigator's report; rather, it is advisory to the adjudicator. The adjudicator may accept or reject the investigator's recommended finding in whole or in part, and may request additional relevant information before making a determination. The adjudicator may consult with the investigator and/or other persons as determined in the discretion of the adjudicator. The adjudicator will avoid duplicating the efforts of the investigator, as well as accepting the investigator's recommended finding without careful review of all of the evidence.
3. The adjudicator may request an individual meeting with either party or any other person(s) as appropriate. This meeting is intended to provide each party with an opportunity to make a brief statement directly to the adjudicator. This meeting is not intended to serve as a hearing or a cross-examination, although the adjudicator may ask questions as needed.
4. After review of the investigator's report and recommended finding, the adjudicator will issue a determination as to whether sexual misconduct (or a violation of other university policies, if applicable) occurred. The adjudicator's determination will be based on a preponderance of the evidence standard.
5. If the adjudicator finds that a staff member has engaged in conduct that violates this policy (or other university policies under investigation, if applicable), the Director of Human Resources will make a recommendation regarding discipline and/or other appropriate action, to the appropriate supervisory authority. After review of the recommendation, the supervisory authority will initiate procedures to determine and impose appropriate disciplinary action.
6. If the adjudicator finds that a faculty member has engaged in conduct that violates this policy (or other university policies under investigation, if applicable), the Director of Human Resources will make a recommendation regarding discipline and/or other appropriate action to the appropriate supervisory authority for the program at issue. Sanctioning and appeals for faculty whose primary appointment is with the undergraduate college will follow the procedures for College faculty. After review of the recommendation, the supervisory authority will initiate procedures to determine and impose appropriate disciplinary action according to the procedures in existing Faculty Handbook policies, other employment policies/or contracts, as applicable.
7. If the adjudicator finds that a student has engaged in conduct that violates this policy (or other university policies under investigation, the Vice President for Mission, the Dean of Students, the Associate Vice President for Enrollment Management and Student Services or the Title IX Coordinator may impose

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disciplinary and/or other appropriate action. Prior conduct may be taken into account in the assignment of these actions

8. To the extent permitted by law, the complainant and respondent will be simultaneously informed, in writing, of (a) the determination and the outcome of any disciplinary or other action arising out of an allegation of sexual misconduct or any other alleged policy violation that was investigated and adjudicated under this policy; (b) the determination and the outcome of any disciplinary or other action taken arising out of an allegation of any other policy violation investigated and adjudicated under this policy; (c) The university's procedures for complainants and respondents to appeal the decision and/or discipline and/or actions imposed, if applicable; (d) any change to the results of a disciplinary process that occurs prior to the time that such results become final; and (e) when such results become final.

### **G. Time Frames for the Investigation and Adjudication**

Absent extenuating circumstances, the investigation of a report or complaint under this policy will ordinarily be completed within 45 days from the time a report or complaint is made. This time period may be shorter or longer depending on the circumstances, including but not limited to the complexity of the case and the availability of witnesses. If extenuating circumstances are present, the investigator may also decide independently to extend this general 45-day time frame, and will inform the parties, and any other individual who needs to know, of any such decision. Absent extenuating circumstances, the adjudicator will issue a finding regarding whether this policy and/or other university policies have been violated within 10 days after receipt of the investigator's complete report. The 10-day period may be extended if the adjudicator determines that further information or investigation is needed.

### **X. PARTICIPATION of ADVISORS in the INVESTIGATION**

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

The parties are entitled to be accompanied by their advisor in all meetings and interviews at which the party is entitled to be present, including intake, interviews, hearings and appeals. Advisors should help their advisees prepare for each meeting, and are expected to advise ethically, with integrity and in good faith. The university cannot guarantee equal advisory rights, meaning that if one party selects an advisor

## Sexual Misconduct Policy

who is an attorney, but the other party does not, or cannot afford an attorney, the university is not obligated to provide one.

All advisors are subject to the same rules, whether they are attorneys or not. Advisors may not present on behalf of their advisee in a meeting, interview or hearing and should request or wait for a break in the proceeding if they wish to interact with campus officials. Advisors may confer quietly with their advisees as necessary, as long as they do not disrupt the process. For longer or more involved discussions, the parties and their advisors should ask for breaks or step out of meetings to allow for private conversation.

Advisors are expected to refrain from interference with the university investigation and resolution. Any advisor who steps out of their role in any meeting under the resolution process will be warned once and only once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, they will be asked to leave the meeting. When an advisor is removed from a meeting, that meeting will typically continue without the advisor present. Subsequently, the Title IX Coordinator will determine whether the advisor may be reinstated, may be replaced by a different advisor, or whether the party will forfeit the right to an advisor for the remainder of the process.

The university expects an advisor to adjust their schedule to allow them to attend university meetings when scheduled. The university does not typically change scheduled meetings to accommodate an advisor's inability to attend. The university will, however, make provisions to allow an advisor who cannot attend in person to attend a meeting by telephone, video and/or virtual meeting technologies as may be convenient and available.

A party may elect to change advisors during the process, and is not locked into using the same advisor throughout.

The parties must advise the investigator of the identity of their advisor at least two (2) business days before the date of their first meeting with investigator. The parties must provide subsequent timely notice to the investigator if they change at any time. No audio or video recording of any kind other than as required by university procedure is permitted during meetings with university officials.

### XI. SANCTIONS

Any of the following sanctions, or combinations of sanctions, may be imposed on a student or employee responsible for a violation of this policy. Disciplinary action other than those outlined below may be taken as the situation warrants. Failure to abide by the imposed sanction may result in additional violations/sanctions.

## Sexual Misconduct Policy

### A. Student Sanctions

1. Oral Reprimand: An oral statement to a student that he or she is violating or has violated institutional rules. No reprimand shall be entered as a permanent part of the student's record unless issued by the appropriate accountability body.
2. Written Reprimand: Notice in writing that continuation or repetition of inappropriate conduct within a period of time stated in the warning may be cause for more severe disciplinary action.
3. Forced Change of Residency: A requirement that the student move from one residence hall area to another.
4. Removal from Campus Housing: A requirement that the student vacate campus housing by a designated time.
5. No Contact Orders restricting encounters and communications between the parties after the investigation and disciplinary proceeding
6. Trespass Warning: The student is prohibited from visiting or returning to a part or all of any designated area of campus. If the student returns, he/she is subject to arrest and additional action.
7. Fines: An appropriate fine may be levied for policy violations or damages incurred.
8. Restitution: A restitution order may be entered requiring the student to reimburse the complainant or university for any loss as a result of the student's sexual misconduct violation.
9. Campus Work: The student may be required to participate in educational programs or projects may be assigned.
10. Loss of Privileges: The student may be denied access to campus technology, recreational facilities, etc.
11. Disciplinary Probation: The student may be excluded from participation in privileged or extracurricular university activities as set forth in the notice of probation.
12. Interim Suspension: The student may be temporarily suspended by an official of the university for a designated period of time. Students who are placed on interim suspension are judged to be disruptive in conduct to the educational mission and/or pose a substantial threat to the health or safety of themselves or others. An interim suspension is made pending a hearing on the alleged offense.
13. Deferred Suspension: Students are suspended but are allowed to continue as a student under specific conditions as outlined by the Office of Residence Life and agreed upon by the student.
14. Suspension: The student is excluded from classes and other privileges or activities or from the university, as set forth in the notice of suspension, for a definite period of time.

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15. Expulsion: The student's status as a student is terminated for an indefinite period of time. The following sanctions may be imposed upon any member of the university community found to have violated this policy.
16. Withholding Diploma: A student's diploma may be withheld for a specified period of time.
17. Revocation of Degree: A student's degree may be revoked by the university.

### B. Employee Sanctions

1. Warning - Written or Verbal
2. Performance Improvement Plan
3. Required Counseling
4. Required Training or Education
5. Demotion
6. Loss of Pay Increase
7. Suspension without Pay
8. Suspension with Pay
9. Revocation of Tenure
10. Termination

### C. Sanctions for Non-Consensual Sexual Contact, Non-Consensual Sexual Intercourse, and Sexual Exploitation

1. Any person found responsible for non-consensual sexual contact will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident, and taking into account any previous disciplinary violations.
2. Any person found responsible for non-consensual sexual intercourse will likely face a recommended sanction of suspension or expulsion (student) or suspension or termination (employee).
3. Any person found responsible for sexual exploitation will likely receive a recommended sanction ranging from warning to expulsion or termination, depending on the severity of the incident, and taking into account any previous disciplinary violations.
4. The decision-making individual reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior.

## XII. APPEALS

Any party may appeal the findings and/or sanctions only under the grounds described, below.

**All sanctions originally imposed will be in effect during the appeal.**

## Sexual Misconduct Policy

Any party who wishes to appeal the decision or the sanctions imposed must do so in writing to the Title IX Coordinator within 3-5 business days of receiving the written decision. The written decision will be mailed to the mailing address of each respective party as indicated in university records and emailed to the parties' university-issued email accounts. Once received in person, mailed or emailed, the notice of decision will be deemed presumptively delivered.

The ONLY grounds for appeal are as follows:

- A procedural error occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.).
- New evidence, unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction, has been discovered. A summary of this new evidence and its potential impact must be included;
- The sanctions imposed fall outside the range of sanctions designated for this offense and the cumulative conduct history of the respondent.

The Title IX Coordinator will share the appeal request with the other party. An appeals panel of no less than two people will be appointed by the Title IX Coordinator. Both parties will be asked to submit statements either in support of or in opposition to the appeal. The appeals panel will consider those statements to determine if the appeal should be heard.

If the appeals panel elects to hear the appeal, it will consider the investigative materials, all statements from the other parties, and other pertinent materials considered by the adjudicator. The appeals panel may dismiss the appeal, may grant the appeal and remand the finding and/or sanction for further investigation or reconsideration, or may modify a sanction.

The original finding and sanction will stand if the appeal is dismissed, and that decision is final. The party requesting appeal must show clear error as the original finding and/or a compelling justification to modify a sanction, as both finding and sanction are presumed to have been decided reasonably and appropriately during the original hearing.

The procedures governing the hearing of appeals include the following:

- All parties should be timely informed of the status of requests for appeal, the status of the appeal consideration, and the results of the appeal decision;
- Appeals are not intended to be full re-hearings of the allegation (de novo). In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal;

## Sexual Misconduct Policy

- Appeals decisions are to be deferential to the original decision-maker, making changes to the finding only where there is clear error and to the sanction only if there is a compelling justification to do so;
- An appeal is not an opportunity for the appeals panel to substitute its judgment for that of the original decision-maker merely because it disagrees with the original finding and/or sanctions.

Sanctions imposed are implemented immediately unless they are stayed by an appropriate party in extraordinary circumstances, pending the outcome of the appeal.

The appeals panel will typically render a written decision on the appeal to all parties within ten (10) business days from hearing of the appeal. The appeals panel decision to deny an appeal request is final.

## Sexual Misconduct Policy

### XIII. CONTACT INFORMATION FOR REPORTS/COMPLAINTS

<b>Campus</b>	<b>For Students</b>	<b>For Employees</b>
Winona	<p>Charissa Jakusz Dean of Students (College) 507-457-1640 105 Vlazny Hall <a href="mailto:cjakusz@smumn.edu">cjakusz@smumn.edu</a></p> <p><i>Investigator</i> <i>Adjudicator</i></p>	<p>David Miliotis Director of Human Resources 507-457-1421 147 Heffron Hall <a href="mailto:dmilioti@smumn.edu">dmilioti@smumn.edu</a></p> <p><i>Investigator</i> <i>Adjudicator</i></p>
	<p>Marisa Quinn Asst. Vice President for Student Life (College) 507-457-1781 105 Vlazny Hall <a href="mailto:mquinn@smumn.edu">mquinn@smumn.edu</a></p> <p><i>Investigator</i> <i>Adjudicator</i></p>	<p>Ann E. Merchlewitz Title IX Coordinator 507-457-1587 Executive Offices, Heffron Hall <a href="mailto:amerchle@smumn.edu">amerchle@smumn.edu</a></p> <p><i>Investigator</i> <i>Adjudicator</i></p>
	<p>Dr. Tim Gossen Vice President for Mission 507-457-1597 113 Vlazny Hall <a href="mailto:tgossen@smumn.edu">tgossen@smumn.edu</a></p> <p><i>Investigator</i> <i>Adjudicator</i></p>	
	<p>Dr. Jodi Monerson Director of Campus Safety 507-457-1703 115 Toner Student Center <a href="mailto:jmonerso@smumn.edu">jmonerso@smumn.edu</a></p> <p><i>Investigator</i></p>	
	<p>Ann E. Merchlewitz Title IX Coordinator 507-457-1587 Executive Offices, Heffron Hall <a href="mailto:amerchle@smumn.edu">amerchle@smumn.edu</a></p> <p><i>Investigator</i> <i>Adjudicator</i></p>	

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Campus	For Students	For Employees
Twin Cities	<p>Gena Bilden AVP- Enrollment Management and Student Services 612-728-5145 166 LaSalle Hall <a href="mailto:gbilden@smumn.edu">gbilden@smumn.edu</a></p> <p><i>Investigator</i> <i>Adjudicator</i></p>	<p>Dave Miliotis Director of Human Resources 507-457-1421 147 Heffron Hall <a href="mailto:dmilioti@smumn.edu">dmilioti@smumn.edu</a></p> <p><i>Investigator</i> <i>Adjudicator</i></p>
	<p>Dr. Sarah Ferguson AVP and Academic Dean (612) 728-5112 114 Martin DePorres Hall <a href="mailto:sferguso@smumn.edu">sferguso@smumn.edu</a></p> <p><i>Investigator</i> <i>Adjudicator</i></p>	<p>Ann E. Merchlewitz Title IX Coordinator 507-457-1587 Executive Offices, Heffron Hall <a href="mailto:amerchle@smumn.edu">amerchle@smumn.edu</a></p> <p><i>Investigator</i> <i>Adjudicator</i></p>
	<p>Ann E. Merchlewitz Title IX Coordinator 507-457-1587 Executive Offices, Heffron Hall <a href="mailto:amerchle@smumn.edu">amerchle@smumn.edu</a></p> <p><i>Investigator</i> <i>Adjudicator</i></p>	

#### XIV. PREVENTION and EDUCATION

New employees and students are and will be educated on the topic of sexual misconduct via an online training module. Current students and employees are and will be trained via in-person seminars, the dissemination of educational materials, etc.

#### XV. TRAINING

The university has developed a plan to annually train faculty and staff on sexual misconduct, how to identify sexual misconduct, and how to respond to complaints of sexual misconduct. Individuals who respond to, investigate, or adjudicate sexual misconduct receive periodic training to facilitate their work in this area.

#### XVI. External Resources

- Order for Protection

*Effective July 1, 2015*  
*Revised August 1, 2016*  
*Revised November 16, 2016*  
*Revised July 27, 2017*  
*Revised September 6, 2018*

## **Sexual Misconduct Policy**

An Order for Protection (OFP) is a civil restraining order designed to prevent further acts of domestic abuse (an actual assault or fear of an assault) between people who live together, have lived together, are married, are related by blood, are involved in a significant romantic or sexual relationship, or have a child in common. In Winona County, the petition for an OFP may be obtained from the Court Administrator's Office on the fourth floor of the Winona County Courthouse. Contact the Women's Resource Center for assistance in filling out the form and filing it with the court. In Hennepin County, contact the Domestic Abuse Service Center (612-348-5073) for assistance in filling out the form and filing it with the court.

- **Harassment Order**

A Harassment Order is a civil restraining order designed to prevent harassing behavior. Harassing behavior is defined as repeated, intrusive, or unwanted acts, including words or gestures that adversely affect the safety, security, or privacy of another regardless of the relationship between the two people. The steps to receive a Harassment Order mirror the steps to obtain an OFP. In Winona County, contact the Women's Resource Center for assistance in obtaining a Harassment Order. In Hennepin County, contact the Domestic Abuse Service Center (612-348-5073) for assistance in obtaining a Harassment Order.

- For sexual assault, dating violence, domestic violence, or stalking, Winona campus students or employees may contact the Winona Law Enforcement Center to make a report or file criminal charges:

Non-emergency: 457-6302

Emergency: 911

- For sexual assault, dating violence, domestic violence, or stalking, Twin Cities campus students or employees may contact the appropriate law enforcement agency that has jurisdiction for the location the assault took place to make a report. In Minneapolis, contact should be made with the City of Minneapolis Police Department:

Non-emergency: 311

TDD/voice: 612-673-3383

Emergency: 911

- For sexual assault, dating violence, domestic violence, or stalking, Rochester Center students or employees may contact the City of Rochester Police Department:

Non-emergency: 507-328-6800

Emergency: 911

## Sexual Misconduct Policy

- For sexual assault, dating violence, domestic violence, or stalking, Apple Valley Center students or employees may contact the City of Apple Valley Police Department:

Non-emergency: 952-953-2700  
Emergency: 911

- For sexual assault, dating violence, domestic violence, or stalking, Oakdale Center students or employees may contact the City of Oakdale Police Department:

Non-emergency and Emergency: 911

- Students or employees may contact the crisis hotline for a referral to local mental health agencies

First Call for Help  
211

- Winona campus students or employees may contact the Women's Resource Center for information, referrals, and advocates for victims of domestic violence and sexual assault (Sexual Assault Crisis Center):

77 East Fifth Street  
Winona, MN 55987  
507-452-4440  
507-452-4453 (24-hour hotline)

- Twin Cities campus, Apple Valley center, and Oakdale center students or employees may contact the following agencies for information, referrals, and advocates for victims of sexual assault:

Minnesota Coalition against Sexual Assault  
651-209-9993

Sexual Violence Center  
612-871-5100 (business)  
612-871-5111 (crisis line)

Hennepin County Medical Center  
612-871-5111(24-hour hotline)  
612-873-5832 (office)

Rape and Sexual Abuse Center  
612-825-4357 (24-hour hotline)  
612-374-9077 (office)

SOS Sexual Violence Services of Ramsey County  
651-266-1000 (24-hour hotline)

Canvas Health Abuse Response Services  
651-777-1117(24-hour hotline)

## Sexual Misconduct Policy

360 Communities (Dakota County)  
952-985-5300 (24-hour hotline)

- Rochester center students or employees may contact the following agencies for information, referrals, and advocates for victims of sexual assault:

Dodge, Filmore & Olmsted Counties Victim Service  
507 289-0636 (24-hourhotline)  
507 328-7270 (office)

- Any student or employee who has been sexually assaulted may call the National Sexual Assault Hotline at 800-656-HOPE. By calling this number, you will be automatically connected to your closest rape crisis center.
- Twin Cities campus, Apple Valley center, and Oakdale center students or employees may contact the following agencies for information, referrals, and advocates for victims of dating violence, domestic violence, or stalking:

Domestic Violence Project  
Dap First Call  
612-874-7063 (9:00 a.m. - 4:00 p.m. Monday-Friday)

Hennepin County Domestic Abuse Center  
612-379-6363 (24-hour hotline)

MN Domestic Violence Crisis Line  
866-223-1111 (24-hour hotline)

Bridges to Safety (Ramsey County)  
651-266-9901 (Monday-Friday from 8:00 a.m. to 4:30 p.m.)

Lewis House (Dakota County)  
651-452-7288

- Rochester center students or employees may contact the following agencies for information, referrals, and advocates for victims of dating violence, domestic violence, or stalking:

Women's Shelter, Inc.  
(507) 285-1010 (crisis line)  
(507) 285-1938 (office)

## Sexual Misconduct Policy

### Appendix A

#### CONFIDENTIAL RESOURCES

Christina Uribe Nittu  
Director of Health Services  
(507) 457-1492  
curibeni@smumn.edu

Julie Buege  
Student Health Services - Staff Nurse  
(507) 457-1492  
jbuege@smumn.edu

Ruth Mathews, Ph.D.  
Wellness Center - Director of Counseling Services  
(507) 457-1481  
rmathews@smumn.edu

Holly Courtenay, Psy.D.  
Wellness Center - Counselor  
(507) 457-1773  
hcourten@smumn.edu

Nazeer Zerka, MS.S.W.  
Wellness Center - Counselor  
(507)457-1773  
nzerka@smumn.edu

Other counselors in the Jay Johnson Wellness Center.