

**Title IX Policy  
and  
Resolution Process**

## **POLICY: Equal Opportunity, Harassment and Nondiscrimination**

### **Reason for Policy/Purpose**

Morningside College is concerned about the safety and welfare of all members of the campus community and guests and is committed to providing a safe living and learning environment, free of all forms of discrimination, harassment, sexual misconduct or retaliation.

This policy is in place to ensure compliance with Title IX and other federal and state civil rights laws. Morningside College has developed internal policies that will provide a supportive process for individuals who report discrimination, harassment, sexual misconduct, including sexual violence, and/or retaliation. The policies outline a fair process to resolve allegations.

### **Policy Jurisdiction and Applicability**

The Title IX Coordinator is able to respond to alleged violations of this policy that occur on campus, that are part of official College programs/groups (regardless of location), or where the responding party is a member of the College community, regardless of location and regardless of whether the reporting party is a member of the College community. If the responding party is unknown or is not a member of the College community, the Title IX Coordinator will assist students or others in identifying appropriate campus resources or local authorities if the individual would like to file a report. In addition, the Title IX Coordinator may take other actions as appropriate to protect the student, faculty, or staff member against such third parties.

### **Title IX Coordinator**

The Dean of Students serves as the Title IX Coordinator and oversees the Title IX team. The Title IX Coordinator acts with independence and authority free of conflicts of interest. To raise any concern involving a conflict of interest by the Title IX Coordinator, contact the College provost at 274-5103. To raise concerns regarding a potential conflict of interest with any other administrator involved in the process, please contact the Title IX Coordinator.

Inquiries about and reports regarding this policy and procedure may be made internally to:

Dr. Karmen Ten Napel  
Dean of Students / Title IX Coordinator  
Lewis Hall 120  
712-274-5191 / [tennapel@morningside.edu](mailto:tennapel@morningside.edu)

Dr. Bill Deeds  
Provost / Title IX Deputy Coordinator  
Lewis Hall 116  
712-274-5103 / [deeds@morningside.edu](mailto:deeds@morningside.edu)

Cindy Welp  
Director of Human Resources / Title IX Deputy Coordinator  
Lewis Hall 103  
712-274-5114 / [welp@morningside.edu](mailto:welp@morningside.edu)

Inquiries may be made externally to:  
Office for Civil Rights (OCR)

U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

Equal Employment Opportunity Commission (EEOC)  
Contact: <http://www.eeoc.gov/contact/>

### **Reporting Discrimination**

Reports of discrimination, harassment and/or retaliation may be made using any of the following options. There is no time limitation on the filing of grievances. However, if the responding party is no longer subject to the College's jurisdiction, the ability to investigate, respond and provide remedies may be more limited:

- 1) Report directly to the Title IX Coordinator or deputies;
- 2) Report using the Campus Conduct Hotline: 866-943-5787

All reports are acted upon promptly while every effort is made by the College to preserve the privacy of reports. Such reports may also be anonymous. Anonymous reports will be investigated to determine if remedies can be provided. Additionally, all employees of the College are designated as mandated reporters (unless deemed confidential: student health workers, personal counselors, and clergy) and will share a report with the Title IX Coordinator promptly. Confidentiality and mandated reporting is addressed more specifically below. Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to the College provost.

### **Jurisdiction**

This policy applies to behaviors that take place on the campus, at College-sponsored events and may also apply off-campus and to actions online when the Title IX Coordinator determines that the off-campus conduct affects a substantial College interest. A substantial College interest is defined to include:

- a) Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state or federal law;
- b) Any situation where it appears that the responding party may present a danger or threat to the health or safety of self or others;
- c) Any situation that significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder; and/or
- d) Any situation that is detrimental to the educational interests of the College.

### **Nondiscrimination**

Morningside College believes in and promotes non-discrimination. It is our policy and practice to promote equal opportunities without regard to age, sex, religion, creed, race, color, gender identity, sexual orientation, marital status, disability, genetic information, or national origin. This basic philosophy applies not only in searching for new employees, but also in the recruiting of students. It is believed that there should be no discrimination in the selection or placement of employees, as well as in administration, supervision, compensation, training, promotions, and termination of employment. Every other practice or procedure, both in the areas of academics and business, must subscribe to the intent of this basic philosophy which is inherent in Judeo-Christian principles.

The College is committed to providing all of its student, faculty, staff, and visitors with equal access to its programs, events, and facilities. In compliance with Section 504 of the Rehabilitation Act of 1973, the College has made modifications to some of its buildings and grounds in such a manner as to allow students and faculty, including those with visual or hearing impairments, auxiliary aids, modification in classroom schedules and location and adjustment of classroom techniques and practices in order to allow equal access to the regular program and degree objectives offered by the College.

### **Accommodation of Disabilities**

Morningside College is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA and ADAAA) and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws pertaining to individuals with disabilities. Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the institution whether qualified or not. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking or caring for oneself.

Morningside College is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs and activities of the College. The Vice President for Experiential Learning and Persistence has been designated as the Disability Services Coordinator responsible for coordinating efforts to comply with these disability laws, including investigation of any allegation of noncompliance.

All accommodations are made on a case-by-case basis. A student requesting any accommodation should first contact the the Disability Services Coordinator, who coordinates services for students with disabilities. The Disability Services Coordinator reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate to the student's particular needs and academic programs.

### **Discriminatory Harassment**

Students, staff, administrators, and faculty are entitled to a working environment and educational environment free of discriminatory harassment. Morningside College's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive subject matters protected by academic freedom. The sections below describe the specific forms of legally prohibited harassment that are also prohibited under College policy.

## **a. Discriminatory and Bias-Related Harassment**

Harassment constitutes a form of discrimination that is prohibited by College policy as well as the law. Morningside condemns and will not tolerate discriminatory harassment against any employee, student, visitor or guest on the basis of any status protected by policy or law. Morningside will remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a hostile environment. When harassment rises to the level of creating a hostile environment, Morningside may also impose sanctions on the harasser using the resolution process below. Morningside's harassment policy explicitly prohibits any form of harassment, defined as unwelcome conduct on the basis of actual or perceived membership in a protected class, by any member or group of the community.

A hostile environment may be created by harassing verbal, written, graphic, or physical conduct that is severe or persistent/pervasive, and objectively such that it interferes with, limits or denies the ability of an individual to participate in or benefit from educational programs or activities or employment access, benefits or opportunities.

Morningside reserves the right to address offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature not on the basis of a protected status. Addressing such behaviors may not result in the imposition of discipline under College policy, but will be addressed through respectful confrontation, remedial actions, education and/or effective conflict resolution mechanisms. For assistance with conflict resolution techniques, employees should contact the Director of Human Resources and students should contact the Dean of Students.

## **b. Sexual Harassment**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC) and the State of Iowa regard sexual harassment as a form of sex/gender discrimination and, therefore, as an unlawful discriminatory practice. Morningside has adopted the following definition of sexual harassment, in order to address the special environment of an academic community, which consists not only of employer and employees, but of students as well.

Sexual harassment is:

- unwelcome,
- sexual, sex-based and/or gender-based,
- verbal, written, online and/or physical conduct.

Anyone experiencing sexual harassment in any Morningside program is encouraged to report it immediately to the Title IX Coordinator or a deputy. Remedies, education and/or training will be provided in response.

Sexual harassment may be disciplined when it takes the form of *quid pro quo* harassment, retaliatory harassment and/or creates a hostile environment.

A hostile environment is created when sexual harassment is:

- Severe, or
- persistent or pervasive, and
- objectively offensive, such that it:  
--unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the Morningside College's educational, employment, social and/or residential programs.

*Quid Pro Quo* Sexual Harassment:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by a person having power or authority over another constitutes sexual harassment when submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational development or performance.

Some examples of possible Sexual Harassment include:

- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student accedes to the request and irrespective of whether a good grade is promised or a bad grade is threatened.
- A student repeatedly sends sexually oriented jokes around on an email list s/he created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.
- Explicit sexual pictures are displayed in a professor's office or on the exterior of a residence hall door.
- Two supervisors frequently 'rate' several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus.
- Male students take to calling a particular brunette student "Monica" because of her resemblance to Monica Lewinsky. Soon, everyone adopts this nickname for her, and she is the target of relentless remarks about cigars, the president, "sexual relations" and Weight Watchers.
- A student grabbed another student by the hair, then grabbed her breast and put his mouth on it. While this is sexual harassment, it is also a form of sexual violence.

**c. Sexual Misconduct**

State law defines various violent and/or non-consensual sexual acts as crimes. While some of these acts may have parallels in criminal law, Morningside College has defined categories of sex/gender discrimination as sexual misconduct, as stated below, for which action under this policy may be imposed. Generally speaking, Morningside considers Non-Consensual Sexual Intercourse violations to be the most serious of these offenses, and therefore typically imposes the most severe sanctions, including suspension or expulsion for students and termination for employees. However, Morningside reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any act of sexual misconduct or other sex/gender-based offenses, including intimate partner (dating and/or domestic) violence, non-consensual sexual contact and/or stalking based on the facts and circumstances of the particular allegation. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, sexual orientation and/or gender identity of those involved. Violations include:

**i. Sexual Harassment (as defined in section b above)**

**ii. Non-Consensual Sexual Intercourse**

Defined as:

- any sexual intercourse
- however slight
- with any object
- by a person upon another person
- that is without consent and/or by force
- sexual intercourse includes:
  - Vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation (mouth to genital contact) no matter how slight the penetration or contact.

### iii. **Non-Consensual Sexual Contact**

Defined as:

- any intentional sexual touching
- however slight
- with any object
- by a person upon another person
- that is without consent and/or by force

Sexual touching includes:

- Intentional contact with the breasts, groin, or genitals, mouth or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or
- Any other bodily contact in a sexual manner.

### iv. **Sexual Exploitation**

Sexual Exploitation refers to a situation in which a person takes non-consensual or abusive sexual advantage of another, and that behavior does not otherwise fall within the definitions of Sexual Harassment, Non-Consensual Sexual Intercourse or Non-Consensual Sexual Contact.

Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as watching a person undressing, using the bathroom or engaged in sexual acts without the consent of the person observed).
- Invasion of sexual privacy.
- Taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent).
- Prostitution.
- Sexual exploitation also includes engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV), a sexually transmitted disease (STD) or infection (STI) without informing the other person of the infection.
- Administering alcohol or drugs (such as "date rape" drugs) to another person without his or her knowledge or consent (assuming the act is not completed).
- Exposing one's genitals in non-consensual circumstances.
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

### v. **Force and Consent**

**Force:** Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that

overcome resistance or produce consent (“Have sex with me or I’ll hit you.” “Okay, don’t hit me, I’ll do what you want.”).

Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

NOTE: Silence or the absence of resistance alone is not consent. There is no requirement on a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of consent is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

**Consent:** Consent is knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent can be withdrawn once given, as long as the withdrawal is clearly communicated.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous dating relationship is not sufficient to constitute consent. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy.

It is not an excuse that the responding party was intoxicated and, therefore, did not realize the incapacity of the reporting party.

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

In Iowa, a minor (meaning a person under the age of 16 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 16 years old may be a crime, and a potential violation of this policy, even if the minor wanted to engage in the act.

Examples of lack of consent:

1. Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00pm until 3:00am, Bill uses

every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. He keeps at her, and begins to question her religious convictions, and accuses her of being “a prude.” Finally, it seems to Bill that her resolve is weakening, and he convinces her to give him a “hand job” (hand to genital contact). Amanda would never had done it but for Bill's incessant advances. He feels that he successfully seduced her, and that she wanted to do it all along, but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn't want it, she could have left. **Bill is responsible for violating the university Non-Consensual Sexual Contact policy. It is likely that campus decision-makers would find that the degree and duration of the pressure Bill applied to Amanda are unreasonable. Bill coerced Amanda into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. Consent is not valid when forced. Sex without consent is sexual misconduct.**

2. Jiang is a junior at the university. Beth is a sophomore. Jiang comes to Beth's residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, and are soon becoming more intimate. They start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a baby-sitter when she was five, and has not had any sexual relations since, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with her, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop, but cannot. Beth is stiff and unresponsive during the intercourse. Is this a policy violation? **Jiang would be held responsible in this scenario for Non Consensual Sexual Intercourse. It is the duty of the sexual initiator, Jiang, to make sure that he has mutually understandable consent to engage in sex. Though consent need not be verbal, it is the clearest form of consent. Here, Jiang had no verbal or non-verbal mutually understandable indication from Beth that she consented to sexual intercourse. Of course, wherever possible, it is important to be as clear as possible as to whether or not sexual contact is desired, and to be aware that for psychological reasons, or because of alcohol or drug use, one's partner may not be in a position to provide as clear an indication as the policy requires. As the policy makes clear, consent must be actively, not passively, given.**
3. Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it's a lot. After the party, he walks John to his room, and John comes on to Kevin, initiating sexual activity. Kevin asks him if he is really up to this, and John says yes. Clothes go flying, and they end up in John's bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that John seems pretty groggy and passive, and he thinks John may have even passed out briefly during the sex, but he does not let that stop him. When Kevin runs into John the next day, he thanks him for the wild night. John remembers nothing, and decides to make a report to the Dean. **This is a violation of the Non-Consensual Sexual Intercourse Policy. Kevin should have known that John was incapable of making a rational, reasonable decision about sex. Even if John seemed to consent, Kevin was well aware that John had consumed a large amount of alcohol, and Kevin thought John was physically ill, and that he passed out during sex. Kevin should be held accountable for taking advantage of John in his condition. This is not the level of respectful conduct the university expects.**

#### 4. Other Civil Rights Offenses

In addition to the forms of sexual misconduct described above, the following behaviors are also prohibited as forms of discrimination when the act is based upon the reporting party's actual or perceived membership in a protected class.

- Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
- Discrimination, defined as actions that deprive, limit or deny other members of the community of educational or employment access, benefits or opportunities;
- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the university community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);
- Bullying, defined as
  - Repeated and/or severe
  - Aggressive behavior
  - Likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally
  - That is not speech or conduct otherwise protected by the 1<sup>st</sup> Amendment.
- Intimate Partner Violence, defined as violence or abuse between those in an intimate interaction and/or relationship to each other;
  - Examples:
    - A boyfriend shoves his girlfriend into a wall upon seeing her talking to a male friend. This physical assault based in jealousy is a violation of the Intimate Partner Violence policy.
    - An ex-girlfriend shames her female partner, threatening to out her as a lesbian if she doesn't give the ex another chance. Psychological abuse is a form of Intimate Partner Violence.
    - A graduate student refuses to wear a condom and forces his girlfriend to take hormonal birth control though it makes her ill, in order to prevent pregnancy.
    - Married employees are witnessed in the parking garage, with one partner slapping and scratching the other in the midst of an argument.
- Stalking
  - Stalking 1:
    - A course of conduct
    - Directed at a specific person
    - On the basis of actual or perceived membership in a protected class
    - That is unwelcome, AND
    - Would cause a reasonable person to feel fear
  - Stalking 2:
    - Repetitive and Menacing
    - Pursuit, following, harassing and/or interfering with the peace and/or safety of another]
- Examples of Stalking
  - A student repeatedly shows up at another student's on-campus residence, always notifying the front desk attendant that they are there to see the resident. Upon a call to the resident, the student informs residence hall staff that this visitor is uninvited and continuously attempts to see them, even so far as waiting for them

outside of classes and showing up to their on-campus place of employment requesting that they go out on a date together (Stalking 1).

- A graduate student working as a on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student and stated that it was not necessary and would appreciate if the gift deliveries stop. The student then started leaving notes of love and gratitude on the graduate assistant's car, both on-campus and at home. Asked again to stop, the student stated by email: "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything necessary to make you have the feelings for me that I have for you." When the tutor did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. We are meant to be together" (Stalking 2).
- Any other College policies may fall within this section when a violation is motivated by the actual or perceived membership of the reporting party's sex or gender.

Sanctions for the above-listed "Other Civil Rights Behaviors" behaviors range from reprimand through expulsion (students) or termination of employment.

## **5. Retaliation**

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. Retaliation against an individual for alleging harassment, supporting a party bringing an allegation or for assisting in providing information relevant to a claim of harassment is a serious violation of Morningside College policy and will be treated as another possible instance of harassment or discrimination. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The College is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

Examples of Retaliation:

- Student-athlete files an allegation against a coach for sexual harassment; the coach subsequently cuts the student-athlete's playing time in half without a legitimate justification
- A faculty member complains of gender inequity in pay within her department; the Department Chair then revokes his prior approval allowing her to attend a national conference, citing the faculty member's tendency to "ruffle feathers."
- A student from Organization A participates in a sexual misconduct resolution process case against the responding individual – also a member of Organization A; the student is subsequently removed as a member of Organization A because he participated in the process.

## **6. Remedial Action**

Upon notice of alleged discrimination, Morningside may implement initial remedial, responsive and/or protective actions upon notice of alleged harassment, retaliation and/or discrimination. Such actions could include but are not limited to: no contact orders, providing counseling and/or medial services, academic support, living arrangement adjustments, transportation accommodations, visa and immigration assistance, student financial aid counseling, providing a campus escort, academic or work schedule and assignment accommodations, safety planning, referral to campus and community support resources.

Morningside will take additional prompt remedial and/or disciplinary action with respect to any member of the community, guest or visitor upon a finding that they have engaged in harassing or discriminatory behavior or retaliation.

The College will maintain as confidential any accommodations or protective measures, provided confidentiality does not impair the College's ability to provide the accommodations or protective measures.

Procedures for handling reported incidents are fully described below.

## **7. Confidentiality and Reporting of Offenses Under This Policy**

All Morningside employees (with the exception of medical staff, counselors, and clergy) are mandatory reporters. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality – meaning they are not required to report actual or suspected discrimination or harassment to appropriate College officials – thereby offering options and advice without any obligation to inform an outside agency or campus official unless a reporting party has requested information to be shared. Other resources exist for reporting parties to report crimes and policy violations and these resources will take action when an incident is reported to them. The following describes the reporting options at Morningside College:

### **a. Confidential Reporting**

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

- On-campus licensed professional counselors
  - Bobbi Meister, LISW, Personal Counselor; 712-274-5606
- On-campus health service providers and staff
  - Carol Garvey, Student Health Nurse; 712-274-5178
- On-campus members of the clergy
  - Rev. Andy Nelson, Chaplain; 712-274-5148
- Off-campus (non-employees):
  - Licensed professional counselors
  - Local rape crisis counselors
  - Domestic violence resources
  - Local or state assistance agencies
  - Clergy/Chaplains
  - Examples
    - Council on Sexual Assault and Domestic Violence (CSADV); 712-258-7233
    - National Coalition Against Domestic Violence; 800-799-7233
    - Iowa Victim Service Call Center; 800-770-1650
    - Rape, Assault, and Incest National Network; 712-856-4673
    - UnityPoint Health – St. Luke's; 712-279-3500
    - Mercy Medical Center; 712-279-2010

All of the above-listed individuals will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor. Morningside employees listed above will submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient or parishioner.

### **b. Formal Reporting Options**

All Morningside employees have a duty to report, unless they fall under the "Confidential Reporting" section above. Reporting parties may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared with the Title IX Coordinator. Employees must promptly share all details of the reports they receive. Generally, climate

surveys, classroom writing assignments or discussions, human subjects research, or events such as Take Back the Night marches or speak-outs do not provide notice that must be reported to the Coordinator by employees, unless the reporting party clearly indicates that they wish a report to be made. Remedial actions may result from such disclosures without formal College action.

If a reporting party does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the reporting party may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. Note that Morningside's ability to remedy and respond to a reported incident may be limited if the reporting party does not want the institution to proceed with an investigation and/or the resolution process.

In cases indicating pattern, predation, threat, weapons and/or violence, the College will likely be unable to honor a request for confidentiality. In cases where the reporting party requests confidentiality and the circumstances allow the College to honor that request, the College will offer interim supports and remedies to the reporting party and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have allegations taken seriously by Morningside when formally reported, and to have those incidents investigated and properly resolved through these procedures.

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party's rights and privacy. Additionally, anonymous reports can be made by victims and/or third parties using the reporting hotline at 866-943-5787. Note that these anonymous reports may prompt a need for the institution to investigate.

Failure of a non-confidential employee, as described in this section, to report an incident or incidents of sex/gender harassment or discrimination of which they become aware is a violation of College policy and can be subject to disciplinary action for failure to comply.

#### On-Campus Resources – NOT CONFIDENTIAL

- Karmen Ten Napel, Title IX Coordinator; 712-274-5191
- Bill Deeds, Deputy Title IX Coordinator; 712-274-5103
- Cindy Welp, Deputy Title IX Coordinator; 712-274-5114
- Safety & Security, 24/7; 712-274-5234
- Brett Lyon, Director of Safety & Security; 712-274-5500
- Sheri Hineman, Director of Residence Life; 712-274-5335

#### Off-Campus Resource – NOT CONFIDENTIAL

- Sioux City Police; 712-279-6440

### **8. Federal Timely Warning Obligations**

Parties reporting sexual misconduct should be aware that under the Clery Act, Morningside College administrators must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. Morningside will ensure that a victim'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 potential danger.

## **9. False Allegations**

Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.

## **10. Amnesty for Reporting Party and Witnesses**

Morningside College encourages the reporting of misconduct and crimes by reporting parties and witnesses. Sometimes, reporting parties or witnesses are hesitant to report to College officials or participate in resolution processes because they fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident. It is in the best interests of this community that reporting parties choose to report to university officials, and that witnesses come forward to share what they know. To encourage reporting, Morningside pursues a policy of offering reporting parties and witnesses amnesty from minor policy violations related to the incident.

## **11. Parental Notification (allegations involving students)**

Morningside College reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. The university may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is non-dependent, the College will contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk. The College also reserves the right to designate which College officials have a need to know about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act.

# **RESOLUTION PROCESS FOR ALLEGATIONS OF HARASSMENT, SEXUAL MISCONDUCT AND OTHER FORMS OF DISCRIMINATION**

Morningside College will act on any formal or informal allegation or notice of violation of the policy on Equal Opportunity, Harassment and Nondiscrimination, that is received by the Title IX Coordinator, Director for Human Resources, or a member of the administration, faculty, or other employee.

The procedures described below apply to all allegations of harassment or discrimination on the basis of protected class involving students, staff or faculty members. These procedures may also be used to address collateral misconduct occurring in conjunction with harassing or discriminatory conduct (e.g.: vandalism, physical abuse of another, etc.). All other allegations of misconduct unrelated to incidents covered by this policy will be addressed through the procedures elaborated in the respective student, faculty and staff handbooks.

## **Overview**

Upon notice to the Title IX Coordinator, this resolution process involves a prompt preliminary inquiry to determine if there is reasonable cause to believe the nondiscrimination policy has been violated. If so, the College will initiate a confidential investigation that is thorough, reliable, impartial, prompt and fair. The investigation and the subsequent resolution process determines whether the nondiscrimination policy has been violated. If so, Morningside will promptly implement effective remedies designed to end the discrimination, prevent its recurrence and address its effects.

## **COMPLAINT RESPONSE AND RESOLUTION PROCEDURES**

### **Reporting Misconduct**

Any member of the community, guest or visitor who believes that the policy on Equal Opportunity, Harassment and Nondiscrimination has been violated should contact the Title IX Coordinator.

It is also possible for employees to notify a supervisor, or for students to notify an employee of the institution. Any member of the community, including visitors, may also contact Campus Safety and Security. These individuals will in turn notify the Title IX Coordinator.

All employees receiving reports of a potential violation of College policy are expected to promptly contact the Title IX Coordinator, within 24 hours of becoming aware of a report or incident. All initial contacts will be treated with privacy: specific information on any allegations received by any party will be reported to the Title IX Coordinator, but, subject to Morningside's obligation to redress violations, every effort will be made to maintain the privacy of those initiating an allegation. In all cases, the College will give consideration to the reporting party with respect to how the reported misconduct is pursued, but reserves the right, when necessary to protect the community, to investigate and pursue a resolution even when a reporting party chooses not to initiate or participate in the resolution process.

### **Preliminary Inquiry**

Following receipt of notice or a report of misconduct, the Title IX Coordinator engages in a preliminary inquiry to determine if there is reasonable cause to believe the nondiscrimination policy has been violated. The preliminary inquiry is typically 1-3 business days in duration. This inquiry may also serve to help the Title IX Coordinator to determine if the allegations evidence violence, threat, pattern, predation and/or weapon, in the event that the reporting party has asked for no action to be taken. In

any case where violence, threat, pattern, predation, and/or weapon is not evidenced, the Title IX Coordinator may respect a reporting party's request for no action, and will investigate only so far as necessary to determine appropriate remedies. As necessary, Morningside reserves the right to initiate resolution proceedings without a formal report or participation by the reporting party.

In cases where the reporting party wishes to proceed or the College determines it must proceed, and the preliminary inquiry shows that reasonable cause exists, the allegation will be resolved through one of the processes discussed briefly here and in greater detail below:

- Informal Resolution
- Administrative Resolution

The process followed considers the preference of the parties, but is ultimately determined at the discretion of the Title IX Coordinator.

If conflict resolution is desired by the reporting party, and appears appropriate given the nature of the alleged behavior, then the report does not proceed to investigation, unless a pattern of misconduct is suspected or there is an actual or perceived threat of further harm to the community or any of its members.

Once a formal investigation is commenced, the Title IX Coordinator will provide written notification of the investigation to the responding party at an appropriate time during the investigation. Notification will be made in writing and be delivered by email to the parties' College-issued email account. Once emailed, notice will be presumptively delivered. The reporting party is typically copied on such correspondence. The College aims to complete all investigations within a sixty (60) calendar day time period, which can be extended as necessary for appropriate cause by the Title IX Coordinator with notice to the parties as appropriate.

If, during the preliminary inquiry or at any point during the formal investigation, the Title IX Coordinator determines that there is no reasonable cause to believe that policy has been violated, the process will end unless the reporting party requests that the Title IX Coordinator makes an extraordinary determination to re-open the investigation. This decision lies in the sole discretion of the Title IX Coordinator.

### **Interim Remedies/Actions**

The Title IX Coordinator may provide interim remedies intended to address the short-term effects of harassment, discrimination and/or retaliation, i.e., to redress harm to the reporting party and the community and to prevent further violations.

These remedies may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the community
- Altering the housing situation of the responding party (resident student or resident employee (or the reporting party, if desired))
- Altering work arrangements for student employees
- Providing campus escorts
- Providing transportation accommodations
- Implementing contact limitations between the parties
- Offering adjustments to academic deadlines, course schedules, etc.

The College may interim suspend a student, employee or organization pending the completion of an investigation and procedures, particularly when in the judgment of the Title IX Coordinator, the safety or well-being of any member(s) of the campus community may be jeopardized by the presence on-campus of the responding party 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 option to meet with the Title IX Coordinator 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 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 will be grounds for expulsion or termination.

During an interim suspension, a student or employee may be denied access to College housing and/or the College campus/facilities/events. As determined by the Title IX Coordinator, this restriction can include classes and/or all other College activities or privileges for which the student or employee might otherwise be eligible. At the discretion of the Title IX Coordinator, alternative coursework options for students may be pursued to ensure as minimal an impact as possible on the responding party.

The institution will maintain as confidential any interim actions or protective measures, provided confidentiality does not impair the institution's ability to provide the interim actions or protective measures.

### **Investigation**

Once the decision is made to commence a formal investigation, the Title IX Coordinator appoints two members from the Title IX team to conduct the investigation, usually within two (2) business days of determining that an investigation should proceed. Investigations are completed expeditiously, normally within ten (10) business days, though some investigations take weeks or even months, depending on the nature, extent and complexity of the allegations, availability of witnesses, police involvement, etc.

The College may undertake a short delay in its investigation (several days to weeks, to allow evidence collection) when criminal charges on the basis of the same behaviors that invoke this process are being investigated. The College will promptly resume its investigation and resolution processes once notified by law enforcement that the initial evidence collection process is complete. Morningside's action will not typically be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.

All investigations will be thorough, reliable, impartial, prompt and fair. Investigations entail interviews with all relevant parties and witnesses, obtaining available evidence and identifying sources of expert information, as necessary.

The investigators will typically take the following steps, if not already completed (not necessarily in order):

- In coordination with campus partners (e.g.: the Title IX Coordinator), initiate or assist with any necessary remedial actions;
- Determine the identity and contact information of the reporting party;
- Identify all policies allegedly violated;
- Assist the Title IX Coordinator with an immediate preliminary inquiry to determine if there is reasonable cause to believe the responding party has violated policy.

- If there is insufficient evidence to support reasonable cause, the inquiry should be closed with no further action;
- Commence a thorough, reliable and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses and the responding party, who may be given notice prior to or at the time of the interview;
- Prepare the notice of allegation [charges] on the basis of the preliminary inquiry;
- Meet with the reporting party to finalize their statement, if necessary;
- If possible, provide written notification to the parties prior to their interviews that they may have the assistance of a Title IX Team member or other advisor of their choosing present for all meetings attended by the advisee;
- Provide reporting party and responding party with a written description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures and a statement of the potential sanctions/responsive actions that could result;
- Prior to the conclusion of the investigation, provide the reporting party and the responding party with a list of witnesses whose information will be used to render a finding;
- Allow each party the opportunity to suggest questions they wish the investigators to ask of the other party and witnesses.
- Provide parties with all relevant evidence to be used in rendering a determination and provide each with a full and fair opportunity to address that evidence prior to a finding being rendered;
- Complete the investigation promptly, and without unreasonable deviation from the intended timeline;
- Provide regular updates to the reporting party throughout the investigation, and to the responding party, as appropriate;
- Once the report is complete, the report is shared with the parties for their review and comment. The investigators may incorporate feedback from the parties as appropriate.
- Recommend to the Title IX Coordinator and a Deputy Title IX Coordinator a finding, based on a preponderance of the evidence (whether a policy violation is more likely than not);
- Investigators and/or the Title IX Coordinator finalize and present the findings to the parties, without undue delay between notifications;

At any point during the investigation, if it is determined there is no reasonable cause to believe that College policy has been violated, the Title IX Coordinator has authority to terminate the investigation and end resolution proceedings.

Witnesses (as distinguished from the parties) are expected to cooperate with and participate in the College's investigation and resolution process. Failure of a witness to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may be subject to discipline. Witnesses may provide written statements in lieu of interviews during the investigation and may be interviewed remotely by phone, Skype (or similar technology), if they cannot be interviewed in person or if the investigators determine that timeliness or efficiency dictate a need for remote interviewing. Parties who elect not to participate in the investigation or to withhold information from the investigation do not have the ability to offer evidence later during the appeal if it could have been offered during the investigation. Failure to offer evidence prior to an appeal does not constitute grounds for appeal on the basis of new evidence.

No unauthorized audio or video recording of any kind is permitted during investigation meetings or other resolution proceedings.

#### **Advisors**

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Each party is allowed to have an advisor of their choice present with them for all meetings and proceedings during the resolution process, from intake through to final determination. The parties may select whomever they wish to serve as their advisor as long as the advisor is eligible and available, and usually otherwise not involved in the resolution process, such as serving as a witness. The advisor may be a friend, mentor, family member, attorney or any other supporter a party chooses to advise them who is available and eligible. Witnesses cannot also serve as advisors. The parties may choose advisors from inside or outside the campus community. The Title IX Coordinator will also offer to assign a trained Title IX Team member to work as an advisor for any party. The parties may choose their advisor from the Title IX Team, choose a non-trained advisor from outside the pool, if preferred, or proceed without an advisor.

The parties may be accompanied by their advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help their advisees prepare for each meeting, and are expected to advise ethically, with integrity and in good faith. The College cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not, or cannot afford an attorney, the College is not obligated to provide one.

All advisors are subject to the same campus rules, whether they are attorneys or not. Advisors may not address campus officials in a meeting or interview unless invited to. The advisor may not make a presentation or represent the reporting party or the responding party during any meeting or proceeding and may not speak on behalf of the advisee to the investigators or hearing panelists. The parties are expected to ask and respond to questions on their own behalf, without representation by their advisor. Advisors may confer quietly with their advisees or in writing 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 will typically be given an opportunity to meet in advance of any interview or meeting with the administrative officials conducting that interview or meeting. This pre-meeting will allow advisors to clarify any questions they may have, and allows the College an opportunity to clarify the role the advisor is expected to take.

Advisors are expected to refrain from interference with the investigation and resolution. Any advisor who steps out of their role will be warned once and only once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the advisor 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.

Morningside expects that the parties will wish to share documentation related to the allegations with their advisors. The College provides a consent form that authorizes such sharing. The parties must complete this form before Morningside is able to share records with an advisor, though parties may share the information directly with their advisor if they wish. Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with 3<sup>rd</sup> parties, disclosed publicly, or used for purposes not explicitly authorized by Morningside. The College may seek to restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by the Morningside's privacy expectations.

Morningside expects an advisor to adjust their schedule to allow them to attend College meetings when scheduled. Morningside does not typically change scheduled meetings to accommodate an advisor's inability to attend. The College will, however, make reasonable 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 investigators of the identity of their advisor at least one (1) day before the date of their first meeting with investigators (or as soon as possible if a more expeditious meeting is necessary or desired). The parties must provide timely notice to investigators if they change advisors at any time.

## **Resolution**

Proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accord with College policy. While the contents of the hearing are private, the parties have discretion to share their own experiences if they so choose, and should discuss doing so with their advisors.

### **I. Informal Resolution**

Informal Resolution is used when the parties agree to resolve the matter through conflict resolution, where the responding party accepts responsibility for violating policy, or when the Title IX Coordinator can resolve the matter informally by providing remedies to resolve the situation.

It is not necessary to pursue Informal Resolution first in order to pursue Formal Administrative Resolution, and any party participating in Informal Resolution can stop the process at any time and request the Formal Administrative Resolution process.

#### **i. Conflict Resolution**

Conflict Resolution is an informal process, such as mediation or restorative practices, by which a mutually-agreed upon resolution of an allegation is reached. It may be used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the Administrative Resolution process to resolve conflicts. The parties must consent to the use of Conflict Resolution.

Additionally, the Title IX Coordinator determines if Conflict Resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue, and the susceptibility of the conduct to Conflict Resolution.

In a Conflict Resolution meeting, a trained administrator facilitates a dialogue with the parties to an effective resolution, if possible. Sanctions are not possible as the result of a Conflict Resolution process, though the parties may agree to appropriate remedies.

The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the accord can result in appropriate responsive actions.

Conflict Resolution is not the primary resolution mechanism used to address reports of violent behavior of any kind or in other cases of serious violations of policy, though it may be made available after the Administrative Resolution process is completed should the parties and the Title IX Coordinator believe it could be beneficial. Conflict Resolution is not used as a stand-alone resolution in cases of sexual violence.

#### **ii. Responding Party admits responsibility for alleged violations**

The responding party may admit responsibility for all or part of the alleged policy violations at any point during the resolution process. If the responding party admits responsibility, the Title IX Coordinator makes a determination that the individual is in violation of College policy.

The Title IX Coordinator then determines appropriate sanction(s) or responsive action, which are promptly implemented in order to effectively to stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the reporting party and the community.

If the responding party only admits to part of the alleged policy violations, then the Title IX Coordinator finds the responding party in violation of the admitted violations and the contested allegations will be resolved using Administrative Resolution.

### **iii. Negotiated Resolution**

The Title IX Coordinator, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and the Institution.

## **II. Administrative Resolution**

Administrative Resolution can be pursued for any behavior that falls within the policy on Equal Opportunity, Harassment and Nondiscrimination, at any time during the process. The Title IX Coordinator and Title IX deputies serve as the Resolution Administrators.

In Administrative Resolution, the Resolution Administrator has the authority to address all collateral misconduct, meaning that they hear all allegations of discrimination, harassment and retaliation, but also may address any additional alleged policy violations that have occurred in concert with the discrimination, harassment or retaliation, even though those collateral allegations may not specifically fall within the policy on Equal Opportunity, Harassment and Nondiscrimination. Accordingly, investigations should be conducted with as wide a scope as necessary.

Any evidence that the Resolution Administrator believes is relevant and credible may be considered, including history and pattern evidence. The Resolution Administrator may exclude irrelevant or immaterial evidence and may choose to disregard evidence lacking in credibility or that is improperly prejudicial.

Unless the Resolution Administrator determines it is appropriate, the investigation and the finding will not consider: (1) incidents not directly related to the possible violation, unless they show a pattern, (2) the sexual history of the reporting party (though there may be a limited exception made in regards to the sexual history between the parties), (3) or the character of the reporting party. While previous conduct violations by the responding party are not generally admissible as information about the present allegation, the investigators will supply the Resolution Administrator with information about previous good faith allegations and/or findings to consider as evidence of pattern and/or predatory conduct.

Neither the Resolution Administrator nor investigators will meet with character witnesses, but investigators will accept up to two (2) letters supporting the character of each of the parties.

The Resolution Administrator will base the determination(s) on the preponderance of the evidence, whether it is more likely than not that the responding party violated policy as alleged.

The responding party may choose to admit responsibility for all or part of the alleged policy violations at

any point during the investigation or Administrative Resolution process. If the responding party admits responsibility, the Resolution Administrators will render a determination that the individual is in violation of College policy.

If the responding party admits the violation, or is found in violation, the Resolution Administrators, in consultation with others as appropriate, will determine an appropriate sanction or responsive action, will implement it, and act promptly and effectively to stop the harassment or discrimination, prevent its recurrence and remedy the effects of the discriminatory conduct.

The Resolution Administrators will inform the parties of the final determination within three (3) business days of the resolution, without significant time delay between notifications. Notification will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official College records; or emailed to the parties' College-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The notification of outcome will specify the finding on each alleged policy violation, any sanctions that may result which the College is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the College is permitted to share under state or federal law. The notice will also include information on when the results are considered by the College to be final, any changes that occur prior to finalization, and any appeals options that are available.

## **Sanctions**

Factors considered when determining a sanction/responsive action may include:

- The nature, severity of, and circumstances surrounding the violation
- An individual's disciplinary history
- Previous allegations or allegations involving similar conduct
- Any other information deemed relevant by the hearing panel
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment and/or retaliation
- The need to remedy the effects of the discrimination, harassment and/or retaliation on the reporting party and the community

## **Student Sanctions**

The following are the usual sanctions that may be imposed upon students or organizations singly or in combination:

- *Warning:* A formal statement that the behavior was unacceptable and a warning that further infractions of any College policy, procedure or directive will result in more severe sanctions/responsive actions.
- *Probation:* A written reprimand for violation of the Code of Student Conduct, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any College policy, procedure or directive within a specified period of time. Terms of the probation will be specified and may include denial of specified social privileges, exclusion from co-curricular activities, non-contact orders and/or other measures deemed appropriate.
- *Suspension:* Termination of student status for a definite period of time not to exceed two

- years, and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure at College.
- *Expulsion*: Permanent termination of student status, revocation of rights to be on campus for any reason or attend College-sponsored events.

### **Withdrawal or Resignation While Charges Pending**

Should a student decide to withdraw and/or not participate in the resolution process, the process will nonetheless proceed in the student's absence to a reasonable resolution and that student will not be permitted to return to Morningside unless all sanctions have been satisfied.

### **Appeals**

All requests for appeal consideration must be submitted in writing to the Title IX Coordinator within three (3) business days of the delivery of the written finding of the Title IX Coordinator. Any party may appeal the findings and/or sanctions only under the grounds described, below

An appeals panel chosen from the Title IX Team pool will be designated by the Title IX Coordinator from those who have not been involved in the process previously. Any party may appeal, but appeals are limited to the following grounds:

- A procedural error or omission occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.).
- To consider new evidence, unknown or unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.
- The sanctions imposed fall outside the range of sanctions the College has designated for this offense and the cumulative record of the responding party.

The appeals panel will review the appeal request(s). The original finding and sanction/responsive actions will stand if the appeal is not timely or is not based on the grounds listed above, and such a decision is final. The party requesting appeal must show that the grounds for an appeal request have been met, and the other party or parties may show the grounds have not been met, or that additional grounds are met. The original finding and sanction are presumed to have been decided reasonably and appropriately. When any party requests an appeal, the Title IX Coordinator will share the appeal request with the other party(ies), who may file a response within three (3) business days and/or bring their own appeal on separate grounds. If new grounds are raised, the original appealing party will be permitted to submit a written response to these new grounds within three (3) business days. These response or appeal requests will be shared with each party.

Where the appeals panel finds that at least one of the grounds is met by at least one party, additional principles governing the hearing of appeals will include the following:

- Decisions by the appeals panel are to be deferential to the original decision, making changes to the finding only where there is clear error and to the sanction/responsive action only if there is a compelling justification to do so.
- Appeals are not intended to be full re-hearings (de novo) of the allegation. In most cases, appeals are confined to a review of the written documentation or record of the investigation, and pertinent documentation regarding the grounds for appeal. An appeal is not an opportunity for appeals panelists to substitute their judgment for that of the original investigator(s) or Resolution

Administrator merely because they disagree with its finding and/or sanctions.

- Appeals granted based on new evidence should normally be remanded to the investigator(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, heard by the appeals panel.
- Sanctions imposed as the result of Administrative Resolution are implemented immediately unless the Title IX Coordinator or designee stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
  - For students: Graduation, study abroad, internships/ externships, etc. do NOT in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal.
- The Title IX Coordinator will confer with the appeals panel, incorporate the results of any remanded grounds, and render a written decision on the appeal to all parties within three (3) business days of the resolution of the appeal or remand.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand.
- All parties will be informed in writing within three (3) business days of the outcome of the appeal decision, without significant time delay between notifications, and in accordance with the standards for notice of outcome as defined above.
- In rare cases where a procedural [or substantive] error cannot be cured by the original investigator(s) and/or Resolution Administrator (as in cases of bias), the appeals panel may recommend a new investigation and/or Administrative Resolution process, including a new Resolution Administrator. The results of a remand cannot be appealed. The results of a new Administrative Resolution process can be appealed, once, on any of the three applicable grounds for appeals.
- In cases where the appeal results in reinstatement to the College or resumption of privileges, all reasonable attempts will be made to restore the responding party to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

### **Long-Term Remedies/Actions**

Following the conclusion of the resolution process and in addition to any sanctions implemented, the Title IX Coordinator may utilize long-term remedies or actions stop the harassment or discrimination, remedy its effects and prevent their reoccurrence. These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the community
- Permanently altering the housing situation of an the responding party (resident student or resident employee (or the reporting party, if desired))
- Permanently altering work arrangements for employees
- Providing campus escorts
- Climate surveys
- Policy modification
- Providing transportation accommodations
- Implementing long-term contact limitations between the parties
- Offering adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, the long-term remedies may also be provided even when the responding party is found not responsible.

The institution will maintain as confidential any long-term remedies/actions or protective measures, provided confidentiality does not impair the institution's ability to provide the actions or protective measures.

### **Failure to Complete Sanctions/Comply with Interim and Long-term Remedies/Responsive Actions**

All responding parties are expected to comply with conduct sanctions, responsive actions and corrective actions within the timeframe specified by the Title IX Coordinator. Failure to abide by these conduct sanctions, responsive actions and corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions/responsive/corrective actions and/or suspension, expulsion and/or termination from the College. A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

### **Records**

In implementing this policy, records of all allegations, investigations, resolutions, and hearings will be kept by the Title IX Coordinator indefinitely.

### **Statement of the Rights of the Parties**

#### ***Statement of the Reporting Party's rights:***

- The right to investigation and appropriate resolution of all credible allegations of sexual misconduct or discrimination made in good faith to College officials;
- The right to be informed in advance of any public release of information regarding the incident;
- The right not to have any personally identifiable information released to the public, without their consent;
- The right to be treated with respect by College officials;
- The right to have College policies and procedures followed without material deviation;
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence;
- The right not to be discouraged by College officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities;
- The right to be informed by College officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the reporting party so chooses. This also includes the right not to be pressured to report, as well;

- The right to have reports of sexual misconduct responded to promptly and with sensitivity by campus law enforcement and other campus officials;
- The right to be notified of available counseling, mental health, victim advocacy, health, legal assistance, student financial aid, visa and immigration assistance, or other student services, both on campus and in the community;
- The right to a campus no contact order (or a trespass order against a non-affiliated third party) when someone has engaged in or threatens to engage in stalking, threatening, harassing or other improper behavior that presents a danger to the welfare of the reporting party or others;
- The right to notification of and options for, and available assistance in, changing academic and living situations after an alleged sexual misconduct incident, if so requested by the reporting party and if such changes are reasonably available (no formal report, or investigation, campus or criminal, need occur before this option is available). Accommodations may include:
  - Change of an on-campus student's housing to a different on-campus location;
  - Assistance from College support staff in completing the relocation;
  - Transportation accommodations;
  - Arranging to dissolve a housing contract and pro-rating a refund;
  - Exam (paper, assignment) rescheduling;
  - Taking an incomplete in a class;
  - Transferring class sections;
  - Temporary withdrawal;
  - Alternative course completion options.
- The right to have the College maintain such accommodations for as long as is necessary, and for protective measures to remain confidential, provided confidentiality does not impair the institution's ability to provide the accommodations or protective measures;
- The right to be fully informed of campus policies and procedures as well as the nature and extent of all alleged violations contained within the report;
- The right to ask the investigators to identify and question relevant witnesses, including expert witnesses;
- The right to be informed of the names of all witnesses whose information will be used to render a finding, in advance of that finding, except in cases where a witness's identity will not be revealed to the responding party for compelling safety reasons (this does not include the name of the reporting party, which will always be revealed);
- The right not to have irrelevant prior sexual history admitted as evidence;
- The right to regular updates on the status of the investigation and/or resolution;
- The right to have reports addressed by investigators and Resolution Administrators who have received annual sexual misconduct training;
- The right to preservation of privacy, to the extent possible and permitted by law;

- The right to meetings and/or interviews that are closed to the public;
- The right to petition that any College representative in the process be recused on the basis of demonstrated bias or conflict-of-interest;
- The right to bring a victim advocate or advisor of the reporting party's choosing to all phases of the investigation and resolution proceeding;
- The right to have the College encourage the participation of student, faculty and staff witnesses, and the opportunity (if desired) to provide the investigators with a list of potential questions to ask of witnesses, and the right to challenge documentary evidence;
- The right to submit an impact statement in writing to the Resolution Administrator following determination of responsibility, but prior to sanctioning;
- The right to be promptly informed of the outcome and sanction of the resolution process in writing, without undue delay between the notifications to the parties;
- The right to be informed in writing of when a decision by the College is considered final, any changes to the sanction to occur before the decision is finalized, to be informed of the right to appeal the finding and sanction of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the College.

***Statement of the Responding Party's rights:***

The rights of the responding party should also be prominently indicated. These should include, among others particular to your College:

- The right to investigation and appropriate resolution of all credible reports of sexual misconduct and/or discrimination made in good faith to College administrators;
- The right to be informed in advance, when possible, of any public release of information regarding the report;
- The right to be treated with respect by College officials;
- The right to have College policies and procedures followed without material deviation;
- The right to be informed of and have access to campus resources for medical, health, counseling, and advisory services;
- The right to timely written notice of all alleged violations, including the nature of the violation, the applicable policies and procedures and possible sanctions;
- The right to review all documentary evidence available regarding the report, subject to the privacy limitations imposed by state and federal law, prior to the finding by the Resolution Administrator;

- The right to be informed of the names of all witnesses whose information will be used to render a finding, prior to final determination, except in cases where a witness's identity will not be revealed to the responding party for compelling safety reasons (this does not include the name of the reporting party, which will always be revealed);
- The right not to have irrelevant prior sexual history admitted as evidence in a campus resolution process;
- The right to have reports addressed by investigators and Resolution Administrators who have received annual training;
- The right to petition that any College representative be recused from the resolution process on the basis of demonstrated bias and/or conflict-of-interest;
- The right to meetings and interviews that are closed to the public;
- The right to have the College encourage the participation of student, faculty and staff witnesses, and the opportunity to provide the investigators with a list of potential questions to ask of witnesses, and the right to challenge documentary evidence;
- The right to have an advisor of their choice to accompany and assist throughout the campus resolution process;
- The right to a fundamentally fair resolution, as defined in these procedures;
- The right to provide an impact statement in writing to the Resolution Administrator following any determination of responsibility, but prior to sanctioning;
- The right to a decision based solely on evidence presented during the resolution process. Such evidence shall be credible, relevant, based in fact, and without prejudice;
- The right to be promptly informed of the outcome and sanction of the resolution process in writing, without undue delay between the notifications to the parties;
- The right to be informed in writing of when a decision of the College is considered final, any changes to the sanction to occur before the decision is finalized, to be informed of the right to appeal the finding and sanction of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the College.

### **Disabilities Accommodation in the Equity Resolution Process**

Morningside is committed to providing qualified students, employees or others with disabilities with reasonable accommodations and support needed to ensure equal access to the resolution process at the College. Anyone needing such accommodations or support should contact the Director of Disability Services, who will review the request and, in consultation with the person requesting the accommodation, and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation.

### **Revision**

These policies and procedures will be reviewed and updated annually by the Title IX Coordinator. The College reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect. The Title IX Coordinator may make minor modifications to procedure that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules, etc. The Title IX Coordinator may also vary procedures materially with notice (on the institutional web site, with appropriate date of effect identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure. Procedures in effect at the time of the resolution will apply to resolution of incidents, regardless of when the incident occurred. Policy in effect at the time of the offense will apply even if the policy is changed subsequently but prior to resolution, unless the parties consent to be bound by the current policy. If government regulations change in a way that impacts this document, this document will be construed to comply with government regulations in their most recent form.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such codes generally.

This policy and procedure was implemented in August 2018.

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