

MARY BALDWIN UNIVERSITY
SEXUAL MISCONDUCT POLICY AND PROCEDURES

Important Information for Individuals Who May Be Victims of Sexual Assault 1

Table of Contents

ARTICLE I. Introduction..... 3

- (a) Notice of Nondiscrimination 3
- (b) Overview of This Policy3
- (c) Scope of This Policy 3
- (d) Period of Limitations.....4
- (e) Training 4
- (f) Confidentiality 4
- (g) Definitions..... 5

ARTICLE II. Statements of Policy 12

- (a) Prohibition on Sexual Misconduct..... 12
- (b) Prohibition on Retaliation.....12
- (c) Prohibition on Providing False Information 12
- (d) Confidentiality..... 12
- (e) Requests Not to Investigate and Refusals to File a Complaint or to Cooperate..... 15
- (f) Related Misconduct and Limited Immunity16
- (g) Individuals with Disabilities16
- (h) Records and Reports 16

ARTICLE III. How and Where to Report Alleged Sexual Misconduct17

- (a) Reporting to Local Law Enforcement17
- (b) Reporting to University Administration..... 18

ARTICLE IV. Procedures Applicable to All Complaints of Sexual Misconduct20

- (a) Overview 20
- (b) Establishment of Review Committee..... 21
- (c) Initial Meetings with the Assigned Title IX Coordinator..... 22
- (d) The Investigation..... 24
- (e) Formal Versus Informal Resolution..... 26
- (f) Notation on Academic Transcript of Respondent..... 27

ARTICLE V. Formal Resolution28

- (a) Respondent’s Acknowledgment of Responsibility 28
- (b) The Formal Resolution Process..... 28
 - (i) The Hearing Panel.....28
 - (ii) Notice of the Composition of the Hearing Panel..... 28
 - (iii) Hearing Policies and Procedures..... 29
 - (iv) Outcome 30
 - (v) Appeals..... 33
 - (vi) Documentation 34

ARTICLE VI. Informal Resolution (Mediation)..... 35

EXHIBIT A. Suggested Actions for Victims of Sexual Assault..... 37

EXHIBIT B. Sexual Misconduct Complaint Form..... 40

SEXUAL MISCONDUCT

WHAT YOU NEED TO KNOW

Obtaining Information, Support and Assistance, Filing a Complaint

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

In addition, you can obtain information about reporting and resources from the Title IX Coordinator, phone: 540-887-7091, email: titleix@marybaldwin.edu or in person in Carpenter Academic, Room 211 (Staunton Campus). One of our Deputy Title IX Coordinators located Kable House, Room 115 (Staunton Campus) or in Room 117 at the Murphy Deming University of Health Sciences (Fishersville Campus) can also provide information.

Definition: "Sexual Misconduct" means any unwelcome conduct of a sexual nature, including any conduct or act of a sexual nature perpetrated against an individual without Consent. Sexual Misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual Misconduct can be committed by men or by women, and it can occur between people of the same or different sex. Sexual Misconduct includes but is not limited to: Dating Violence; Domestic Violence; Non-forcible Sex Acts; Sexual Assault; Sexual Exploitation; Sexual Harassment; and Stalking. The University encourages reporting of all Sexual Misconduct.

1

IMMEDIATELY AFTER INCIDENT

Reporting the Incident

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

Local Law Enforcement can be reached by calling 911 or for non-emergencies call the **Staunton Police Department** at 540-332-3842 located at 116 W Beverley Street, Staunton VA, or the **Augusta County Sheriff's Office** at 540-245-5333, located at 127 Lee Hwy, Verona VA. The **Campus Safety and Security Department** is located at 237 Sycamore Street, Staunton VA and is available by phone at 540-887-7000. Campus Safety and Security Officers are available 24 hour/7 days a week. The **Title IX Coordinator** is located in Carpenter Academic, Room 211, Staunton VA, phone: 540-887-7091, email: titleix@marybaldwin.edu

Seeking Emergency Medical Attention

You are encouraged to seek immediate medical attention.

Augusta Health Regional Hospital is located at 78 Medical Center Drive, Fishersville, VA 22939, Main Phone (540) 332-4000. The Emergency Department can be reached at (540) 332-4444. It is crucial that you obtain medical attention as soon as possible after a Sexual Assault to determine the possibilities of physical injury and to prevent or treat sexually transmitted diseases. Additionally, the Commonwealth of Virginia is required to pay for costs associated with the collection of evidence for sexual assaults.

Seeking Confidential Crisis Counseling

Student Health and Counseling Services are located in the Blakley House Health Center on the corner of Academy Street and N. Market Street, Staunton VA. The office is staffed from 9:00 a.m. until 5:00 p.m. Monday through Friday during the academic year, and is available by phone at 540-887-7095.

The Mary Baldwin University **Chaplain** is located in Carpenter Academic Building Room 107 on the Staunton Campus and is available by phone at (540) 887-7044, additional details at www.marybaldwin.edu/chaplain/

2

SEEKING EMOTIONAL SUPPORT/COUNSELING SERVICES

The Campus Student Life **On-Call Professional** can be reached at 540-255-4486 and is available 24 hours a day/7 days a week when University is in session.

The **New Directions Center** is a local center in Staunton that provides options for those emotionally, physically, & sexually abused. Counselors can be reached at 540-886-6800 or 1-800-56-haven.

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

3

REPORTING OPTIONS

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

www.marybaldwin.edu/title-ix/

You may file a criminal complaint by contacting the police. The University will provide you support throughout this process. A criminal complaint is governed by criminal law and standard of proof is "beyond a reasonable doubt," and potential sanctions include incarceration.

If the respondent is a University student or University employee, you may file a complaint by using our Sexual Misconduct website, contacting any Responsible Employee, or by contacting the Title IX Coordinator. You may seek a 'formal' or 'informal' resolution. The standard of proof is "a preponderance of the evidence," and potential sanctions include suspension or job termination.

You may file an anonymous complaint through our Sexual Misconduct website. If you provide your contact information, the University can best support you. The University's ability to respond and investigate depends on the details you provide in your anonymous report.

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

For Sexual Misconduct that took place in Staunton:
Staunton General District Court
113 E. Beverley Street, 1st Floor
Staunton, Virginia 24401.
Telephone: (540) 332-3878.

For Sexual Misconduct that took place in Augusta County:
Augusta County General District Court
6 East Johnson Street, Second Floor
Staunton, Virginia 24401
Telephone: (540) 245-5300

4

UNIVERSITY OBLIGATIONS

The University is required by Federal Law to investigate allegations of Sexual Misconduct and take any remedial action deemed necessary to preserve your safety and that of the University Community whether or not you wish to make a formal complaint of Sexual Misconduct. You will be informed of actions taken. You may receive assistance and support without disclosing details of the Misconduct.

Confidentiality. The University will respect and will make every feasible effort to properly preserve the confidentiality of the information shared by and the identities of the parties involved in Sexual Misconduct matters.

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

MARY BALDWIN UNIVERSITY

SEXUAL MISCONDUCT POLICY AND PROCEDURES

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

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

ARTICLE I.

INTRODUCTION

(a) Notice of Nondiscrimination.

Mary Baldwin University (the "University") is required to comply and committed to complying with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* ("Title IX"), which prohibits discrimination on the basis of sex in educational programs or activities, admission, and employment. Under certain circumstances, Sexual Misconduct (as defined below) constitutes sexual discrimination prohibited by Title IX. Inquiries concerning the application of Title IX may be referred to the University's Title IX Coordinator or to the U.S. Department of Education's Office for Civil Rights. The University's Title IX Coordinator is Doug Davis, whose office is located in Carpenter Academic (Main Campus), Staunton VA. He may be contacted by phone at 540-887-7091 or by email at dldavis@marybaldwin.edu.

(b) Overview of This Policy.

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

The University will make this Policy and information about recognizing and preventing Sexual Misconduct readily available to all students and other members of the University community.

The University will review this Policy on an annual basis and update it as necessary.

(c) Scope of This Policy.

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

In the case of allegations of Sexual Misconduct, unless otherwise stated, this Policy supersedes and applies in lieu of all other procedures and policies set forth in any other document containing University policies and/or procedures.

This Policy applies to all prohibited conduct, outlined in Article II below, that occurs on Campus. It also applies to prohibited conduct that occurs off campus, including on-line or electronic conduct, if: the conduct occurred in the context of an employment or education program or activity of the University, had continuing adverse effects on campus, or had continuing adverse effects in an off-campus employment or education program or activity. Examples of covered off-campus conduct include University-sponsored study abroad, research, or internship programs.

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

Regardless of where the conduct occurred and with whom, the University will offer resources and assistance to community members who are victims of prohibited conduct. The University will also assist the reporting party in identifying and contacting external law enforcement agencies and community resources.

(d) Period of Limitations.

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

(e) Training.

The University supports an education, training, and awareness program on sexual misconduct prevention and response. We will ensure training on an annual basis for administrators, faculty, staff, and students regarding this policy and regarding sexual misconduct prevention and response. New residential students and new MBU Responsible Employees receive training in a seminar and complete computer-based training. The Title IX Coordinator and deputy coordinators attend initial training and complete annual computer-based training. Online and graduate students and responsible employees complete annual computer-based training through United Educators.

(f) Confidentiality.

The University will respect and will make every feasible effort to properly preserve the confidentiality of the information shared by and the identities of the parties involved in Sexual Misconduct matters. A more detailed description of the varying degrees of confidentiality and associated procedures is contained in Section II(d).

MARY BALDWIN UNIVERSITY – SEXUAL MISCONDUCT POLICY DEFINITIONS

g. Definitions

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

(ii) Appropriate Divisional Leader. The “Appropriate Divisional Leader” is the University administrator the Policy designates to handle a particular appeal or other issue. For Complaints against students or faculty at the Murphy Deming College for Health Sciences, the Appropriate Divisional Leader is the Vice President for Health Sciences. For complaints against all other students or faculty members, the Appropriate Divisional Leader is the Provost. For Complaints against non-faculty staff members and third parties, the Appropriate Divisional Leader is the Director of Human Resources.

(iii) Assigned Title IX Coordinator. The “Assigned Title IX Coordinator” means either the Title IX Coordinator or the Deputy Title IX Coordinator assigned by the Title IX Coordinator or President to handle a given Complaint, as outlined above.

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

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

(vi) Complainant. A “Complainant” is an alleged victim of Sexual Misconduct who chooses to file a Complaint and participate in the University’s investigation and resolution of the alleged Sexual Misconduct.

(vii) Complaint. A “Complaint” is an allegation of Sexual Misconduct asserted against another party and reported to or filed with the University.

(viii) Consent. “Consent” is informed, freely and actively given and mutually understandable words or actions that indicate a willingness to participate in mutually agreed-upon sexual activity.

Consent is mutually understandable when a reasonable person would consider the words or actions of the parties to have manifested a mutually understandable agreement between them to engage in certain conduct with each other. Consent cannot be gained by ignoring or acting in spite of the objections of another. Consent can be withdrawn at any time.

Consent cannot be inferred from:

- 1) Silence, passivity, or lack of resistance alone;
- 2) A current or previous dating or sexual relationship alone (or the existence of such a relationship with anyone else);
- 3) Attire;
- 4) The buying of dinner or the spending of money on a date; or
- 5) Consent previously given (i.e., consenting to one sexual act does not imply consent to another sexual act).

Consent is not effective if it is obtained through the use of physical force, violence, duress, intimidation, coercion or the threat, expressed or implied, of bodily injury. Whether a party used intimidation or coercion to obtain consent will be determined by reference to the perception of a reasonable person found in the same or similar circumstances.

Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another person.

Consent may never be given by:

- a) Minors, even if the other participant did not know the minor's age;
- b) Mentally disabled persons, if their disability was reasonable knowable to a sexual partner who is not mentally disabled; or
- c) Persons who are incapacitated (whether as a result of drugs, alcohol or otherwise), unconscious, asleep or otherwise physically helpless or mentally or physically unable to make informed, rational judgments. The use of alcohol or drugs does not diminish one's responsibility to obtain Consent and does not excuse conduct that constitutes Sexual Misconduct under this Policy.

If at any time during a sexual act any confusion or ambiguity is or should reasonably be apparent on the issue of consent, it is incumbent upon each individual involved in the activity to stop and clarify the other's willingness to continue and capacity to consent. Neither party should make assumptions about the other's willingness to continue.

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

- 1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

2) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- a)** the length of the relationship,
- b)** the type of relationship, and
- c)** the frequency of interaction between the persons involved in the relationship.

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

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

(xii) Domestic Violence. “Domestic Violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the Commonwealth of Virginia, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the Commonwealth of Virginia.

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

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

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

(xvi) Hostile Environment. A “Hostile Environment” exists when the conduct is sufficiently severe, persistent or pervasive that it unreasonably interferes with, limits or deprives an individual from participating in or benefitting from the University’s education or work programs and/or activities. The University evaluates the existence of a Hostile Environment from both a subjective and objective viewpoint.

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

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

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

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

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

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

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

(xxiii) Respondent. A “Respondent” is an individual who has been accused of committing Sexual Misconduct by the reporting or filing of a formal or informal Complaint.

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

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

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

- 1) Rape and attempted Rape;
- 2) Intentional and unwelcome sexual touching (including disrobing or exposure), however slight, with any body part or any object, by a man or a woman upon a man or a woman, without effective Consent, of a person’s breasts, buttocks, groin, or genitals (or clothing covering such areas), or coercing, forcing, or attempting to coerce or force another to touch you, themselves, or a third party with any of these body parts or areas when such touching would be reasonably and objectively offensive;
- 3) Any sexual act in which there is force, violence, or use of duress or deception upon the victim;
- 4) Any sexual act perpetrated when the victim is unable to give Consent; and
- 5) Sexual intimidation, which includes but is not limited to:
 - a) Threatening, expressly or impliedly, to commit a sexual act upon another person without his or her Consent,
 - b) Stalking or cyber-stalking, and
 - c) Engaging in indecent exposure.

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

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

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

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

- a)** pressuring an individual to engage in sexual behavior for some educational or employment benefit, or
- b)** making a real or perceived threat that rejecting sexual behavior will carry a negative educational or employment consequence for the individual.

2) The behavior is so severe or pervasive that it has the effect of substantially interfering with the individual’s work or educational performance by creating an intimidating, hostile, or demeaning environment for employment, education, on-campus living, or participation in a University activity. Examples of this type of sexual harassment include:

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

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

- 1)** Dating Violence;
- 2)** Domestic Violence;
- 3)** Non-forcible Sex Acts;
- 4)** Sexual Assault;
- 5)** Sexual Exploitation;

6) Sexual Harassment; and

7) Stalking.

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

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

1) fear for his or her safety or the safety of others; or

2) suffer substantial emotional distress.

(xxxii) Strictly Confidential Resources. The University’s “Strictly Confidential Resources” are set forth in Section II(d)(ii)(1).

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

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

ARTICLE II.

STATEMENTS OF POLICY

(a) Prohibition on Sexual Misconduct.

This Policy is designed to protect the rights and needs of alleged victims and Respondents. Creating a safe environment is the responsibility of all members of the University community.

The University strongly encourages prompt reporting of all types of Sexual Misconduct and is committed to fostering a community that promotes timely and fair resolution of Sexual Misconduct cases. To that end, the University has defined Sexual Misconduct broadly to include any unwelcome conduct of a sexual nature, and the University will investigate all allegations of Sexual Misconduct. However, not all unwelcome conduct of a sexual nature rises to the level of warranting adjudication and/or discipline pursuant to this Policy. Although the University will investigate all allegations of Sexual Misconduct, this Policy uses the term “Actionable Sexual Misconduct,” as defined in Article I, to identify those acts of Sexual Misconduct that do warrant adjudication under, and discipline pursuant to, this Policy.

(b) Prohibition on Retaliation.

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

(c) Prohibition on Providing False Information.

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

(d) Confidentiality.

(i) Standard of Confidentiality (Applicable to All Complaints). The University will respect and will make every feasible effort to properly preserve the confidentiality of the information shared by and the identities of the parties involved in Sexual Misconduct matters.

All University personnel will explain his/her reporting obligation (discussed below) before any information is revealed to that employee. In keeping with this respect for confidentiality (and except as set forth in Section II(d)(ii) below), information regarding alleged Sexual Misconduct will generally be disclosed by University personnel only as follows:

(1) The University’s Responsible Employees will (and are obligated to) report information regarding alleged Sexual Misconduct to the Title IX Coordinator. Responsible Employees are (1) all non-student University employees (e.g., faculty, staff, administrators) not designated as “Strictly Confidential Resources”, and (2) the University’s Resident Advisors.

(2) Responsible Employees will (and are obligated to) handle information regarding alleged Sexual Misconduct in accordance with applicable local, state, and federal laws. For example,

under conditions of potential imminent harm to the community, the University may be required by federal law to inform the community of the occurrence of the alleged incident(s) of Sexual Misconduct. Similarly, information regarding the alleged Sexual Misconduct may be used as an anonymous report for data collection purposes under the Clery Act.

(3) Responsible Employees may report alleged Sexual Misconduct to local law enforcement if warranted by the nature of the allegations at issue.

(4) University administrators will share information regarding alleged Sexual Misconduct, as appropriate and necessary, in order to address and resolve the Complaint at issue, prevent the recurrence of similar Sexual Misconduct, and address the effects of the Sexual Misconduct.

Please note that the University cannot control disclosures by students or third parties.

(ii) Strict and Heightened Confidentiality.

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

(A) Counseling Services,

(B) Health Services, and

(C) Chaplain.

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

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

(2) Heightened Confidentiality. If information regarding alleged Sexual Misconduct is shared with a Responsible Employee, the Responsible Employee is obligated to report that information to the University’s Title IX Coordinator or a Deputy Title IX Coordinator and the Title IX Coordinator or Deputy Title IX Coordinator is obligated to report that information to the Review Committee. If the alleged victim to whom the information pertains desires that the Title IX Coordinator not share the information with the Respondent or with others, even as appropriate and necessary to address the allegations, such individual must request that

the University apply heightened confidentiality to such information. This request must be made to the Title IX Coordinator.

The University takes requests for heightened confidentiality seriously; however, such requests may limit the University's ability to investigate and take reasonable action in response to a Complaint.¹ The University must therefore evaluate heightened confidentiality requests in the context of the University's commitment to provide a reasonably safe and non-discriminatory environment. In order to make such an evaluation, the Title IX Coordinator may conduct a preliminary investigation into the alleged Sexual Misconduct and may weigh requests for heightened confidentiality against the following factors:

- (A)** the seriousness of the alleged Sexual Misconduct;
- (B)** the alleged victim's age;
- (C)** whether there have been other Complaints of Sexual Misconduct against the Respondent;
- (D)** the Respondent's right to receive information about the allegations if the information is maintained by the University as an "education record" under FERPA; and
- (E)** the applicability of any laws mandating disclosure.

The Title IX Coordinator will inform the person requesting heightened confidentiality of the University's limitations on maintaining heightened confidentiality and whether the University intends to pursue investigation and/or resolution in spite of the person's request.

Even when the University determines to abide by a request for heightened confidentiality (and even if such request limits the University's ability to take disciplinary action against the Respondent):

- (i.)** To the extent practicable and appropriate, the University will take prompt action to limit the effects of the alleged Sexual Misconduct and to prevent its recurrence. For instance, the University may take appropriate interim measures to ensure an individual's safety even in the absence of a University proceeding.
- (ii)** Information regarding the alleged Sexual Misconduct may be included in University records, as necessary and appropriate.
- (iii)** University personnel will (and are obligated to) handle information regarding alleged Sexual Misconduct in accordance with applicable local, state, and federal laws. For example, under conditions of potential imminent harm to the community,

¹ A Respondent has a right to know the name of the accuser and information regarding the nature of the allegations in order to defend against the Complaint; thus, the University may not be able to both adjudicate the Complaint and maintain the confidentiality of the Complainant during that process.

the University may be required by federal law to inform the community of the occurrence of the alleged incident(s) of Sexual Misconduct. Similarly, information regarding the alleged Sexual Misconduct may be used as an anonymous report for data collection purposes under the Clery Act.

Please note that the University cannot control disclosures by students or third parties.

(e) Requests Not to Investigate and Refusals to File a Complaint or to Cooperate.

Alleged victims may (i) request that the University not investigate the information or allegation(s) reported, (ii) refuse to file a Complaint, and/or (iii) refuse to cooperate in the investigation and/or resolution of allegation(s).

The University takes such requests and decisions seriously; however, such requests and decisions may limit the University's ability to investigate and take reasonable action in response to a Complaint. In such cases, the University will evaluate such requests and decisions in the context of the University's commitment to provide a reasonably safe and non-discriminatory environment.

In order to make such an evaluation, the Assigned Title IX Coordinator may conduct a preliminary investigation into the alleged Sexual Misconduct and may weigh such requests and decisions against the following factors:

- (1) the seriousness of the alleged Sexual Misconduct;
- (2) the alleged victim's age;
- (3) whether there have been other Complaints of Sexual Misconduct against the Respondent;
- (4) the Respondent's right to receive information about the allegations if the information is maintained by the University as an "education record" under FERPA; and
- (5) the applicability of any laws mandating disclosure.

The Assigned Title IX Coordinator will inform the person requesting that the University not pursue an investigation, refusing to file a Complaint and/or or refusing to participate in the investigation or resolution of allegations of Sexual Misconduct if the University intends to pursue investigation and/or resolution in spite of the person's request or refusal.

Regardless of an individual's requests or decisions, Title IX requires the University to take reasonable action in response to the information known to it. Thus, the University may take such measures as are deemed necessary by the Assigned Title IX Coordinator.

Additionally, even if the University cannot take disciplinary action against the Respondent because of a refusal to file a Complaint or participate in the investigation and/or resolution of allegations, to the extent practicable and appropriate, the University will take prompt action to limit the effects of the alleged Sexual Misconduct and to prevent its recurrence. For instance, the University may issue a "no-contact" order or take other appropriate interim measures to ensure an individual's safety even in the absence of a formal proceeding.

The Complaint or other information regarding alleged Sexual Misconduct may also be used as an anonymous report for data collection purposes under the Clery Act.

(f) Related Misconduct and Limited Immunity.

The University may adjudicate alleged misconduct that is related to the Sexual Misconduct at issue, even if such related misconduct is not, when standing alone, governed by this Policy.

The University considers the reporting and adjudication of Sexual Misconduct cases on campus to be of paramount importance. The University does not condone underage drinking or the use of illegal drugs; however, the University may extend limited immunity from punitive sanctioning in the case of illegal alcohol or drug use to victims, witnesses, and those reporting incidents and/or assisting the victims of Sexual Misconduct, provided that they are acting in good faith in such capacity and, in limited circumstances, may also extend such immunity to a Respondent.

(g) Individuals with Disabilities.

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

(h) Records and Report.

The Title IX Coordinator will keep on file in his/her office for seven years from the date of the filing of the formal complaint, copies of the written statement of the complainant, the respondent, and the action taken by the University. At the beginning of each semester, the Title IX Coordinator will report to the Campus Assessment and Risk Evaluation (CARE) committee on sexual misconduct reporting activities during the past term. This report will include the number of individuals who came to the Title IX Coordinator or Deputy Title IX Coordinators for help, the number of requests for informal mediation, the number of formal complaints later were lodged, and the kinds of behavior that gave rise to the complaints. The Title IX Coordinator will submit a written report to the President, who will make it public, while maintaining confidentiality of any individual or identifying details of any case.

ARTICLE III.

HOW AND WHERE TO REPORT ALLEGED SEXUAL MISCONDUCT

For information regarding seeking medical assistance and emotional support, as well as important contact information for local law enforcement agencies and hospitals, see Exhibit A attached to this Policy.

Because Sexual Misconduct may in some instances constitute both a violation of University policy and criminal activity, and because the University grievance process is not a substitute for instituting legal action, **the University encourages individuals to report alleged Sexual Misconduct promptly to campus officials and to law enforcement authorities, where appropriate.**

Individuals may, however, choose not to report alleged Sexual Misconduct to such campus officials and/or law enforcement authorities. The University respects and supports the individual's decision with respect to reporting; nevertheless, the University may notify appropriate law enforcement authorities if required or warranted by the nature of the allegations at issue.

(a) Reporting to Local Law Enforcement:

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

(i) The University's Campus Safety and Security Department, 24 hours a day, seven days a week (available by phone at 540-887-7000 and located in the Taylor House, 237 Sycamore Street, Staunton VA 24401),

(ii) The University's Title IX Coordinator, Doug Davis (available by phone at 540-887-7091 or by email at dldavis@marybaldwin.edu and located in Carpenter Academic, Room 211, Main Campus, Staunton VA 24401).

Individuals may inform law enforcement authorities about Sexual Misconduct and discuss the matter with a law enforcement officer without making a formal criminal complaint (or a University Complaint). Individuals who make a criminal complaint may also choose to pursue a University Complaint simultaneously.

A criminal investigation into the matter does not exempt the University from conducting its own investigation. However, the University's investigation may be delayed temporarily while the criminal investigators are gathering evidence. In the event of such a delay, the University may take interim measures when necessary to protect the alleged victim and/or the University community.

Neither the results of a criminal investigation nor the decision of law enforcement to investigate or decline to investigate the matter is determinative of whether Actionable Sexual Misconduct, for the purposes of this Policy, has occurred.

(b) Reporting to University Administration:

Individuals may choose not to report alleged Sexual Misconduct to campus officials. The University respects and supports the individual’s decision with respect to reporting; however, if information about Sexual Misconduct comes to the attention of the University, the University may (1) start an investigation even in the absence of a filed Complaint and/or (2) notify appropriate law enforcement authorities if required or warranted by the nature of the information of which it becomes aware.

Anyone wishing to make a Complaint to the university under this Policy should contact one of the following individuals, offices or file an anonymous report online. You may seek a formal or informal resolution. The standard of proof is “a preponderance of the evidence” and sanctions include suspension or job termination.

(i) Title IX Coordinator. The University’s Title IX Coordinator and Sexual Misconduct Response Coordinator is Doug Davis whose office is in Carpenter Academic, Main Campus, Staunton, VA 24401. Mr. Davis may be contacted by phone, 540-887-7091 or by email at dldavis@marybaldwin.edu. In addition to overseeing the prompt, fair, and impartial investigation and resolution of all Complaints filed with the University, Mr. Davis generally will serve as the Assigned Title IX Coordinator for allegations regarding non-VWIL staff/students.

Title IX Coordinator	Staunton VA Campus	Office Phone	Email
Doug Davis	Carpenter, Room 211	540-887-7091	dldavis@marybaldwin.edu

(ii) Deputy Title IX Coordinators. The University’s Deputy Title IX Coordinators work under the oversight of the Title IX Coordinator to assist with the handling of Title IX-related Complaints. The Title IX Coordinator may, at his or her discretion, assign a Deputy Title IX Coordinator as the Assigned Title IX Coordinator in connection with a given Complaint and ensure no conflict of interest. Deputy Title IX Coordinators will assist with annual training for responsible employees and students.

Deputy Title IX Coord	Staunton VA Campus	Office Phone	Email
Lisa Wells	Kable House, Room 1115	540-887-7330	lwells@marybaldwin.edu
Martha Modlin	MDCHS, Room 117	540-887-4323	mmodlin@marybaldwin.edu

(iii) Mary Baldwin University’s Campus Safety and Security Department. The University’s Campus Safety and Security Department is located in the Taylor House at 237 Sycamore Street, Staunton VA 24401, available by phone at 540-887-7000, 24 hours a day, seven days a week.

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

If an employee of the University's Campus Safety and Security Department receives a report of alleged Sexual Misconduct, that employee must notify the University's Title IX Coordinator or a Deputy Title IX Coordinator.

Anonymous reports of sexual misconduct can be submitted through the Campus Sexual Misconduct Prevention Reporting Website

https://cm.maxient.com/reportingform.php?MaryBaldwin&layout_id=2

An anonymous report allows you to let the University know that a sexual misconduct incident happened without sharing the name of the victim. Please fill out as much information as possible, the level of detail or identifying information regarding the alleged misconduct will determine the University's ability to thoroughly investigate and respond to the report.

An individual may report alleged Sexual Misconduct to a faculty or staff member other than those referenced above. No member of the University community may discourage an individual from reporting alleged incidents of Sexual Misconduct.

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

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

www.marybaldwin.edu/title-ix/

You may file a criminal complaint by contacting the police. The University will provide you support throughout this process. A criminal complaint is governed by criminal law and standard of proof is "beyond a reasonable doubt," and potential sanctions include incarceration.

If the respondent is a University student or University employee, you may file a complaint by using our Sexual Misconduct website, contacting any Responsible Employee, or by contacting the Title IX Coordinator. You may seek a 'formal' or 'informal' resolution. The standard of proof is "a preponderance of the evidence," and potential sanctions include suspension or job termination.

You may file an anonymous complaint through our Sexual Misconduct website. If you provide your contact information, the University can best support you. The University's ability to respond and investigate depends on the details you provide in your anonymous report.

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

For Sexual Misconduct that took place in Staunton:
Staunton General District Court
113 E. Beverley Street, 1st Floor
Staunton, Virginia 24401.
Telephone: (540) 332-3878.

For Sexual Misconduct that took place in Augusta County:
Augusta County General District Court
6 East Johnson Street, Second Floor
Staunton, Virginia 24401
Telephone: (540) 245-5300

ARTICLE IV.

PROCEDURES APPLICABLE TO ALL COMPLAINTS OF SEXUAL MISCONDUCT

(a) Overview.

(i) Oversight. The Assigned Title IX Coordinator will be responsible for overseeing the prompt, fair, and impartial investigation and resolution of Complaints filed with the University.

(ii) Conflicts. If any administrator designated by this Policy to participate in the investigation or resolution of a Complaint is the Respondent (including, but not limited to, the Title IX Coordinator), then the President will appoint another University administrator to perform such person's duties under this Policy. If the President is the Respondent, then the Title IX Coordinator will appoint another University administrator to perform his duties under this Policy. Assigned Title IX coordinators will not be assigned to Sexual Misconduct cases involving staff/students within their division of responsibility at the University.

(iii) Support Persons / Advisors. The Complainant and Respondent may be accompanied by a support person / advisor of their choice during any meeting or interview held pursuant to this Policy. The support person /advisor may consult with the person he or she is there to support but may not participate in the meeting or interview by asking or answering questions or by making statements to the interviewer(s). In the case of a hearing, the support person / advisor may not address the Hearing Panel, cross-examine witnesses, or have any other speaking role. A support person / advisor must maintain confidentiality regarding any and all communications exchanged pursuant to this Policy.

(iv) Timing. The University will make every reasonable effort to ensure that the investigation and resolution of a Complaint occurs in as timely and efficient a manner as possible. The University's investigation and resolution of a Complaint (not including an appeal, if applicable) will generally be completed within 60 calendar days of the receipt of the Complaint, absent extenuating circumstances. Throughout the investigation, the Complainant and the Respondent will receive periodic status updates from the Assigned Title IX Coordinator.

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

(v) Interim Measures. If at any point during the complaint, investigative or disciplinary processes, the Assigned Title IX Coordinator deems it necessary for the protection of any member of the University community, the Assigned Title IX Coordinator may recommend actions such as those listed below. These actions may be appealed to the Appropriate Divisional Leader, whose decision regarding their imposition will be final.

1) For student Respondents:

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

b) summarily suspending the Respondent;

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

a) take such steps as are reasonable, appropriate, and necessary to restrict the Respondent's movement on campus; or

b) reassign or place on administrative leave such Respondent.

(b) Establishment of Review Committee.

Upon receipt of information that an act of Sexual Violence has been committed against a student attending the institution or may have occurred on Campus, or in a noncampus building or property, or on public property, the Title IX coordinator or designee shall promptly report the information, including any personally identifiable information, to a Review Committee. At any time, the Title IX coordinator or any other responsible employee may provide any information to law enforcement with the consent of the victim.

(i) Purpose of Review Committee. The purpose of this Review Committee shall be to review information related to acts of Sexual Violence.

(ii) Composition of Review Committee. Such Review Committee shall consist of three or more persons and shall include the Title IX Coordinator or designee, a representative of law enforcement, and a student affairs representative. The representative of law enforcement shall be a representative of campus security.

(iii) Scope of Review. The review committee may obtain law-enforcement records, criminal history record information, health records, available institutional conduct or personnel records, and known facts and circumstances of the information reported in the complaint or information or evidence known to the institution or to law enforcement. The Review Committee shall conduct its review in compliance with federal privacy law.

(iv) Timing of Meeting. Upon receipt of information of an alleged act of Sexual Violence reported to the Title IX Coordinator, the Review Committee shall meet within 72 hours to review the information and shall meet again as necessary as new information becomes available.

(v) Disclosure to Protect Health or Safety of Student(s). If, based on consideration of all factors, the Review Committee, or if the Review Committee cannot reach a consensus, the representative of law enforcement on the Review Committee, determines that the disclosure of the information, including personally identifiable information, is necessary to protect the health or safety of the student or other individuals as set forth in 34 C.F.R. § 99.36, the representative of law enforcement on the Review Committee shall immediately disclose such information to the law-enforcement agency that would be responsible for investigating the alleged act of Sexual Violence. Such disclosure shall be for the purposes

of investigation and other actions by law enforcement. Upon such disclosure, the Title IX coordinator or his designee shall notify the victim that such disclosure is being made. The provisions of this subsection shall not apply if the law-enforcement agency responsible for investigating the alleged act of Sexual Violence is located outside the United States.

(vi) Disclosure in Cases of Rape. In cases in which the alleged act of Sexual Violence would constitute Rape, the representative of law enforcement on the Review Committee shall inform the other members of the Review Committee and shall within 24 hours consult with the attorney for the Commonwealth or other prosecutor who would be responsible for prosecuting the alleged Rape and provide the prosecutor with the information received by the Review Committee without disclosing personally identifiable information, unless such information was disclosed as necessary to protect the health or safety of student(s). If such consultation does not occur and any other member of the Review Committee individually concludes that the alleged act of Sexual Violence would constitute Rape, that member shall within 24 hours consult with the attorney for the Commonwealth or other prosecutor who would be responsible for prosecuting Rape and provide the prosecutor with the information received by the Review Committee without disclosing personally identifiable information, unless such information was to protect the health or safety of student(s).

(vii) Conclusion of the Review Committee's Investigation. At the conclusion of the , the Title IX coordinator and the law-enforcement representative shall each retain (i) the authority to proceed with any further investigation or adjudication allowed under state or federal law and (ii) independent records of the Review Committee's considerations, which shall be maintained under applicable state and federal law.

(c) Initial Meetings with the Assigned Title IX Coordinator.

Simultaneously with the assembly and investigation of the Review Committee, the Title IX Coordinator will begin compiling information as follows:

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

- 1) provide the alleged victim a copy of this Policy;
- 2) explain avenues for formal resolution and informal resolution (mediation) of the Complaint;
- 3) explain the steps involved in a Sexual Misconduct investigation;
- 4) discuss confidentiality standards and concerns with the alleged victim;
- 5) provide the alleged victim with a Sexual Misconduct Complaint Form (a copy of which is attached to this Policy as Exhibit C) and determine whether the alleged victim wishes

to file a Complaint and participate in the University's investigation and resolution of the Complaint²;

- 6)** refer the alleged victim to the Counseling Center or other resources, as appropriate;
- 7)** discuss protection from, and reporting of, Retaliation; and
- 8)** discuss with the alleged victim, as appropriate, possible interim measures that can be provided to the alleged victim during the pendency of the investigative and resolution processes. The University may implement such measures, if appropriate and reasonably available, whether a formal Complaint has been filed (with either campus administrators or law enforcement agencies) or whether an investigation has commenced (by either campus administrators or law enforcement agencies). Interim measures may include, but are not limited to:
 - a)** issuing no-contact orders to prevent any contact between the alleged victim, the Respondent, witnesses, and/or third parties;
 - b)** providing the alleged victim an escort to ensure that he or she can move safely between classes, work, and/or activities;
 - c)** changing an alleged victim's or a Respondent's on-campus housing, if any, to a different on-campus location and providing assistance from University support staff in completing the relocation;
 - d)** arranging to dissolve a campus housing contract and offering a pro-rated refund;
 - e)** changing work arrangements;
 - f)** rescheduling class work, assignments, and examinations;
 - g)** arranging for the alleged victim to take an incomplete in a class;
 - h)** moving the alleged victim or the Respondent from one class section to another;
 - i)** permitting a temporary withdrawal from the University;
 - j)** providing alternative course completion options;
 - k)** providing counseling services; and
 - l)** providing academic support services.

Following the initial meeting with the alleged victim the Assigned Title IX Coordinator will, if applicable, promptly determine the interim measures to be provided to the alleged victim. Such determination will be promptly communicated

² An alleged victim who elects to file a Complaint and participate in the University's investigation and resolution of the Complaint becomes a Complainant for the purposes of this Policy. Even when an alleged victim is not cooperative or requests that the University not pursue an investigation, Title IX requires the University to take reasonable action in response to the information known to it. Thus, the University may take such measures as are deemed appropriate by the Assigned Title IX Coordinator.

to the alleged victim (and in no event later than the point at which it is communicated to the Respondent) and the Respondent.

(ii) Respondent's Initial Meeting with the Assigned Title IX Coordinator.

If the alleged victim wishes to pursue a formal or informal resolution through the University or if the University otherwise deems that a further investigation is warranted, as soon as is reasonably practicable after the Assigned Title IX Coordinator's initial meeting with the alleged victim, the Assigned Title IX Coordinator will schedule an initial meeting with the Respondent. During the initial meeting with the Respondent, the Assigned Title IX Coordinator will, as applicable:

- 1) provide the Respondent, in writing, sufficient information consistent with state and federal privacy laws and, if applicable, the alleged victim's request for confidentiality, to allow him or her to respond to the substance of the allegation, including, if possible, the name of the alleged victim and the date, location, and nature of the alleged Sexual Misconduct;
- 2) provide the Respondent a copy of this Policy;
- 3) explain the University's procedures for formal resolution and informal resolution (mediation) of the Complaint;
- 4) explain the steps involved in a Sexual Misconduct investigation;
- 5) discuss confidentiality standards and concerns with the Respondent;
- 6) discuss non-Retaliation requirements with the Respondent;
- 7) inform the Respondent of any interim measures already determined and being provided to the alleged victim that directly affect the Respondent (e.g., changing his or her class schedule, or moving her to an alternate residence hall);
- 8) refer the Respondent to the Counseling Center or other resources, as appropriate;
- 9) discuss with the Respondent, as appropriate, possible interim measures that can be provided to the Respondent during the pendency of the investigative and resolution processes (such as those set forth in Section IV(b)(i)(8) of this Policy). The University may implement such measures, if appropriate and reasonably available, whether a formal Complaint has been filed or whether an investigation by either campus administrators or law enforcement agencies has commenced; and
- 10) allow the Respondent to provide a written statement in response to the allegation if the Respondent so desires.

(d) The Investigation.

(i) The Assigned Title IX Coordinator's Initial Determination.

The Assigned Title IX Coordinator, in consultation with (1) the Title IX Coordinator or another Deputy Title IX Coordinator, and (2) the Appropriate Divisional Leader will determine that further investigation of the Complaint should be conducted *unless* it is clear

on its face value and/or based on the Assigned Title IX Coordinator's initial meetings with the parties that no reasonable grounds exist for believing that the Respondent engaged in Actionable Sexual Misconduct.

In the event that the Assigned Title IX Coordinator determines that further investigation is not warranted, he or she will determine and document (in consultation, as necessary, with the Complainant, the Respondent, and other University administrators) the appropriate resolution of the Complaint and inform the parties of the same. Appropriate resolutions may include, but are not limited to, dismissal of the Complaint; conferences with one or both of the parties; or the implementation of other measures, such as changes in class schedules or living arrangements.

In the event that the Assigned Title IX Coordinator determines that further investigation is not warranted, the Complainant and/or the Respondent may appeal the Assigned Title IX Coordinator's decision in writing to the Appropriate Divisional Leader and provide a copy of the appeal to the Assigned Title IX Coordinator within ten days of receipt of the notice of closure. The Assigned Title IX Coordinator will promptly inform the other party of the appeal.

Following receipt of the appeal, the Appropriate Divisional Leader will make a determination as to whether the Complaint warrants further investigation or the case should be closed and whether any additional or different remedial action is necessary. He or she will notify the Complainant and the Respondent concurrently of his or her decision.

(ii) The Appointment of the Investigators.

If the Assigned Title IX Coordinator determines that further investigation should be conducted, the Assigned Title IX Coordinator will promptly appoint two Investigators (one male and one female), share their names and contact information with the Complainant and the Respondent, and forward the Complaint to the Investigators.

Within three days of such appointment, the Investigators, the Complainant, or the Respondent may identify to the Assigned Title IX Coordinator in writing any real or perceived conflicts of interest posed by assigning such Investigators to the matter. The Assigned Title IX Coordinator will carefully consider such statements and will assign different individuals as Investigators if it is determined that a material conflict of interest exists.

(iii) The Investigators' Activities and Report.

Upon receipt of the Complaint, the Investigators will promptly begin their investigation, taking steps such as

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

enforcement agencies). Throughout the investigation, the Investigators will remain neutral.

The Investigators should obtain, where applicable and where possible, the written consent of any third-party witnesses to the disclosure, as contemplated by this Policy, of any Personally Identifiable Information contained in the Complaint, the Investigative Report, and/or any other documents the disclosure of which is contemplated by this Policy in order to further the resolution of the Complaint.

The Investigators will complete a written investigative report that includes items such as summaries of all interviews conducted, photographs, and descriptions of relevant evidence, summaries of relevant electronic records, and a detailed report of the events in question (the "Investigative Report"). The Investigators will share the Investigative Report with the Assigned Title IX Coordinator, who will make it available in his or her office for review by the Complainant and the Respondent after redacting from the Investigative Report Personally Identifiable Information of other students and information that would not be admissible at a hearing on the matter pursuant to Section V of this Policy. All parties to whom the Investigative Report is distributed pursuant to this Policy must maintain it in confidence; the Investigative Report may only be disclosed as contemplated by this Policy.

(iv) Evaluation of the Investigative Report.

The Assigned Title IX Coordinator, in consultation with (1) the Title IX Coordinator or another Deputy Title IX Coordinator, and (2) the Appropriate Divisional Leader is responsible for determining and documenting, based on the Investigative Report and other available information, whether reasonable grounds exist to believe that the conduct at issue constitutes Actionable Sexual Misconduct.

The Assigned Title IX Coordinator will direct that the case will proceed unless it is clear that no reasonable grounds exist for believing that the Respondent engaged in Actionable Sexual Misconduct. The Assigned Title IX Coordinator will specify which allegations and, if applicable, which other, related alleged misconduct, will go forward for resolution under this Policy.

If the Assigned Title IX Coordinator, after consulting with (1) the Title IX Coordinator or another Deputy Title IX Coordinator, and (2) the Appropriate Divisional Leader, finds no reasonable grounds to believe that the conduct at issue constitutes Actionable Sexual Misconduct, then the Assigned Title IX Coordinator will determine (in consultation, as necessary, with the Complainant, Respondent, and other University administrators) and document the appropriate resolution of the Complaint and will promptly notify the parties of that determination.

The Complainant and/or the Respondent may appeal the Assigned Title IX Coordinator's decision in writing to the Appropriate Divisional Leader and provide a copy of the appeal to the Assigned Title IX Coordinator within ten days of receipt of the notice of closure. The Assigned Title IX Coordinator will promptly inform the other party of the appeal.

Following receipt of the appeal, the Appropriate Divisional Leader will make a determination as to whether the Complaint should proceed or the case should be closed and whether any additional or different remedial action is necessary. He or she will notify the Complainant and the Respondent concurrently of his or her decision.

(e) Formal Versus Informal Resolution.

At any time before the Hearing Panel provides notice of the hearing in accordance with Section V(b)(iii)(2), the Complainant may elect to resolve his or her Complaint through the informal resolution (mediation) process in accordance with Article VI of this Policy, provided that (i) the Respondent agrees to such resolution, (ii) the Complainant and the Respondent are both students or are both employees of the University, (iv) the Assigned Title IX Coordinator determines that informal resolution is an appropriate mechanism for resolving the Complaint, and (v) the Complaint does not involve Sexual Assault. Otherwise, a Complaint that is not closed pursuant to the Assigned Title IX Coordinator's evaluation of the Investigative Report will proceed to formal resolution in accordance with Article V of this Policy.

(f) Notation on Academic Transcript of Respondent in Cases of Physical Sexual Acts Without Consent.

If a student who is taking or has taken a course at a Campus of the University has been suspended for, has been permanently dismissed for, or withdraws from the University while under investigation for an offense involving Sexual Violence, the University shall include in that student's academic transcript a prominent notation stating that such student was suspended for, was permanently dismissed for, or withdrew from the institution while under investigation for an offense involving Sexual Violence under the institution's code, rules, or set of standards.

Such notation shall be substantially in the following form: "[Suspended, Dismissed, or Withdrew while under investigation] for a violation of Mary Baldwin University's Sexual Misconduct Policy."

Upon the filing of a Complaint or the beginning of an investigation, the University shall notify each student that any such suspension, permanent dismissal, or withdrawal will be documented on the student's academic transcript.

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

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

ARTICLE V.

FORMAL RESOLUTION

(a) Respondent's Acknowledgement of Responsibility Prior to Hearing.

At any time prior to the date of his or her designated hearing, the Respondent may elect to acknowledge his or her actions and take responsibility for the alleged Sexual Misconduct. In such a situation, the Assigned Title IX Coordinator will propose sanction(s). If the Complainant and the Respondent agree to such proposed sanction(s), then the Complaint will be resolved without a hearing and without any further rights of appeal by any party. If either the Complainant or the Respondent objects to such proposed sanction(s), then a Hearing Panel will convene for the exclusive purpose of determining a sanction, which determination may be subject to appeal pursuant to Section V(b)(v) of this Policy.

(b) The Formal Resolution Process.

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

(i) The Hearing Panel. The Assigned Title IX Coordinator will appoint the members of the "Hearing Panel." The Hearing Panel will include three faculty and/or staff members.

For Complaints involving a faculty or staff Respondent, the Assigned Title IX Coordinator will designate one faculty/staff member of the Hearing Panel as the Chair of the Hearing Panel. For Complaints involving a student Respondent, the Dean of each college will serve as the non-voting Chair of the Hearing Panel (e.g., for Murphy Deming College for Health Sciences students the Vice President for Health Sciences will be the Chair and for all other students the Provost will be the chair). The Assigned Title IX Coordinator will share the Complaint and the Investigative Report with the Hearing Panel and, if only a portion of the misconduct alleged in the Complaint justifies continuing to the hearing process, the Assigned Title IX Coordinator will specify which part(s) of the alleged misconduct will be the subject of the hearing.

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

The parties may challenge the participation of any member of the Hearing Panel by submitting a written objection to the Assigned Title IX Coordinator within three days of receipt of the notice of the composition of the Hearing Panel. Such objection must state the specific reason(s) for the objection. The Assigned Title IX Coordinator will evaluate the objection and determine whether to alter the composition of the Hearing Panel. Failure to submit a timely and proper objection will constitute a waiver of any right of objection to the composition of the Hearing Panel. Any changes in the composition of the Hearing Panel will be provided in writing to both parties prior to the date of the first hearing.

(iii) Hearing Policies and Procedures.

1) Submission of Written Materials by the Parties. Within five days of receipt of the notice of composition of the Hearing Panel, the Complainant and the Respondent may provide the Chair of the Hearing Panel with (1) a list of witnesses, if any, that they propose that the Hearing Panel call and a brief description of each proposed witness's connection to and/or knowledge of the issues in dispute³, and (2) a written statement of position with regard to the allegations.

2) Notice of the Hearing. Not less than five days but not more than ten days after delivery of notice of the composition of the Hearing Panel to the parties, the Hearing Panel will provide a separate notice to each of the Complainant, the Respondent, and any witnesses of other third parties whose testimony the Hearing Panel deems relevant, requesting such individuals to appear before the Hearing Panel. The notice should set forth, as applicable, the date, time, and location of the hearing. In its notices to the Complainant and the Respondent, the Hearing Panel will provide the names of the witnesses or other third parties that the Hearing Panel plans to call.

3) Failure to Appear. If the Complainant or the Respondent fails to appear before the Hearing Panel if requested to do so, and such party was provided proper notice of the hearing as set forth above, then absent extenuating circumstances, the Hearing Panel will proceed to determine the resolution of the Complaint.

4) Special Arrangements and/or Accommodations. In addition to disability-related accommodations, the parties may request special arrangements and/or accommodations (for example, the ability to participate remotely) in connection with the hearing. Any such requests must be submitted in writing to the Assigned Title IX Coordinator no later than three days before the hearing. The Assigned Title IX Coordinator will determine, in his or her sole discretion, whether to grant such requests, and his or her decision will be final. Additionally, even in the absence of a specific request from a party, the Assigned Title IX Coordinator may make special arrangements related to the hearing or other accommodations as he or she deems necessary.

5) No Contact Prior to the Hearing. The Complainant and the Respondent may not contact each other outside of the hearing, even to discuss the hearing.

6) Evidentiary Matters. The Complainant and the Respondent will have an equal opportunity to present evidence during the hearing. Formal rules of evidence will not be observed during the hearing. Evidence of the past sexual histories of the Complainant and the Respondent will not be permitted at the hearing, with the following exceptions:

a) evidence is permitted to show that the Complainant has in the past been formally disciplined by the University for falsely filing Complaints alleging Sexual Misconduct,

³ The Hearing Panel also may call witnesses not suggested by the Complainant or the Respondent.

b) evidence is permitted to show that the Respondent has in the past been either convicted in a criminal proceeding or formally disciplined by the University for Sexual Misconduct, and

c) evidence regarding the past sexual activity of the Respondent (regardless of whether the Respondent was formally charged with a violation of the Policy with respect to such conduct) may be permitted to show that the Respondent has engaged in a pattern of behavior similar to the alleged Sexual Misconduct at issue before the Hearing Panel, provided that (1) the Respondent has not been found "not responsible" by the University in a proceeding related to such sexual activity and (2) the Chair of the Hearing Panel has made written findings both that the evidence is reliable and trustworthy and that the conduct is sufficiently and substantially similar to the conduct at issue before the Hearing Panel to suggest a pattern of behavior.

7) Conduct of the Hearing.

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

b) Testimony of the Respondent. The Respondent may choose not to testify or appear before the Hearing Panel; however, his or her exercise of that option will not preclude the Hearing Panel from making a determination regarding the Complaint filed against the Respondent.

(iv) Outcome.

1) The Decision of the Hearing Panel. Following the conclusion of the hearing, the Hearing Panel will confer and by majority vote determine whether the evidence (including the information provided in and by the Investigative Report, the parties' written statements, if any, the evidence presented at the hearing, and the testimony of the parties and witnesses) establishes that it is more likely than not⁴ that the Respondent committed Actionable Sexual Misconduct.

2) Sanctions.

a) Generally. Sanctions for a finding of responsibility depend upon the nature and gravity of the misconduct, any record of prior discipline for Sexual Misconduct, or both. Sanctions may include, without limitation, withholding a promotion or pay increase, reassigning employment, terminating employment, temporary suspension without pay, compensation adjustments, expulsion or suspension from the University, disciplinary

⁴ In other words, the standard of proof will be the "preponderance of the evidence" standard.

probation, expulsion from campus housing, mandated counseling, and/or educational sanctions deemed appropriate by the Hearing Panel.

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

b) Implementation of Sanctions. Sanctions imposed are not effective until the resolution of any timely appeal pursuant to Section V(b)(v), below. However, if it is advisable in order to protect the welfare of the victim or the University community, the Hearing Panel (or other decision-making body, if applicable) may recommend and the Assigned Title IX Coordinator may determine that any sanctions be effective immediately and continue in effect until such time as the appeal process is exhausted.

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

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

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

4) Final Outcome Letter. Within ten calendar days following the conclusion of the hearing, the Assigned Title IX Coordinator will issue a written decision letter (the "Final Outcome Letter") concurrently to the Respondent and the Complainant.

For employee and third-party Respondents, the Final Outcome Letter will set forth (1) the name of the Respondent, (2) the violation(s) of this Policy for which the Respondent was found responsible or a statement that the Respondent was found not to have violated this Policy, and (3) the sanctions imposed on the Respondent. Where appropriate, the Final Outcome Letter may set forth names of other individuals, such as a victim or witness, if such other individuals provide their written consent to such inclusion.

For student Respondents alleged to have committed Sexual Assault and/or Non-forcible Sex Acts, the Final Outcome Letter will set forth (1) the name of the Respondent, (2) the violation(s) of this Policy for which the Respondent was found responsible or a statement that the Respondent was found not to have violated this Policy, and (3) the sanctions imposed on the Respondent, if any (setting forth only a description of the disciplinary action taken, the date of its imposition, and its duration), and where appropriate, it may set forth names of other individuals, such as a victim or witness, if such other individuals provide their written consent to such inclusion.

For student Respondents alleged to have committed any other form of Sexual Misconduct, the Final Outcome Letter will set forth (1) the name of the Respondent, (2) the violation(s) of this Policy for which the Respondent was found responsible or a statement that the Respondent was found not to have violated this Policy, and (3) the sanctions imposed on the Respondent, if any (setting forth only a description of the disciplinary action taken, the date of its imposition, and its duration), and where appropriate, it may set forth names of other individuals, such as a victim or witness, if such other individuals provide their written consent to such inclusion. To the extent that the sanctions imposed on the Respondent do not constitute part of the Complainant's "education record" (as that term is defined by FERPA), then such information will be redacted from the version of the Final Outcome Letter that is provided to the Complainant. This redaction is unnecessary if a student Respondent has been suspended for, has been permanently dismissed for, or withdraws from the University while under investigation for an offense involving Sexual Violence, as Article IV(e), above, requires a notation on a student's transcript under those circumstances.

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

6) If it is determined, however, that the Respondent committed Sexual Assault or one or more Non-forcible Sex Acts, University policy does not prohibit the further disclosure of the Final Outcome Letter by either the Complainant or the Respondent.

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

1) Appeals of the Decision of the Hearing Panel Regarding Responsibility for Sexual Misconduct. The only permissible grounds for an appeal are (a) availability of germane new evidence not reasonably available at the time of the hearing that could significantly impact the outcome of the hearing and/or (b) procedural errors during the hearing that significantly impacted the outcome of the hearing.

Appeals of the decision of the Hearing Panel must be made in writing to the Appropriate Divisional Leader. The Appropriate Divisional Leader will provide a copy of the written appeal to the Assigned Title IX Coordinator. The Assigned Title IX Coordinator will promptly inform the other party (i.e., the Complainant or the Respondent) of the filing of the appeal.

The Appropriate Divisional Leader will make a determination (i) that the decision of the Hearing Panel should stand; (ii) that the decision of the Hearing Panel should be overturned; or (iii) that additional evidence should be obtained before making an appellate determination.

In the event that he or she determines that the decision of the Hearing Panel should be overturned or that additional evidence should be obtained, he or she will specify, after consultation with the Assigned Title IX Coordinator and other University administrators, as necessary, the appropriate steps to be taken to come to a final resolution of the Complaint. The Appropriate Divisional Leader will notify the Complainant and the Respondent concurrently of the decision or action.

2) Appeals of Sanctions.

The sanctions imposed on the Respondent may be appealed on grounds that the severity of the sanction imposed is incommensurate to the gravity of the Sexual Misconduct for which the Respondent was found responsible. Appeals must be made in writing to the Appropriate Divisional Leader. The Appropriate Divisional Leader will provide a copy of the written appeal to the Assigned Title IX Coordinator. The Assigned Title IX Coordinator will promptly inform the other party (i.e., the Complainant or the Respondent) of the filing of the appeal.

The Appropriate Divisional Leader will make a determination (a) that the decision of the Hearing Panel should stand, or (b) that the decision of the Hearing Panel should be overturned.

In the event that he or she determines that the decision of the Hearing Panel should be overturned, he or she will specify (after consultation with the Assigned Title IX Coordinator and other University administrators, as necessary) the final sanctions to be imposed on the Respondent, which will not be subject to further appeal (except as provided in the following paragraph). The Appropriate Divisional Leader will notify the Complainant and the Respondent concurrently of the decision or action. When the Respondent is a student, the Appropriate Divisional Leader's decision is final.

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

The President of the University will, after consulting as necessary with the Assigned Title IX Coordinator and other University administrators, make a determination (a) that the decision regarding the initial sanction-related appeal should stand, or (b) that the decision of the Appropriate Divisional Leader should be overturned, in which case he or she will determine the appropriate final resolution of the matter. Before making the decision, the President of the University may request additional information from the Complainant, Respondent, or other individuals as he or she sees fit. The decision of the President of the University is final.

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

ARTICLE VI.

INFORMAL RESOLUTION (MEDIATION)

Informal resolution is only appropriate if (i) the Complainant requests it, (ii) the Respondent agrees to it, (iii) the Complainant and the Respondent are both students or are both employees of the University, (iv) the Assigned Title IX Coordinator determines that it is an appropriate mechanism for resolving the Complaint, and (v) the Complaint does not involve Sexual Assault.

Informal resolution may not be selected for less than all of the misconduct alleged in the Complaint (for example, the parties may not choose to resolve a claim of Sexual Assault according to the formal resolution process but mediate all other claims). If the parties agree to informal resolution (and informal resolution is appropriate for all of the claims at issue), then all of the claims must be resolved according to the informal resolution process.

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

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

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

(b) Notice of the Mediation. Promptly after the Assigned Title IX Coordinator has appointed the Presiding Officer, the Assigned Title IX Coordinator will provide concurrent written notice to the Complainant and the Respondent, setting forth (1) the date, time and location of the mediation, and (2) the name of the individual selected to serve as the Presiding Officer. If only a portion of the alleged misconduct justifies continuing to adjudication, the Assigned Title IX Coordinator will also specify in the notice which part(s) of the alleged misconduct will be the subject of the mediation.

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

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

(d) Attendance. Both the Complainant and the Respondent are expected to attend the mediation. If either party fails to appear at the mediation, and such party was provided proper notice of the mediation as set forth above, then absent extenuating circumstances, the Presiding Officer may direct that resolution of the Complaint be determined according to the formal resolution process set forth above.

(e) The Mediation.

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

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

(ii) Counsel and Advisors.

1) Legal Counsel. Under no circumstances may legal counsel be present at the mediation on behalf of the Complainant or the Respondent. The University, however, may seek advice from the University's in-house or outside counsel on questions of law and procedure throughout the mediation process.

2) Other Advisors. Absent accommodation for disability, the parties may not be accompanied by an advisor during the mediation.

(iii) Resolution. During the mediation, the Presiding Officer will attempt to facilitate the parties' resolution of the Complaint. If the mediation results in a resolution between the parties and the Assigned Title IX Coordinator finds the resolution to be appropriate under the circumstances (giving consideration to the extent to which the resolution will protect the safety of the alleged victim and the entire school community), the informal disciplinary procedure will be concluded and the Complaint will be closed. If the parties are unable to reach a resolution, the formal resolution process outlined in Article V of this Policy will promptly commence.

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

EXHIBIT A
MARY BALDWIN UNIVERSITY -- SEXUAL MISCONDUCT POLICY AND PROCEDURES
IMPORTANT CONTACT INFORMATION

University Resources

The University's **Title IX Coordinator** is Doug Davis, whose office is located In Carpenter Academic, Room 211, Main Campus, Staunton VA. Mr. Davis by phone at 540-887-7091 or by email at dldavis@marybaldwin.edu. Mr. Davis can also be contacted through our campus safety and security phone at 540-887-7000.

The **Campus Safety and Security Department** is located at 237 Sycamore Street, Staunton VA and is available by phone at 540-887-7000. Campus Safety and Security Officers are available 24 hours a day/7 days a week.

The Campus Student Life **On-Call Professional** can be reached at 540-255-4486 and is available 24 hours a day/7 days a week when University is in session.

Student Health and Counseling Services are located in the Blakley House Health Center on the corner of Academy Street and N. Market Street, Staunton VA. The office is staffed from 9:00 a.m. until 5:00 p.m. Monday through Friday during the academic year, and is available by phone at 540-887-7095.

The Mary Baldwin University **Chaplain** is located in Carpenter Academic, Room 107 on the Staunton Campus and is available by phone at (540) 887-7044 www.marybaldwin.edu/chaplain/

Community Resources

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

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

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

Augusta Health Regional Hospital is located at 78 Medical Center Drive, Fishersville, VA 22939, Main Phone (540) 332-4000. The Emergency Department can be reached at (540) 332-4444.

New Directions Center. This local center provides options for those emotionally, physically, & sexually abused. Counselors can be reached at 540-886-6800 or 1-800-56-haven.

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

The Assigned Title IX Coordinator can provide individuals with recommendations for legal counsel upon request.

SEXUAL MISCONDUCT POLICY AND PROCEDURES

Suggested Actions for Victims of Sexual Assault

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

1. Ensure Your Physical Safety.

You may seek help from **local law enforcement agencies** or by contacting the **University's Campus Safety and Security Department**. The Campus Safety and Security Department can assist you with contacting local law enforcement and can help you obtain transportation to the local law enforcement office. Campus Safety personnel are on duty at the Campus Safety Department 24 hours a day, seven days a week.

2. Seek Medical Assistance and Treatment; Preserve Evidence.

Local options for medical care include Campus Health Services and Augusta Health Hospital. It is crucial that you obtain medical attention as soon as possible after a Sexual Assault to determine the possibilities of physical injury and to prevent or treat sexually transmitted diseases (such as HIV). Medical facilities can also screen for the presence of sedative drugs such as Rohypnol or GHB (date-rape drugs).

Employees at the University's Student Health Services can help you contact a support person, such as a family member, a friend or roommate.

If you choose to have an evidence collection kit (or "rape kit") completed, it is important to do so within 5 days. Even if you have not decided to file charges, it is advisable to have the evidence collection kit completed so that you can preserve the options of obtaining a protective order and or filing criminal charges at a later date. The Director of Health Services administers evidence collection kits. Individuals may go directly to the medical facility of their choice or may be referred to the hospital by Student Health Services.

In order to best preserve evidence for an evidence collection kit, it may be advisable to avoid showering, bathing, going to the bathroom or brushing your teeth before the kit is completed. You should also wear (or take with you in a paper – not plastic – bag) to the hospital the same clothing that you were wearing during the assault. An evidence collection kit can still be completed even if you have showered or bathed.

3. Obtain Emotional Support

The University's Counseling Center on our Staunton Main Campus can help students sort through their feelings and begin the recovery process. The professionals at the Counseling Center are trained to provide crisis intervention on short-term and emergency issues. The Counseling Center can also provide referral services for outside providers and law enforcement for MBU students and employees. The University for Health Sciences contracts separately for their students' counseling services. Counseling is free of charge to all students. In some instances, the law may require the disclosure of information shared by students with counselors. However, absent a legal mandate to the contrary, counseling services are confidential, are not part of students' University records, and will not be reported to other University personnel.

4. Obtain Information / Report Misconduct

You are encouraged to report incidents of Sexual Assault to the University's Title IX Coordinator or other Responsible Employee or offices as outlined in the Sexual Misconduct Policy and Procedures (even if you have filed a report directly with law enforcement). Further information about how to report Sexual Assault is provided in the body of the Mary Baldwin University Sexual Misconduct Policy and Procedures. University personnel can help you access resources (including recommendations for legal counsel, if requested) and can provide you with support and information, including information on the University's procedures for investigating and addressing instances of Sexual Assault.

EXHIBIT B

**MARY BALDWIN UNIVERSITY -- SEXUAL MISCONDUCT POLICY AND PROCEDURES
SEXUAL MISCONDUCT COMPLAINT FORM**

Today's date: _

Information Regarding the Complainant

Name of the Complainant: _____

Complainant's Phone Number/email address: _

The Complainant is (please check one):

- a faculty member (current or former)
- a student (current or former)
- a staff member (current or former)
- not affiliated with the University.

Information Regarding the Respondent

Name of the Respondent: _____

The Respondent is (please check one):

- a faculty member (current or former)
- a student (current or former)
- a staff member (current or former)
- not affiliated with the University.

Information Regarding the Alleged Sexual Misconduct

Time and date of the alleged Sexual Misconduct: _____

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

on campus: _____

off campus: _____

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

Please provide a brief description of the alleged Sexual Misconduct:

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

Please feel free to use the reverse side of this form or separate pages to continue your description, if desired.

Signature of the Complainant: _____