



1.0.005 Milwaukee School of Engineering (MSOE) Title IX Sex Discrimination Policy

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Approvals: Title IX Coordinator
Responsible office: Title IX Coordinator
Policy contact: Title IX Coordinator

I. PURPOSE and SCOPE

1.1. Title IX

The Milwaukee School of Engineering (MSOE) seeks to provide an educational and employment environment free from all forms of discrimination or harassment or intimidation based on race, ethnicity, color, creed, religion, sex (including pregnancy and pregnancy-related disabilities), age, national origin/ancestry, arrest record, conviction record, physical or mental disability, military and veteran status, sexual orientation, gender identity, genetic characteristics, marital status, or any other characteristic protected by local, state or federal law.

Enacted as part of the United States Education Amendments of 1972, Title IX is a federal civil rights law that prohibits discrimination on the basis of sex in education programs and activities that receive federal financial assistance: “[N]o person in the United States shall on the basis of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance” (32 C.F.R. § 106.31). In a 1992 United States Supreme Court decision (*Franklin v. Gwinnett Public Schools*), sexual harassment was recognized to be a form of discrimination under Title IX.

MSOE does not discriminate on the basis of sex and prohibits sex discrimination in all education programs and activities it operates, as required by Title IX, including in admission and employment.

1.2. Purpose

The Milwaukee School of Engineering is a postsecondary institution that receives federal financial assistance, and as such, the University is legally required to comply with Title IX law. The purpose of this *Milwaukee School of Engineering (MSOE) Title IX Sex Discrimination Policy*, therefore, is to explain the processes, requirements, procedures, and other matters associated with MSOE’s Title IX compliance, which focuses on the elimination of

discrimination on the basis of sex in its education programs and activities, including its employment environment. A fundamental goal of this policy is to protect all students, faculty, staff, other employees, and third parties (e.g., guests, applicants, visitors) from sex discrimination that jeopardizes or limits or denies equal access to, participation in, and derivation of benefits from, the University's education programs and activities.

Sex discrimination—which includes sex-based harassment and sexual violence—is addressed at MSOE by policies and procedures associated with federal Title VII law, Wisconsin state law, as well as by official institutional policies and procedures (see, for example, the MSOE Student Conduct Code, the MSOE Faculty Handbook, and the MSOE Staff Handbook). However, when sex discrimination occurs in the context of the University's education programs and activities, and when the discrimination functions to jeopardize equal access to, and participation in, those education programs and activities, the discrimination implicates Title IX requirements that are addressed in this Title IX sex discrimination policy.

When a report or a complaint of sex discrimination is brought to the attention of the University, trained personnel shall respond by applying the relevant provisions and procedures of this policy in a manner that protects the safety of students, employees, and other parties, provides due process for all parties, promotes accountability, and restores access to, and ensures participation in, the University's education programs and activities. All University responses to reports and complaints of sex discrimination are associated with a supportive, respectful, fair, equitable, and impartial approach for all parties.

This policy is intended to serve as one of the institution's proactive and educational measures to prevent sex discrimination, and as such, this policy shall be widely distributed, and it shall be available and easily accessible on an ongoing basis in electronic and print formats.

1.3. Scope

This policy applies to all persons participating or attempting to participate in MSOE's education programs or activities. These persons include students, faculty, staff, other employees, and third-party persons. Examples include but are not limited to:

- Persons who believe they are victims of sex discrimination, including sex-based harassment, sexual violence, and other types of sexual misconduct.
- Persons who are accused of sex discrimination, including sex-based harassment, sexual violence, and other types of sexual misconduct.
- Persons who wish to report alleged discrimination on the basis of sex, including discrimination aimed at an individual or discrimination that affects persons as a group or category and that results from institutional policies, procedures, or practices.
- Persons who desire MSOE to investigate alleged discrimination on the basis of sex in the University's education programs and activities, including its employment environment.
- Persons who are participants in some manner (e.g., witnesses) in MSOE's processes and procedures associated with the University's efforts to eliminate

discrimination on the basis of sex in its education programs and activities, including its employment environment.

- Title IX personnel at MSOE, for which this policy serves as guidance in their Title IX work at the University.

In addition, this policy applies to persons who are not participating or who are no longer participating in MSOE's education programs and activities but who were participating or attempting to participate in the education programs and activities and who at the same time experienced alleged sex discrimination. This can include, but is not limited to, prospective students, former students, former employees, visitors, attendees at short-term workshops and camps, and so on.

This policy explains:

- Title IX-related definitions and concepts.
- The scope of *sex discrimination*, including the conduct that constitutes discrimination on the basis of sex under Title IX.
- MSOE's Title IX administrative structure, including the role and responsibilities of the University's Title IX Coordinator and other Title IX personnel, as well as training requirements for those personnel and for MSOE students and employees. The MSOE Title IX Coordinator is trained, impartial, avoids prejudgment of facts at issue, avoids bias and conflicts of interest, and acts without bias towards all persons in a Title IX situation.
- How to report alleged sex discrimination to MSOE, including confidential reporting options, and how to request MSOE to investigate alleged sex discrimination.
- The steps—and the requirements associated with those steps—that MSOE takes when it learns of conduct that reasonably may constitute Title IX sex discrimination. These steps include offering and coordinating supportive measures, taking prompt and effective action to evaluate and to investigate reports and complaints of alleged sex discrimination, and to end sex discrimination and prevent its recurrence. MSOE employs a single-investigator or investigator team and a separate decisionmaker in Title IX investigations, which features individual meetings and the gathering of relevant non-testimonial evidence. MSOE Title IX investigators and decisionmakers are trained, impartial, avoid prejudgment of facts at issue, avoid bias and conflicts of interest, and act without bias towards all persons in a Title IX situation.
- The rights of persons and their options in alleged sex discrimination situations, processes, and procedures.
- The grievance process for resolving Title IX sex discrimination complaints. MSOE employs a single decisionmaker in its Title IX grievance process. This is typically, but may not always be, the MSOE Title IX Coordinator. Using the permissible evidence gathered in a Title IX investigation, the decisionmaker employs individual meetings to evaluate evidence and credibility issues, and to determine if a violation of this

MSOE Title IX policy has occurred. If a violation has occurred, MSOE ends the discrimination, prevents its recurrence through the issuing of appropriate sanctions and other actions, and restores full participation in MSOE's education programs and activities to persons who were adversely affected by the discrimination. The decisionmaker is trained, impartial, avoids prejudgment of facts at issue, avoids bias and conflicts of interest, and acts without bias towards all persons in a Title IX situation.

- How to appeal the determination of a policy violation resulting from the MSOE Title IX grievance process.
- The informal resolution option for resolving Title IX sex discrimination complaints. The informal resolution option is available in most, but not all, alleged Title IX sex discrimination situations.

II. RELATED POLICIES

Student Complaints

2.1. Other Policies

Other policies that are referred to in this MSOE Title IX policy include the following:

- MSOE Faculty Handbook
- MSOE Staff Handbook
- MSOE Faculty Research Policy
- MSOE Student Code of Conduct

III. DEFINITIONS

3.1. Important Title IX Definitions

Advisor: Under MSOE's Title IX policy, a complainant and a respondent may be accompanied by a single *advisor* of their choice in all meetings and proceedings, including during an investigation and the grievance process, including any applicable appeal. An advisor may be, but is not required to be, an attorney. The role of the advisor in all meetings and proceedings is limited. MSOE is not required to provide an advisor.

Appeal: An *appeal* is a formal request to-reconsider a decision or an action. Under MSOE's Title IX policy, several items are subject to appeal by a Complainant and a Respondent, including supportive measures, emergency removals, dismissals of complaints, and final decisions. Appeals must comply with requirements that are detailed in the policy.

Applicant: A prospective student who submits an admission application for the purpose of enrolling in MSOE's education program and activity.

Bias: Under MSOE's Title IX policy, *bias* refers to a prejudice, predisposition, or inclination in favor of or against a person or thing.

Coercion: *Coercion* is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want to engage in any sexual

activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive. There is no requirement that a party resists the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

Complainant: A student or an employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX and who files a complaint requesting MSOE to investigate the alleged discrimination. A Complainant can also be a person other than a student or employee, who was participating or attempting to participate in MSOE's education programs or activities at the time of the alleged discrimination. A person who is alleged to have engaged in conduct that could constitute sex discrimination is referred to as a Respondent.

Complaint: Under MSOE's Title IX policy, a *complaint* is an oral or written request to MSOE that objectively can be understood as a request to investigate and make a determination about alleged sex discrimination. A *report* of sex discrimination is information about possible sex discrimination. Under its Title IX policy, MSOE is required to respond in specific ways to both reports and complaints of sex discrimination.

Conduct on the basis of sex: Conduct that targets a person because of their sex.

Confidential employee: *Confidentiality* with respect to information means the information is not shared. *Privacy* with respect to information means information that is shared on a need-to-know basis. Privacy under the MSOE Title IX policy means information related to a report or a complaint will be shared only with others who have a "need to know" in order to assist with the resolution of the complaint. On the other hand, under MSOE's Title IX policy, an employee may be designated as a *confidential employee*. A confidential employee can provide services to persons related to alleged sex discrimination, but a confidential employee is not required to report to MSOE information about the alleged discrimination. Confidential employees must comply with some requirements, such as providing the contact information for the Title IX Coordinator to persons who have experienced alleged sex discrimination-- see this policy for details about MSOE confidential employees, including the names and contact information for the confidential employees.

Conflict of Interest: Under MSOE's Title IX policy, a *conflict of interest* occurs when an individual has a material connection to a dispute, or the parties in a dispute, such that a reasonable person would question the individual's ability to be impartial.

Consent: Under MSOE's Title IX policy *consent* is clear, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in sexual activity.

- Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- Previous relationships or prior consent cannot imply consent to future sexual acts.
- In order to give effective consent, one must be of legal age.
- Consent cannot occur in situations associated with force, coercion, and incapacitation.

Consent is determined by whether the relevant facts establish conduct that amounts to agreement to engage in sexual activity. The ability to consent is determined by whether a person has the capacity to consent or whether they have lost such capacity.

Disciplinary sanctions: Under MSOE's Title IX policy, *disciplinary sanctions* are consequences imposed on a Respondent following a determination that the Respondent violated the policy.

Dismissal: Under MSOE's Title IX policy, the Title IX Coordinator may dismiss a complaint on one or more specific grounds. For example, if a Respondent cannot be identified, a complaint can be dismissed. Under MSOE's Title IX policy, all complaints must be initially evaluated for *dismissal* on one or more of several specific grounds.

Due process: Under MSOE's Title IX policy, *due process* refers to procedures and practices that are clear, transparent, consistent, reliable, predictable, prompt, fair, and equitable with respect to the resolution of all forms of sex discrimination. MSOE incorporates procedures and practices that comport with the requirements of due process. MSOE treats Complainants and Respondents equitably: (1) by offering supportive measures to both parties; (2) by providing notices to both parties for allegations, decisions, procedures, meetings, and proceedings; (3) by maintaining standards for bias, conflicts of interest, and relevant and impermissible evidence; (4) by following equitable and clear investigative and grievance resolution practices and requirements that include the sharing of evidence with both parties; (5) by providing clear procedures for appeals. Under MSOE's Title IX policy, MSOE presumes that the Respondent has not violated its Title IX policy unless or until a determination of responsibility is made at the conclusion of the grievance process, including any applicable appeals. While the Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution do not apply to private universities, the Department of Education does not impose different procedural standards for public and private institutions.

Education programs and activities: Under MSOE's Title IX policy, *education programs and activities* refer to:

- Any operation of MSOE, regardless of location.
- Buildings owned or controlled by MSOE.
- Buildings owned or controlled by an officially recognized MSOE student organization.
- Conduct that is subject to MSOE's disciplinary authority.
- The exercise of MSOE's power or authority by employees and agents regardless of location.

Evidence, impermissible: Under MSOE's Title IX policy, *impermissible evidence* refers to evidence that cannot be sought or employed in any stage of the Title IX process.

Impermissible evidence includes:

- Evidence that is protected under legal privilege, or that was provided to a confidential employee, unless the party voluntarily waives the privilege or confidentiality.
- A person's health care records, unless the person gives voluntary, written consent.
- Evidence of the Complainant's sexual interests and history.

Evidence, relevant: Under MSOE’s Title IX policy, *relevant evidence* is evidence that may aid a decisionmaker in determining whether a sex discrimination allegation occurred. Questions during any stage of the Title IX process are relevant if they seek evidence that may aid in showing whether a sex discrimination allegation occurred.

Force: Under MSOE’s Title IX policy, *force* is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent. Sexual violence is a form of sexual discrimination prohibited by Title IX.

Grievance process: Under Title IX law, a *grievance process* is a formal means of dispute resolution to provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in an institution’s educational programs and activities, or by the Title IX Coordinator, alleging sex discrimination. At MSOE, the Title IX grievance process consists of stages, including the initial evaluation of and response to a complaint, a complaint investigation, a complaint decision-making process, a written determination of whether MSOE’s Title IX policy was violated, and any subsequent appeal. The complaint investigation is followed by the resolution, which features a single decisionmaker who employs the evidence gathered in the investigation, individual meetings with Complainants, Respondents, witnesses, and other persons (as necessary) to evaluate evidence and credibility issues, culminating in the written determination that indicates whether a violation of this MSOE Title IX policy has occurred, and if so, the disciplinary sanctions that are necessary to ensure that sex discrimination does not continue or recur. The grievance process complies with numerous requirements in Title IX law, such as the requirement to treat Complainants and Respondents equitably, the requirement to presume that the Respondent is not responsible for the alleged sexual discrimination until a determination is made at the conclusion of the grievance process, the requirement to establish reasonably prompt timeframes for the major stages of the grievance process, and so forth.

Incapacitation: Under MSOE’s Title IX policy, *incapacitation* is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction). Sexual activity with someone who one should know to be--or based on the circumstances, should reasonably have known to be--mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout), constitutes a violation of this policy. This policy also covers a person whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of date rape drugs. Use of alcohol or other drugs will never function as a defence for any behavior that violates this policy. Facts that may be relevant to determining incapacity resulting from alcohol or drugs include the following:

- Ability to speak coherently.
- Ability to track conversation.
- Ability to appreciate and weigh risks and benefits.
- Ability to walk and stand.
- Ability to engage in behaviors requiring presence of mind.
- Time period of consumption.
- Nature of alcohol or drugs.

- Amount of alcohol or drugs.
- Size of the person consuming.

Individualized discrimination: Under MSOE’s Title IX policy, *individualized discrimination* refers to a particular decision made, or a particular action taken, that results in adverse treatment of a particular person that limits or excludes them from participation in MSOE’s education programs or activities, or denies them the benefits of participating in MSOE’s education programs and activities.

Informal resolution: Under its Title IX policy, during its grievance process, at any point prior to determining whether sex discrimination occurred, MSOE can offer an *informal resolution* process for resolving a complaint of alleged sex discrimination. Whereas the grievance process is intended to result in a determination of whether the policy has been violated, the intent of the informal resolution process is to establish an agreement between the Complainant and the Respondent. The agreement features terms that both parties agree to abide by. For example, an informal resolution agreement may impose a term that restricts contact between the parties. Under Title IX law, several requirements are associated with an informal resolution process. MSOE is not required to offer an informal resolution process in response to every complaint of alleged sex discrimination—in fact, MSOE must first determine whether it is appropriate to offer an informal resolution process. MSOE has the right to decline to offer informal resolution despite one or more of the parties’ wishes. At the conclusion of the informal resolution process, as with the conclusion of its single decisionmaker grievance process, MSOE must ensure that sex discrimination does not continue or recur.

Mandatory reporter: Under MSOE’s Title IX policy, all employees—with the exception of confidential employees—must notify the Title IX Coordinator when they have information about conduct that reasonably may constitute sex discrimination under Title IX. In addition, all employees—including confidential employees—must provide the contact information of the Title IX Coordinator to persons who provide the employee with information about conduct that reasonably may constitute sex discrimination under Title IX. In addition to serving as mandatory reporters, employees have other Title IX obligations—see Section 5.1.3.1. of this policy. To summarize, except for confidential employees, all employees are *mandatory reporters*. This includes student employees (e.g., Resident Assistants). A person who wishes to communicate to an MSOE employee information about conduct that reasonably may constitute sex discrimination, and who wishes the information to be confidential, must communicate with a designated confidential employee—see this policy for details about MSOE confidential employees, including the names and contact information for the confidential employees.

Office for Civil Rights (OCR): The United States Department of Education’s Office for Civil Rights (OCR) enforces Title IX of the Education Amendments of 1972. Title IX applies to schools, local and state educational agencies, and other institutions that receive federal financial assistance from the Department. An institution that receives Department funds must operate its education program or activity in a nondiscriminatory manner free of discrimination based on sex, including sexual orientation and gender identity. Some key issue areas in which institutions have Title IX obligations are: recruitment, admissions, counseling; financial assistance; athletics; sex-based harassment, which encompasses sexual assault and other forms of sexual violence; treatment of pregnant and parenting students;

treatment of LGBTQI+ students; discipline; single-sex education; and employment. Also, no institution or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in a proceeding under Title IX.

Party: Under MSOE's Title IX policy, *party* refers to the Complainant or the Respondent in a Title IX complaint.

Pregnancy or related conditions: Under MSOE's Title IX policy, pregnancy or related conditions refers to:

- Pregnancy, childbirth, termination of pregnancy, or lactation.
- Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation.
- Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

Programmatic discrimination: Under MSOE's Title IX policy, *programmatic discrimination* refers to sex discrimination that occurs in a systematic way because of an institutional policy or practice. Programmatic discrimination adversely affects persons as a group or by category, rather than by individualized decision. Programmatic discrimination is usually not attributed to an individual Respondent. An example of programmatic discrimination is a situation in which a college provides new facilities, luxury travel, unlimited food, new equipment, new uniforms, and full scholarships for most men's athletics teams, whereas the women's teams have outdated facilities, ride in vans, eat per-diem, use old equipment and old uniforms, receive only partial scholarships. The Title IX Coordinator must monitor MSOE's education programs and activities for conduct that may constitute programmatic discrimination and take steps reasonably calculated to address such conduct.

Recordkeeping: Under its Title IX policy, MSOE must maintain for a period of at least seven years the following records:

- Records concerning reports of alleged sex discrimination.
- Records documenting the entire grievance process or informal resolution associated with each complaint of alleged sex discrimination.
- Records documenting the actions MSOE took in response to each notification received by the Title IX Coordinator concerning conduct that reasonably may constitute sex discrimination under Title IX.
- Records documenting dismissals of complaints.
- Records documenting emergency removals under Title IX.
- Records documenting employee administrative leaves under Title IX.
- Records documenting supportive measures and remedies under Title IX.

Remedies: Under MSOE's Title IX policy, *remedies* are measures provided, as appropriate, to a Complainant or any other person MSOE identifies as having had their equal access to MSOE's education programs and activities limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to the education programs and activities after MSOE has determined that sex discrimination occurred.

Report: Under MSOE's Title IX policy, a *report* of sex discrimination is information about possible sex discrimination. A *complaint* is an oral or written request to MSOE that objectively can be understood as a request to investigate and make a determination about alleged sex discrimination. Under its Title IX policy, MSOE is required to respond in specific ways to both reports and complaints of sex discrimination.

Respondent: Under MSOE's Title IX policy, a *Respondent* is a person who is alleged to have violated the policy.

Retaliation, including peer retaliation: Under MSOE's Title IX policy, *retaliation* refers to intimidation, threats, coercion, or discrimination against any person by MSOE itself, by a student, by an employee, or by any other person authorized to provide aid, benefit, or service under MSOE's education programs and activities, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation or proceeding, including an informal resolution process.

Sex: Under Title IX law, *sex* refers to assigned sex at birth, biological sex, sex stereotypes, sex characteristics, pregnancy and pregnancy-related conditions, sexual orientation, and gender identity.

Sex-based harassment: Under MSOE's Title IX policy, prohibited *sex-based harassment* refers to sexual harassment and other harassment on the basis of sex. *Sex-based harassment is a form of sex discrimination.* Sex-based harassment is conduct that is sexual in nature or conduct on the basis of sex that constitutes the following categories:

- Quid Pro Quo harassment
- Hostile Environment Harassment
- Sexual Assault
- Domestic Violence
- Dating Violence
- Stalking

See this policy for details about each of these categories.

Sex discrimination: Under MSOE's Title policy, *sex discrimination* is adverse treatment of a person on the basis of sex that jeopardizes or limits or denies equal access to, participation in, and derivation of benefits from, the University's education programs and activities. Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, gender identity, and sex-based harassment.

Sex-separated treatment: Under MSOE's Title IX policy, *sex-separated treatment* refers to different treatment or separation on the basis of sex. Sex-separated treatment is permitted only if it results in no more than *de minimis* (i.e., it is not material) harm to a person. Examples of permitted sex-separated treatment include sex-separated living facilities, sex-separated sports teams involving a contact sport or where selection is based on competitive skill, and social fraternities and sororities. Adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with a person's gender identity subjects a person to more than *de minimis* harm on the basis of sex.

Sexual assault: Under MSOE's Title IX policy, *sex assault* is an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Specific sexual assault offenses include the following:

- Rape
- Statutory rape.
- Dating violence.
- Domestic violence.
- Stalking.

Sexual conduct: Conduct that is sexual in nature.

Sexual history: *Sexual history* refers to information about a party's sexual interests or prior sexual conduct. Under MSOE's Title IX policy, in situations concerning alleged sex discrimination in the form of sex-based harassment, information concerning the sexual history of the Complainant is impermissible evidence, unless the evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the Complainant and the Respondent *does not by itself* demonstrate or imply the Complainant's consent to the alleged sex-based harassment, nor does it prevent a determination that sex-based harassment occurred. In other words, a previous sexual relationship or prior consent does not imply consent to future sexual acts.

Sexual misconduct: Under MSOE's Title IX policy, *sexual misconduct* is a term that can be used to refer to prohibited sex-based harassment under Title IX. Sex-based harassment under Title IX is a form of sex discrimination.

Stereotype: Under MSOE's Title IX policy, a *stereotype* is a form of bias that functions as a preconceived, generalized, and sometimes inaccurate belief about a person based on their membership in a group or some other characteristic.

Student employee: A *student employee* is a currently enrolled student who also is employed by the University and receives a paycheck from the University for duties performed in their University employment. Student employees include work study students. Under MSOE's Title IX policy, student employees are expected to be mandatory reporters when acting in an employee capacity.

Supportive measures: Under MSOE's Title Policy, *supportive measures* are individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, and not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to:

- Restore or preserve a party's access to MSOE's education programs and activities, including measures that are designed to protect the safety of the parties or MSOE's educational environment.
- Provide support during the MSOE Title IX grievance process, and if applicable, during the informal resolution process.

In an alleged Title IX sex discrimination situation, MSOE offers supportive measures to the alleged victim (if known) promptly after receiving a report of sex discrimination, regardless

of whether the alleged victim files a complaint. Under Title IX law, MSOE must offer supportive measures to a Complainant who has filed a Title IX complaint, and to an alleged Respondent when a grievance process or an informal resolution are initiated, but MSOE chooses to offer supportive measures to an alleged perpetrator (if known) promptly after receiving a report, regardless of whether a complaint is initiated.

If MSOE does not provide a alleged victim with supportive measures, the University must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. This does not prohibit MSOE from providing supportive measures in the future, as needed.

As part of the provision of supportive measures to the alleged victim, the Title IX Coordinator must complete the following tasks, if not previously completed: The Coordinator must explain the Title IX grievance process, explain how to file a complaint, and discuss the alleged victim's wishes concerning how to proceed in the matter.

Supportive measures must be designed to protect the safety of the parties or MSOE's education programs and activities, or to provide support during the MSOE Title IX grievance process.

Under MSOE's Title IX policy, the Title IX Coordinator administers supportive measures, and may consult with other MSOE personnel, as appropriate, to aid in the deployment of the measures.

MSOE may, as appropriate, modify or terminate supportive measures at the conclusion of a grievance process or the conclusion of an informal resolution, or MSOE may choose to continue supportive measures beyond the conclusion.

Supportive measures that do not impact a Respondent can be continued after a determination of whether a Title IX policy violation has occurred. Supportive measures that burden a respondent either convert to an element of discipline (if a determination of a violation is made) or terminate (if a determination of no violation is made).

MSOE must provide the Complainant or Respondent with a timely opportunity to seek, from an appropriate and impartial employee other than the Title IX Coordinator, modification or reversal of MSOE's decision to provide, deny, modify, or terminate supportive measures applicable to them. MSOE must also provide the Complainant and Respondent with the opportunity to seek additional modification or termination of a supportive measure applicable to them if circumstances change materially.

MSOE must not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless necessary to provide the supportive measure or restore or preserve a party's access to MSOE's education programs and activities.

If the Complainant or Respondent is a student with a disability, the Title IX Coordinator may consult, as appropriate, with MSOE's Student Accessibility Services to determine how to comply with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, in the implementation of supportive measures.

Title IX Coordinator: At MSOE, the Title IX Coordinator is:

Dr. Kip Kussman, Ed.D.
Dean of Students

Dean of Students Office
Campus Center 345
Milwaukee School of Engineering
1025 N. Broadway
Milwaukee, WI 53202
Voice: 414-277-7175
Email: kussman@msoe.edu

Title IX team: At MSOE, the Title IX team consists of the following personnel:

- Title IX Coordinator
- Deputy Title IX Coordinators
- Title IX Investigators
- Title IX Decisionmakers
- Title IX Informal Resolution Facilitator
- Title IX Appeals Personnel
- Persons responsible for providing or helping with supportive measures.

Training materials: Under Title IX law, all training materials employed to train the following persons must be maintained for a period of at least seven years, and must be available upon request for inspection by members of the public:

- All employees.
- Investigators, decisionmakers, and other persons who are responsible for implementing MSOE's grievance process or have the authority to modify or terminate supportive measures.
- Facilitators of the informal resolution process.
- Title IX Coordinator and designees.

IV. POLICY STATEMENT

4.1. Overview of the Stages in the MSOE Title IX Process

Figure 1 shows an overview of the stages in MSOE's Title IX process, which is focused on the prevention and elimination of sex discrimination that limits or excludes participation in, and the benefits derived from, MSOE's education programs and activities, including its employment environment. The MSOE Title IX process features a prompt and effective response to allegations of sex discrimination, including actions to end the sex discrimination if MSOE determines that the discrimination occurred, along with steps to ensure that the discrimination does not recur, as well as steps to restore full participation in the University's education programs and activities to persons who were adversely affected by the discrimination.

Following the establishment and maintenance of the MSOE Title IX infrastructure, the basic process begins with allegations of sex discrimination under Title IX and ends after the appeals process (if applicable).

At any point from the allegations stage up until the issuing of a written determination, MSOE has the right to offer an informal resolution process.

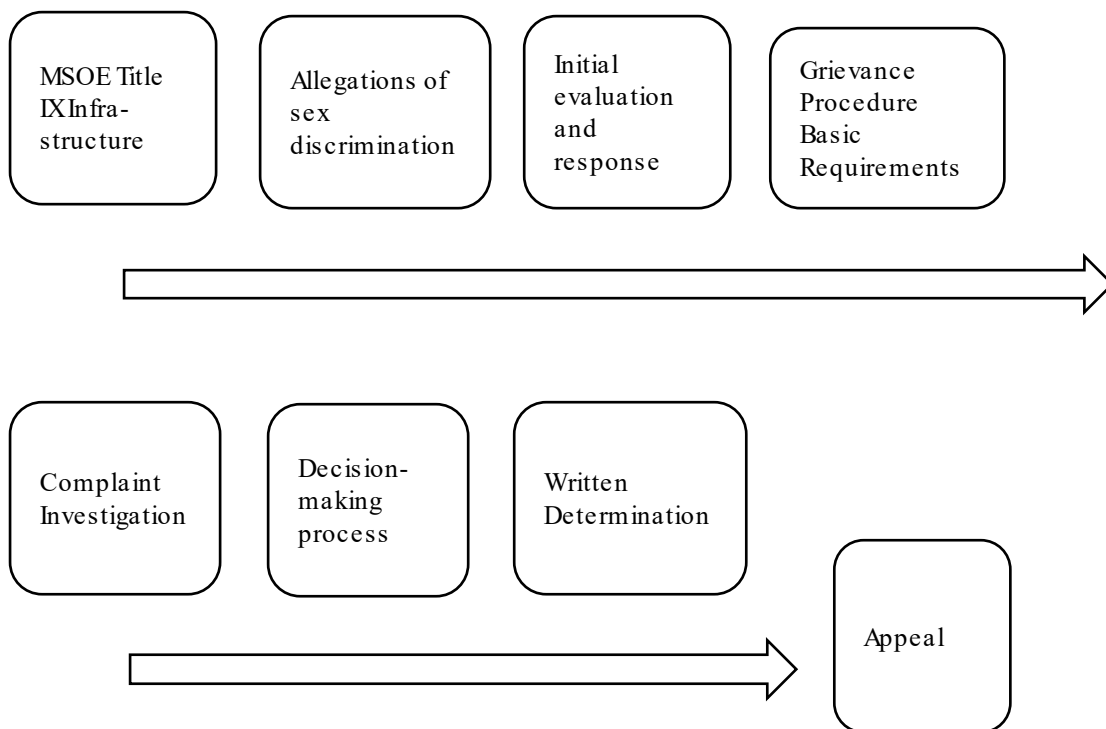


Figure 1: Overview of the Stages in the MSOE Title IX Process.

5.1. Establishment and Maintenance of the MSOE Title IX Infrastructure

The MSOE Title IX infrastructure consists of the Title IX Coordinator and Title IX team, the nondiscrimination policy, training requirements, and prevention efforts.

5.1.1. Nondiscrimination Policy

5.1.1.1. MSOE must adopt, publish, implement, and revise as necessary a nondiscrimination policy with grievance process that is consistent with Title IX law, that provides for the prompt and equitable resolution of complaints from students, employees, or other individuals participating or attempting to participate in MSOE’s education programs and activities, including its employment environment, or by the Title IX Coordinator, alleging any action that would be prohibited under Title IX law. The policy must be published on MSOE’s website.

5.1.1.2. Along with its Title IX policy, MSOE must provide a notice of nondiscrimination with respect to Title IX to students, parents, guardians, or other authorized legal representatives of minors, and applicants for admission and employment. The notice must include a statement that MSOE does not discriminate on the basis of sex and prohibits sex discrimination in its education programs and activities, including in admission. In addition, the notice must state that Title IX-related inquiries may be directed to MSOE’s Title IX Coordinator or to the Office for Civil Rights (OCR), or both. The notice must include information on how to locate MSOE’s Title IX policy, and how to report or file a complaint about alleged sex discrimination to the MSOE’s Title IX Coordinator. See Section 6.1. of this

policy for instructions on how to report or make a complaint about alleged sex discrimination.

5.1.2. Designation of a Title IX Coordinator

5.1.2.1. MSOE must designate at least one Title IX Coordinator to coordinate its efforts to comply with its responsibilities under Title IX. As appropriate, MSOE or the Title IX Coordinator may delegate a Deputy Title IX Coordinator (or Coordinators) to assume responsibilities for specific duties associated with MSOE's Title IX process.

At MSOE, the Title IX Coordinator is:

Dr. Kip Kussman, Ed.D.

Dean of Students

Dean of Students Office

Campus Center 345

Milwaukee School of Engineering

1025 N. Broadway

Milwaukee, WI 53202

Voice: 414-277-7175

Email: kussman@msoe.edu

5.1.2.2. The MSOE Title IX Coordinator is responsible for assembling the MSOE Title IX Team (see "Title IX team" in Section 3.1 of this policy).

5.1.2.3. The responsibilities of MSOE's Title IX Coordinator include the following:

- Coordinate overall Title IX compliance
- Answer questions about Title IX programs
- Coordinate training
- Receive and respond to reports and complaints of alleged sex discrimination
- Provide information about options and rights to Complainants and others
- Coordinate supportive measures
- Provide information about grievance process and informal resolution
- Initiate relevant processes, including in specific circumstances a complaint of alleged sex discrimination
- Screen for conflicts of interest and bias
- In alleged sex discrimination situations involving disabled persons, coordinate with disability services personnel
- Evaluate the efficacy of reporting and barriers to reporting of alleged sex discrimination incidents
- Ensure proper recordkeeping of Title IX documentation

5.1.2.4. At MSOE, the Title IX Coordinator can serve as a decisionmaker in the resolution of complaints for all alleged sex discrimination violations, with the exception of (i) complaints generated by the Title IX Coordinator, (ii) complaints associated with an actual or perceived conflict of interest or bias on the part of the Title IX Coordinator, and (iii) complaints in which service as a decisionmaker has the actual or perceived potential to otherwise undermine confidence in the Title IX Coordinator’s ability to effectively serve as the Title IX Coordinator.

5.1.2.5. At MSOE, the Title IX Coordinator serves as the facilitator in any informal resolution process that MSOE initiates to resolve alleged sex discrimination, subject to the requirements associated with informal resolution under Title IX law, and with the exception of an informal resolution process associated with alleged sex discrimination that was initially addressed by MSOE’s grievance process in which the Title IX Coordinator served as the decisionmaker.

5.1.3. MSOE Title IX Training Requirements

Title IX law features training requirements for Title IX teams and all employees of institutions. Title IX law does not feature specific training requirements for students. Instead, the Campus Sexual Violence Elimination (SaVE) Act, which is part of the Reauthorization of the Violence Against Women Act of 2013 (VAWA), requires higher education institutions to train their students on sexual violence and related issues. Institutions may wish to implement Title IX training for students as part of their Title IX-related efforts to prevent sex discrimination. All Title IX training materials shall be retained for a period of no less than seven years, and the materials must be made available upon request for inspection by members of the public.

5.1.3.1. All employees must receive Title IX training promptly upon hiring and annually thereafter. Such training must not rely on sex stereotypes. Employee training must explain: (i) MSOE’s legal obligation to address sex discrimination in its education program and activities; (ii) the scope of conduct that constitutes sex discrimination under Title IX, including the definition of sex-based harassment; (iii) how to locate and consult MSOE’s Title IX policy; (iv) the name and contact information for MSOE’s Title IX Coordinator; (v) the expectation that with the exception of confidential employees, all employees are mandatory reporters who must notify the Title IX Coordinator when they have information or a report about conduct that reasonably may constitute sex discrimination under Title IX (see “Mandatory reporter” in Section 3.1 for details); (vi) the expectation that all employees must provide to any person who provides the employee with information about conduct that reasonably may constitute sex discrimination under Title IX the contact information for the MSOE Title IX Coordinator; (vii) the expectation that all employees must provide to any student who informs the employee of the student’s pregnancy or related condition the contact information of the MSOE Title IX Coordinator, as well as informing the student of the Title IX Coordinator’s ability prevent sex discrimination, ensure equal access, and coordinate supportive measures and accommodations.

5.1.3.2. In addition to the training in Section 5.1.3.1., members of the Title IX team must receive training on (i) how MSOE is required to respond to allegations of sex discrimination under Title IX law, (ii) MSOE’s Title IX grievance process, (iii) how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; (iv) the meaning and application of the term “relevant” in relation to questions and evidence,

and the types of evidence that are impermissible regardless of relevance (see “Evidence, impermissible” and “Evidence, relevant” in Section 3.1 of this policy).

5.1.3.3. In addition to training in Sections 5.1.3.1. and 5.1.3.2., the facilitator of an MSOE Title IX informal resolution process must be trained on MSOE’s informal resolution process and on how to serve impartially, including by avoiding conflicts of interest and bias.

5.1.3.4. In addition to training in Sections 5.1.3.1., 5.1.3.2., and 5.1.3.3., the MSOE Title IX Coordinator shall receive training on specific responsibilities associated with ensuring MSOE’s Title IX compliance efforts, as well as MSOE’s Title IX recordkeeping system.

5.1.4. MSOE Title IX Prevention Efforts

Title IX law does not stipulate a requirement for student-facing education and prevention programming. However, nothing in Title IX law precludes an institution from using its discretion to provide such programming that it deems appropriate to students. As resources permit, MSOE may offer sex discrimination prevention programming on appropriate topics, such as bystander intervention.

6.1. Allegations of Sex Discrimination Under Title IX

Under Title IX law, allegations of sex discriminations are received by MSOE in the form of a report or a complaint (see “Complaint” and “Report” in Section 3.1 in this policy for details).

6.1.1. How to Make a Report of Alleged Sex Discrimination

A *report* is information about potential sex discrimination or sex-based harassment. A *complaint* is an oral or written request to MSOE to investigate alleged sex discrimination, including sex-based harassment, and to determine if the alleged discrimination or harassment occurred.

6.1.1.1. Anyone may file a report with MSOE’s Title IX Coordinator about conduct that reasonably may constitute sex discrimination or sex-based harassment under Title IX. “Anyone” means MSOE students, employees, and others participating, or attempting to participate in, MSOE’s education programs and activities. “Anyone” additionally includes persons no longer participating or attempting to participate in MSOE’s programs and activities, but who experienced or who witnessed potential sex discrimination when they were participants. “Anyone” also means a person who is not, nor has ever been, officially associated with MSOE’s education programs and activities. Examples of this type of reporter includes friends and acquaintances of a person participating, or attempting to participate in, MSOE’s education programs and activities.

A person participating, or attempting to participate in, MSOE’s education programs and activities, and who experienced alleged sex discrimination may file a report and then may subsequently file a complaint associated with the same conduct. The same person may file a report, but then may decide never to file a complaint associated with the same conduct.

6.1.1.2. All reports of potential sex discrimination must be filed with MSOE’s Title IX Coordinator. At MSOE, the Title IX Coordinator is:

Dr. Kip Kussman, Ed.D.
Dean of Students
Dean of Students Office

Campus Center 345
Milwaukee School of Engineering
1025 N. Broadway
Milwaukee, WI 53202
Voice: 414-277-7175
Email: kussman@msoe.edu

A report of alleged sex discrimination or sex-based harassment can be conveyed to the Title IX Coordinator in an oral communication (e.g., face-to-face conversation, telephone conversation, conversation via technical means, such as a Teams meeting, etc.) or in a written communication (e.g., email, text message, web-based complaint form, paper document, etc.).

6.1.1.3. At MSOE, all employees are mandatory reporters, including student employees while working in their capacity as MSOE employees. A person who wishes to communicate to an MSOE employee information about conduct that reasonably may constitute sex discrimination, and who wishes the information to be confidential, must communicate with a designated confidential employee.

6.1.1.4. The person who reports alleged sex discrimination or sex-based harassment to the Title IX Coordinator must provide as much detail as possible, including names of persons associated with the alleged incident (e.g., an alleged victim, an alleged perpetrator), nature of the alleged conduct, location of the alleged conduct, date of the alleged conduct, and so forth.

6.1.1.5. After receiving a report of alleged sex discrimination or sex-based harassment, the MSOE Title IX Coordinator must work to identify an alleged victim (or victims) if one has not been identified in the report.

If after reasonable inquiry, an alleged victim cannot be identified, the report must be documented in the MSOE Title IX recordkeeping system, and information from the report must be used to inform MSOE's sex discrimination and sex-based harassment prevention efforts, including targeted training efforts. Consideration must also be given to whether the alleged discrimination can be addressed under other MSOE policies and procedures.

If the name of the alleged victim is known, the Title IX Coordinator must meet promptly with the individual to provide information about supportive measures, to explain the MSOE Title IX process, to explain how to file a complaint, and to discuss the alleged victim's wishes concerning how to proceed in the matter.

6.1.2. Confidential Reporting of Alleged Sex Discrimination

Recognizing the sensitive nature of alleged sex discrimination and sex-based harassment situations, including an alleged victim's right to maintain confidentiality, MSOE makes available a confidential reporting option.

At MSOE, persons wishing to confidentially report alleged sex discrimination, including sex-based harassment, must consult the following designated confidential employees:

- MSOE's on-campus mental health counselors, acting within a counselor/patient relationship. Counselors can be contacted at MSOE Counseling Services (Kern Center, Room 230) – 414-277-7590.

- MSOE’s Director of Health Services/Nurse Practitioner, acting within a medical/patient relationship. The health care coordinator can be contacted at MSOE Health Services (Kern Center, Room 241) – 414-277-4555.

Designated MSOE confidential employees will not share the information about alleged sex discrimination and sex-based harassment with the Title IX Coordinator nor with any other person.

An MSOE confidential employee must:

- Notify the reporting person of the employee’s confidential status with respect to Title IX, and clarify that the employee can serve in a confidential role only when acting in their confidential capacity (i.e., as an MSOE counsellor or as an MSOE health care coordinator). Information learned in a non-confidential capacity may be subject to mandatory reporting.
- Explain to the reporting person how to contact the MSOE Title IX Coordinator.
- Explain to the reporting person how to file a Title IX complaint.
- Explain to the reporting person that the Title IX Coordinator may be able to offer supportive measures as well as initiate an investigation under an MSOE grievance process or an informal resolution process.

An off-campus confidential reporting option close to the MSOE campus and not associated with MSOE is:

- Sexual Assault Treatment Center (SATC), Aurora Sinai Medical Center, 945 N. 12th St., Milwaukee – 414-219-5555

6.1.2.1. Other Reporting Options Involving Sexual Assault

In a sexual assault situation, a victim has the right to notify the local police department to report the alleged crime and to pursue legal prosecution.

On the MSOE campus, if you wish to report an incident to the local police department you are advised to first contact MSOE Public Safety, and to ask them to contact the police. Reporting an alleged crime to the local police department will lead to a criminal investigation. In such situations, the University will also conduct its own sexual misconduct investigation in compliance with this policy.

MSOE Public Safety

Regents Residence Hall

1121 N. Milwaukee Street

Milwaukee, WI 53202

Emergency Phone: 414-277-7159

6.1.2.2. Other Reporting Options Involving Sex Discrimination in MSOE’s Education Programs and Activities

Persons who have experienced alleged sex discrimination under Title IX, including sex-based harassment, and who feel they have as a result been limited or denied from participating in

MSOE's education programs and activities, have the right to file a formal Title IX complaint with the Office for Civil Rights (OCR) in the United States Department of Education.

Office for Civil Rights

400 Maryland Avenue, SW

Washington, DC 20202-1100

Hotline: 1-800-421-3481

E-mail: OCR@ed.gov

6.1.3. How to Make an MSOE Complaint of Alleged Sex Discrimination

A *report* is information about potential sex discrimination or sex-based harassment. A *complaint* is an oral or written request to MSOE to investigate alleged sex discrimination or sex-based harassment and to determine if the alleged discrimination or harassment occurred.

6.1.3.1. The following persons may file a Title IX complaint at MSOE:

- The alleged victim.
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of an alleged victim.
- For alleged sex discrimination other than sex-based harassment, any student or employee, or other person who was participating or attempting to participate in the MSOE education programs and activities at the time of the alleged discrimination. With respect to sex-based harassment, the alleged victim must file the complaint, although in some circumstances, the Title IX Coordinator may file a complaint for sex-based harassment.
- The Title IX Coordinator may initiate a Title IX complaint, subject to certain factors.

6.1.3.1.1. The Title IX Coordinator may initiate a complaint under the following circumstances:

- In the absence of a complaint, or when any or all allegations in a complaint have been withdrawn,
- *and* provided informal resolution is not ongoing,
- *and* provided a fact-specific determination justifies filing the complaint.

Facts that the Title IX Coordinator must consider if contemplating the filing of a complaint are the following:

- The Complainant's request not to proceed with initiation of the complaint.
- The Complainant's reasonable safety concerns regarding initiation of the complaint.
- The risk that additional acts of sex discrimination would occur if a complaint is not initiated.
- The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a Respondent from campus or an imposition of another disciplinary sanction to end the discrimination and prevent its recurrence.

- The age and relationship of the parties, including whether the Respondent is an employee.
- The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals.
- The availability of evidence to assist the decisionmaker in determining whether sex discrimination occurred.
- Whether MSOE could end the alleged sex discrimination and prevent its recurrence without initiating its grievance and resolution process.

If after considering these facts and other factors as necessary, the Title IX Coordinator determines that the alleged sex discrimination conduct presents an imminent and serious threat to the health or safety of the Complainant or other person, or that the alleged conduct prevents MSOE from providing equal access on the basis of sex to its education programs and activities, the Title IX Coordinator may initiate a complaint in the matter.

Before initiating a complaint, the Title IX Coordinator must notify the Complainant and address any reasonable safety concerns associated with the Complainant and other persons, including by providing appropriate supportive measures.

Regardless of whether a complaint is initiated by an alleged victim or by the Title IX Coordinator, the Title IX Coordinator must take other prompt and effective steps to effectuate any remedies necessary (see “Remedies” in Section 3.1 of this policy for details) to ensure that the alleged victim or Complainant or other persons in the matter have equal access restored to MSOE’s education programs and activities (assuming that the alleged conduct limited or excluded them from participating) and that the alleged sex discrimination does not continue or recur.

6.1.3.2. A complaint of alleged sex discrimination or sex-based harassment must be filed with MSOE’s Title IX Coordinator. At MSOE, the Title IX Coordinator is:

Dr. Kip Kussman, Ed.D.

Dean of Students

Dean of Students Office

Campus Center 345

Milwaukee School of Engineering

1025 N. Broadway

Milwaukee, WI 53202

Voice: 414-277-7175

Email: kussman@msoe.edu

A complaint of alleged sex discrimination or sex-based harassment can be conveyed to the Title IX Coordinator in an oral communication (e.g., face-to-face conversation, telephone conversation, conversation via technical means, such as a Teams meeting, etc.) or in a written communication (e.g., email, text message, web-based complaint form, paper document, etc.).

6.1.3.3. Along with their request to MSOE to investigate alleged discrimination, the person who files a complaint of alleged sex discrimination or sex-based harassment to the Title IX Coordinator must provide as much detail as possible, including names of persons associated

with the alleged incident (e.g., an alleged victim, an alleged perpetrator), nature of the alleged conduct, location of the alleged conduct, date of the alleged conduct, and so forth.

6.1.3.4. No time limit exists for providing the MSOE Title IX Coordinator with a complaint of alleged sex discrimination, including sex-based harassment. To file a complaint, a Complainant must be participating in, or attempting to participate in, MSOE’s education programs and activities, or the Complainant must have been a participant when the alleged discrimination occurred.

However, a significant passage of time may limit and challenge the ability of MSOE to investigate and to reach a determination concerning the occurrence of sex discrimination (e.g., because of a lack of sufficient evidence, witnesses, etc.). As with all complaints, MSOE will employ a preponderance of evidence standard to resolve a complaint that may be time-impacted. The preponderance of evidence standard is employed by a decisionmaker to determine if it is more likely than not that sex discrimination occurred in MSOE’s education programs or activities. If the decisionmaker is not persuaded under the preponderance of evidence standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker must not determine that sex discrimination occurred.

In addition, time issues may impact the disposition of a complaint with respect to dismissal. For example, if the Respondent is no longer enrolled or employed at MSOE, the University cannot initiate a Title IX grievance process—see Section 7.1.2.

If a time-impacted complaint is dismissed, MSOE will comply with the requirements associated with dismissals in Section 7.1.2.

If a decisionmaker determines in a time-impacted complaint that sex discrimination did not occur, and if appropriate, MSOE may offer supportive measures to the Complainant and consider the use of other relevant policies and procedures. As with all Title IX complaints, the Title IX Coordinator shall document the complaint and its resolution, and if appropriate, employ findings associated with the complaint in future prevention efforts to eliminate sex discrimination for MSOE’s education programs and activities.

7.1. MSOE Initial Response to a Title IX Complaint

The filing of a Title IX complaint with the MSOE Title IX Coordinator by a Complainant initiates MSOE’s grievance process with respect to the complaint. However, after receiving a Title IX complaint, MSOE must first (i) evaluate the complaint for the purposes of Title IX jurisdiction and dismissal, (ii) evaluate whether the alleged Respondent needs to be removed or placed on leave, and (iii) administer supportive measures.

7.1.1. Title IX Jurisdiction

MSOE must consider the following factors in assessing whether the alleged conduct in the complaint reasonably may constitute Title IX sex discrimination or sex-based harassment.

- The alleged conduct must represent one or more of the Title IX sex discrimination violations described in Section 8.1. of this policy.
- The alleged conduct must have occurred in MSOE’s education programs and activities—see “Education programs and activities” in Section 3.1 of this policy for details.

- The Complainant must be participating or attempting to participate in MSOE’s education program and activities, or the Complainant was participating or attempting to participate at the time of the alleged conduct.
- The alleged conduct limited, excluded, or denied the Complainant from equal access to, participation in, and derivation of benefits from, MSOE’s education programs and activities.
- The alleged conduct must have taken place in the United States.
- Alleged conduct that occurred outside of the United States or outside of MSOE’s education programs and activities and then subsequently contributed to or was part of an alleged sex-based hostile environment in the United States and in MSOE’s education program and activities must be addressed.
- The alleged conduct does not concern course textbook selection and curricular materials. Title IX does not have jurisdiction in the selection of textbooks and curricular materials.
- Title IX does not have jurisdiction to the extent that it conflicts with the First Amendment of the United States Constitution and any other constitutional rights. MSOE is a private actor under the Constitution. In situations where there are questions concerning rights under the United States Constitution and Title IX jurisdiction at MSOE, it is recommended that legal counsel be consulted.

7.1.2. Dismissal of a Title IX Complaint

MSOE may dismiss a Title IX complaint of alleged sex discrimination, including sex-based harassment, for any of the following reasons:

- The Title IX Coordinator is unable to identify the Respondent after taking reasonable steps.
- The Respondent is not participating in MSOE’s education programs and activities and is not employed by MSOE.
- The Complainant voluntarily withdraws any or all of the allegations in the complaint,¹ and if after the withdrawal of the allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX.
- The Title IX Coordinator determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX.

Upon dismissal, the Title IX Coordinator must promptly notify in writing the Complainant of the dismissal and the grounds for dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then the Respondent must simultaneously be notified in writing of the dismissal and the grounds for dismissal.

Upon dismissal, and in addition to notifying in writing the Complainant of the dismissal and the grounds for dismissal, the Title IX Coordinator must notify the Complainant that the

¹ The Title IX Coordinator must obtain the Complainant’s withdrawal in writing if dismissing a complaint based on the Complainant’s voluntary withdrawal of the complaint or allegations.

dismissal may be appealed within five (5) business days from issuance of the notification on the following grounds:

- Procedural irregularity that would change the decision to dismiss.
- New evidence that would change the outcome and that was not reasonably available when the dismissal decision was made.
- The Title IX Coordinator had a conflict of interest or bias for or against Complainants or Respondents in general or the individual Complainant or Respondent that would change the decision to dismiss.

If the dismissal occurs after the Respondent has been notified of the allegations, then the Respondent also must be notified of the opportunity to appeal the dismissal on the same grounds.

If the dismissal is appealed by either or both parties, the decisionmaker of the appeal must not be the Title IX Coordinator nor an investigator in the grievance process (assuming that an investigation had already been initiated). The decisionmaker for the appeal must be appropriately trained and must be free of conflicts of interest and bias. If the dismissal is appealed, the Title IX Coordinator shall notify simultaneously in writing both parties, implement the appeal procedures equally for both parties, provide the parties with five (5) additional business days to submit a written statement in support of, or challenging, the appeal. At the conclusion of these five (5) business days, the decisionmaker of the appeal must issue simultaneously to both parties with a copy to the Title IX Coordinator their written decision concerning the appeal, and the grounds for the decision.

For Title IX complaints that have been dismissed, the Title IX Coordinator must offer supportive measures as appropriate to the Complainant and the Respondent (if the Respondent has been notified of the allegations). The Title IX Coordinator also must take appropriate prompt and effective steps to ensure that alleged sex discrimination associated with the complaint does not continue or recur within MSOE's education programs and activities.

7.1.3. Emergency Removal of the Respondent

After receiving a Title IX complaint, MSOE may remove a Respondent from its education programs and activities on an emergency basis. Before removing the Respondent, MSOE must undertake an individualized safety and risk analysis to determine whether an imminent and serious threat to the health or safety of a Complainant, the Respondent, or any students, employees, or other persons arising from the allegations of sex discrimination justifies removal. The Respondent must also be provided notice and an opportunity to challenge the decision immediately following the removal.

7.1.4. Employee Administrative Leave

After receiving a Title IX complaint, if appropriate because of concerns associated with safety and health, in consultation with MSOE's Human Resources Department, members of the executive leadership team, other appropriate personnel (e.g., supervisors), and the Title IX team, MSOE has the option under Title IX law of placing an employee Respondent on administrative leave from employment responsibilities during the pendency of a Title IX grievance process.

MSOE additionally has the option of placing an employee on administrative leave as a supportive measure.

7.1.5. Supportive Measures

In its initial response to a Title IX complaint, MSOE must offer supportive measures to the Complainant, if it has not already done so (i.e., if the Complainant made a report first, followed by a complaint). Because MSOE considers a complaint to be the initiation of its Title IX grievance process, MSOE must offer supportive measures to the Respondent, as well, if it has not already done so.

See “Supportive measures” in Section 3.1 of this policy for a detailed explanation of supportive measures, including all Title IX requirements associated with such measures. Examples of supportive measures include, but are not limited to:

- Counseling.
- Extensions of deadlines and other course-related adjustments.
- Campus escort services.
- Increased security and monitoring of certain areas of the campus.
- Restrictions on contact applied to one or more parties.
- Leaves of absence.
- Modified work schedules.
- Changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative.
- Training and education programs related to sex-based harassment.

8.1. Sex Discrimination Violations Under Title IX

The following conduct constitutes sex discrimination violations under Title IX law and under this *Milwaukee School of Engineering (MSOE) Title IX Sex Discrimination Policy*.

8.1.1. Sex Discrimination on the Basis of Sex Stereotypes

Sex discrimination on the basis of sex stereotypes refers to discriminatory conduct featuring a preconceived idea about how a person should be, act, or behave on the basis of that person’s sex. Conduct that is discriminatory with respect to sex stereotyping under Title IX is sex-based, unwelcome, subjectively and objectively offensive, and sufficiently severe or pervasive to limit or deny a person’s ability to participate in or benefit from MSOE’s education programs or activities (i.e., creates a hostile environment). Thus, harassing a person—including acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on the person’s nonconformity with stereotypical notions—can constitute discrimination on the basis of sex under Title IX in certain circumstances. For guidance on evaluating alleged sex discrimination on the basis of sex stereotypes, see Section 8.1.6.2. (Hostile Environment Harassment). See also relevant case law, such as *Ashton Whitaker, by his mother and next friend Melissa Whitaker v. Kenosha Unified School District No. 1 Board of Education, et al.*, United States Court of Appeals for the Seventh District, No. 16-3522, May 30, 2017, explaining that differential treatment on the basis of sex implicates Title IX law.

8.1.2. Sex Discrimination on the Basis of Sex Characteristics

Sex discrimination on the basis of sex characteristics refers to discriminatory conduct associated with a person’s sex characteristics. Conduct that is discriminatory with respect to sex characteristics under Title IX is sex-based, unwelcome, subjectively and objectively offensive, and sufficiently severe or pervasive to limit or deny a person’s ability to participate in or benefit from MSOE’s education programs or activities (i.e., creates a hostile environment). Thus, harassing a person—including acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on the person’s sex characteristics—can constitute discrimination on the basis of sex under Title IX in certain circumstances. For guidance on evaluating alleged sex discrimination on the basis of sex characteristics, see Section 8.1.6.2. (Hostile Environment Harassment). See also relevant case law, such as *Ashton Whitaker, by his mother and next friend Melissa Whitaker v. Kenosha Unified School District No. 1 Board of Education, et al.*, United States Court of Appeals for the Seventh District, No. 16-3522, May 30, 2017, explaining that differential treatment on the basis of sex implicates Title IX law.

8.1.3. Sex Discrimination on the Basis of Sexual Orientation

Sexual orientation is a part of individual identity that includes “a person’s sexual and emotional attraction to another person and the behavior and/or social affiliation that may result from this attraction.”² Sex discrimination on the basis of sexual orientation refers to discriminatory conduct associated with a person’s sexual orientation. Conduct that is discriminatory with respect to sexual orientation under Title IX is sex-based, unwelcome, subjectively and objectively offensive, and sufficiently severe or pervasive to limit or deny a person’s ability to participate in or benefit from MSOE’s education programs or activities (i.e., creates a hostile environment). Thus, harassing a person—including acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on the person’s sexual orientation—can constitute discrimination on the basis of sex under Title IX in certain circumstances. For guidance on evaluating alleged sex discrimination on the basis of sexual orientation, see Section 8.1.6.2. (Hostile Environment Harassment). See also relevant case law, such as *Ashton Whitaker, by his mother and next friend Melissa Whitaker v. Kenosha Unified School District No. 1 Board of Education, et al.*, United States Court of Appeals for the Seventh District, No. 16-3522, May 30, 2017, explaining that differential treatment on the basis of sex implicates Title IX law.

8.1.4. Sex Discrimination on the Basis of Gender Identity

Gender identity is “a component of gender that describes a person’s psychological sense of their gender. Many people describe gender identity as a deeply felt, inherent sense of being a boy, a man, or male; a girl, woman, or female; or a nonbinary gender (e.g., genderqueer, gender-nonconforming, gender-neutral, agender, gender-fluid) that may or may not correspond to a person’s assigned sex at birth, presumed gender based on sex assignment, or primary or secondary sex characteristics.”³ Sex discrimination on the basis of gender identity refers to discriminatory conduct associated with a person’s gender identity.

² American Psychological Association. (2015a). Guidelines for psychological practice with transgender and gender nonconforming people. *American Psychologist*, 70(9), 832-864. <https://doi.org/10.1037/a0039906>

³ American Psychological Association. (2020). *Publication manual of the American Psychological Association* (7th ed.). <https://doi.org/10.1037/000165-000>.

Conduct that is discriminatory with respect to gender identity under Title IX is sex-based, unwelcome, subjectively and objectively offensive, and sufficiently severe or pervasive to limit or deny a person’s ability to participate in or benefit from MSOE’s education programs or activities (i.e., creates a hostile environment). Thus, harassing a person—including acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on the person’s gender identity—can constitute discrimination on the basis of sex under Title IX in certain circumstances. For guidance on evaluating alleged sex discrimination on the basis of gender identity, see Section 8.1.6.2. (Hostile Environment Harassment). See also relevant case law, such as *Ashton Whitaker, by his mother and next friend Melissa Whitaker v. Kenosha Unified School District No. 1 Board of Education, et al.*, United States Court of Appeals for the Seventh District, No. 16-3522, May 30, 2017, explaining that differential treatment on the basis of sex implicates Title IX law.

8.1.5. Sex Discrimination on the Basis of Pregnancy or Related Conditions: Students

MSOE must not adopt or implement any policy, practice, or procedure concerning a student’s current, potential, or past parental, family, or marital status that treats students differently on the basis of sex. As such, MSOE will not discriminate in its education programs and activities against any student based on the student’s current, potential, or past pregnancy or related conditions. Pregnancy and related conditions include the following:

- Pregnancy.
- Childbirth.
- Termination of pregnancy.
- Lactation.
- Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation.
- Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

The rights secured by Title IX law apply to MSOE employees, including rights associated with pregnancy or related conditions. MSOE employee pregnancy rights are also addressed by Title VII law as amended by the Pregnancy Discrimination Act, and internal policies. For employee Title IX rights with respect to pregnancy and related conditions, see Section 8.1.6.

8.1.5.1. MSOE must allow a student, based on pregnancy or related conditions, to voluntarily participate in a separate portion of its education programs and activities provided the separate portion is comparable to that offered to students who are not pregnant and do not have related conditions.

8.1.5.2. When a student, or a person who has a legal right to act on behalf of the student, informs any MSOE employee of the student’s pregnancy or related conditions, unless the employee reasonably believes that the Title IX Coordinator has been notified, the employee must promptly provide the person with the Title IX Coordinator’s contact information and inform the person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student’s equal access to MSOE’s education programs and activities. For training requirements, see Section 5.1.3.1.

8.1.5.3. After the MSOE Title IX Coordinator has learned of a student’s pregnancy or related conditions, the Title IX Coordinator must:

- Provide the student with MSOE’s notice of nondiscrimination (see Section 1.1. of this policy).
- Make reasonable modifications to MSOE policies, procedures, or practices, as necessary, to prevent sex discrimination and ensure equal access for the student to MSOE’s education programs and activities. Each reasonable modification must be based on the student’s individualized needs in consultation with the student. A modification that would fundamentally alter the nature of MSOE’s education programs or activities is not reasonable. Reasonable modifications may include, but are not limited to:
 - Breaks during class to express breast milk.
 - Breastfeed, or attend to health needs associated with pregnancy or related conditions, including eating, drinking, or using the restroom.
 - Intermittent absences to attend medical appointments.
 - Access to online or homebound education.
 - Changes in schedule or course sequence.
 - Extensions of time for coursework and rescheduling of tests and examinations.
 - Allowing a student to sit or stand, or carry or keep water nearby.
 - Counseling.
 - Changes in physical space or supplies (e.g., access to a larger desk or a footrest).
- Provide the student with voluntary access to a separate and comparable portion of MSOE’s education programs and activities—see Section 8.1.5.1.
- Provide the student with a voluntary leave of absence from MSOE’s education programs and activities to cover, minimally, the period of time deemed medically necessary by the student’s licensed healthcare provider. When the student returns to MSOE’s education programs and activities, the student must be reinstated to the academic status and, as practicable, to the extracurricular status that the student held when the voluntary leave began.
- Provide the student with a lactation space, which must be a space other than a bathroom, and must be clean, shielded from view, free from intrusion from others, and available for use by the student for expressing breast milk or breastfeeding as needed.
- MSOE must not require supporting documentation of the student’s pregnancy or related conditions, unless such documentation is necessary to determine reasonable modifications.
- MSOE must treat pregnancy or related conditions in the same manner and under the same policies as any other temporary medical conditions with respect to any medical or hospital benefit, service, plan, or policy that MSOE administers, operates, offers, or participates in with respect to students.
- MSOE must not require a student who is pregnant or has related conditions to provide certification from a healthcare provider or any other person that the student is physically able to participate in MSOE’s class, program, or extracurricular activity, unless such certification is required of all students and the information is not used as a basis for discrimination under Title IX.

8.1.6. Sex Discrimination on the Basis of Pregnancy or Related Conditions: Employees

MSOE will not adopt or implement any policy, practice, or procedure, or take any employment action, on the basis of sex (i) concerning the current, potential, or past parental, family, or marital status of an employee or applicant for employment, which treats persons differently; or (ii) that is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

MSOE will not discriminate against any employee or applicant for employment on the basis of current, potential, or past pregnancy or related conditions.

8.1.6.1. Comparable Treatment to Temporary Medical Conditions

MSOE will treat pregnancy or related conditions as any other temporary medical conditions for all job-related purposes, including (i) commencement, duration and extensions of leave, (ii) payment of disability income, (iii) accrual of seniority and any other benefit or service, (iv) and reinstatement, and (v) under any fringe benefit offered to employees by virtue of employment.

8.1.6.2. Voluntary Leaves of Absence

MSOE treats pregnancy and related conditions as justification for leaves of absences for employees. The University employs a variety of leave options on an individualized basis.

8.1.6.3. Lactation Time and Space

MSOE provides reasonable break time for an employee to express breast milk or breastfeed as needed. MSOE ensures that an employee can access a lactation space, which is other than a bathroom, and which is clean, shielded from view, free from intrusion from others, and may be used by an employee for expressing breast milk or breastfeeding as needed.

8.1.7. Sex-Based Harassment

Sex-based harassment is a form of sex discrimination and refers to sexual harassment on the basis of sex. Sex-based harassment consists of the following categories:

- Quid Pro Quo harassment
- Hostile Environment Harassment
- Sexual Assault
- Domestic Violence
- Dating Violence
- Stalking

8.1.7.1. Quid Pro Quo Harassment

Quid Pro Quo harassment occurs when an employee, agent, or other person authorized by MSOE to provide an aid, benefit, or service under MSOE's education programs or activities explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

Quid Pro Quo sex-based harassment covers harassment by members of MSOE's leadership, including board members, paid or unpaid, to the extent those individuals are authorized by MSOE to provide an aid, benefit, or service under MSOE's education programs or activities.

Quid Pro Quo sex-based harassment is implicated even if the employee, agent, or other authorized person is unable to provide the aid, benefit, or service.

8.1.7.2. Hostile Environment Harassment

Hostile environment harassment is unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from MSOE's education programs or activities (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- (i) The degree to which the conduct affected the Complainant's ability to access MSOE's education programs or activities;
- (ii) The type, frequency, and duration of the conduct;
- (iii) The parties' ages, roles within MSOE's education programs or activities, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- (iv) The location of the conduct and the context in which the conduct occurred; and
- (v) Other sex-based harassment in MSOE's education programs or activities.

8.1.6.2.1. Selected Department of Education guidance regarding the assessment of hostile environment harassment.

Verbal and Nonverbal Conduct Must Be Evaluated

- Hostile environment harassment can consist of verbal or nonverbal conduct, or both.

Required Fact-Specific Analysis of Several Factors

- "[W]hether a hostile environment has been created for a particular complainant requires an individualized and fact-specific analysis of the effect of the alleged conduct on that complainant. For this reason, the first factor appropriately examines the degree to which the conduct affected the complainant's ability to access the recipient's education program or activity."
- "[T]he definition of hostile environment sex-based harassment requires an evaluation, based on the totality of circumstances, of several key elements."

Hostile Environment Harassment Must Actually Limit or Deny

- "The definition of hostile environment sex-based harassment is narrowly tailored to advance the compelling interest in eliminating discrimination on the basis of sex because it requires that the harassment have the actual effect of limiting or denying

a person's ability to participate in or benefit from MSOE's education programs or activities."

- "[T]he definition of hostile environment sex-based harassment appropriately requires evidence of the impact of the alleged conduct on the complainant, as Title IX requires. The Department reiterates that grades are not the only evidence of a student's ability to participate in and access the benefits of a recipient's education program or activity, and the Department reaffirms that the definition of hostile environment sex-based harassment does not require a complainant to demonstrate any particular harm, such as reduced grades or missed classes. Put another way, a complainant must demonstrate some impact on their ability to participate or benefit from the education program or activity, but the definition does not specify any particular limits or denials. Rather, as with all complaints, the recipient's evaluation of whether sex-based harassment occurred must be based on all of the relevant and not otherwise impermissible evidence."

Verbal Comments

- "The definition of 'sex-based harassment' ... recognizes that isolated comments would generally not meet the definition of hostile environment sex-based harassment."
- "[O]ne stray remark does not satisfy the level of pervasiveness" required in hostile environment harassment.
- "[T]he offensiveness of a particular expression as perceived by some persons, standing alone, would not be a legally sufficient basis to establish a hostile environment under Title IX."
- "[A] statement of one's point of view on an issue of debate and with which another person disagrees, even strongly so, is not the kind or degree of conduct that implicates" hostile environment harassment.
- "The Department clarifies that nothing in the definition of 'sex-based harassment' ... requires a recipient to directly or indirectly track speech for which no complaint was made or of which the Title IX Coordinator has not been notified."

Frequency and Pervasiveness

- "[S]ex-based conduct that occurs on multiple occasions and is so persistent that, for example, it limits another student's ability to complete assigned coursework at the student's typical level of performance would potentially constitute the type of pervasive sex-based conduct [Title IX] intended to reach."
- "With respect to the example provided in the July 2022 NPRM of a single request for a date or a single gift of flowers from one student to another, the Department

intended that example to demonstrate the type of conduct that may be sex-based but would not be pervasive.”

- “[H]arassment can be pervasive if it is widespread, openly practiced, or well-known to students and staff (such as sex-based harassment occurring in the hallways, graffiti in public areas, or harassment occurring during recess under a teacher’s supervision).”
- “[I]f one student at a postsecondary institution made a derogatory comment to a pregnant student based on her pregnancy, that alone may not be sufficient to create a hostile environment, but if multiple people make similar comments to the same student based on pregnancy, that may create a hostile environment for the student. The Department notes that, when the elements of sex-based hostile environment are satisfied for an affected student, a recipient has an obligation to address that hostile environment, even if a particular respondent’s conduct does not justify discipline. For example, in response to a hostile environment created by a series of incidents by different respondents, a recipient may offer supportive measures to the affected student or provide training for the broader school community.”

Subjective and Objective Offensiveness

- “[T]he objective severity of harassment should be judged from the perspective of a reasonable person in the [complainant’s] position, considering ‘all the circumstances.’ ” (quoting Harris, 510 U.S. at 23)—and subjective standards—see Harris, 510 U.S. at 21–22 (explaining that “if the victim does not subjectively perceive the environment to be abusive, the conduct has not actually altered the conditions of the victim’s employment, and there is no Title VII violation,” even if a reasonable person would find the environment hostile or abusive)—in determining whether a hostile environment existed.”
- “The Department disagrees with commenters that subjectively offensive speech, in itself, would constitute sex-based harassment under Title IX, given the inclusion of an objectively offensive element in the definition.”
- “Subjective offensiveness must be supported by evidence, and subjective offensiveness alone would not support a finding or discipline.”
- “With respect to the commenters’ request for more clarity regarding how to draw the line between “annoying” and “immature” conduct and conduct that constitutes sex-based harassment, the Department notes that the legal standard is not whether or not conduct is subjectively “annoying” or “immature.” The standard for hostile environment sex-based harassment is whether or not the totality of the circumstances demonstrates conduct that is unwelcome sex-based conduct, subjectively and objectively offensive, and so pervasive that it limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity.”

Location and Context Factors

- “Location and context are important to consider in determining whether a hostile environment has been created because they provide information that is relevant to each of the hostile environment elements: unwelcomeness, objective and subjective offensiveness, and severity and pervasiveness and effect on a complainant’s ability to access or benefit from the education program or activity. For example, harassing conduct on a school bus may be more intimidating than on school grounds because of the confined space. Similarly, harassing conduct in a personal and secluded area, such as a dorm room, can be more threatening than the same conduct in a public area. On the other hand, harassing conduct in public can be more humiliating. Each instance of alleged harassing conduct must take into account the totality of the circumstances, including consideration of the location and context.”

Online Harassment

- “When a recipient has information about sex-based harassment among its students that took place online and created a hostile environment in the recipient’s education program or activity, the recipient has an obligation to address that hostile environment.”
- “[A] recipient’s obligation is to address all forms of sex discrimination, including sex-based harassment that occurs within the recipient’s education program or activity, whether the conduct takes place online, in person, or both. Online harassment can include, but is not limited to, unwelcome conduct on social media platforms such as sex-based derogatory name-calling, the nonconsensual distribution of intimate images (including authentic images and images that have been altered or generated by artificial intelligence (AI) technologies), cyberstalking, sending sex-based pictures or cartoons, and other sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity. A recipient must evaluate online conduct with the same factors that are used to determine whether in-person conduct creates a hostile environment.”
- “If an employee has information about sex-based harassment among its students that took place online, such as the nonconsensual sharing of intimate images, and that created a hostile environment in the recipient’s education program or activity, the recipient has an obligation to address the conduct.”

8.1.7.3. Sexual Assault

Sexual assault is an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Sexual assault includes the following classes of conduct: (1) rape, (2) sodomy, (3) sexual assault with an object, (4) fondling, and (5) incest.

8.1.7.3.1. Rape

Rape entails having or attempting to have carnal knowledge of a person, without the consent of the person, including instances where the person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity (including instances involving the influence of drugs or alcohol). Physical resistance is not required on the part of the victim to demonstrate lack of consent. There is carnal knowledge if there is penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, or by a sex-related object.

Statutory rape entails sexual intercourse with a person who is under the statutory age of consent as defined by law. In the state of Wisconsin, the age of consent for sexual intercourse is 16 and over (Wisconsin State Statutes, Chapter 948, “Crimes Against Children”). Sexual intercourse with a person who has not attained the age of 16 constitutes a felony. However, Wisconsin State Statutes (Section 948.02) additionally indicate that sexual intercourse with a child who has attained the age of 16 is a Class A misdemeanor if the defendant has attained the age of 19 years when the violation occurs.

8.1.7.3.1.1. Sodomy

Sodomy is oral or anal sexual intercourse with another person without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity. Sodomy is classified as rape.

8.1.7.3.1.2. Sexual Assault with an Object

Sexual assault with an object entails the use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity. An object or instrument is anything used by the perpetrator other than the perpetrator’s genitalia. Sexual assault with an object is classified as rape.

8.1.7.3.1.3. Guidance in Sexual Violence Situations

In the event that you are the victim of a violent sexual assault, you are strongly encouraged to seek immediate medical treatment at a hospital emergency room or at a sexual assault treatment center. Trained personnel will collect evidence, check for injuries, address pregnancy concerns, and address the possibility of exposure to sexually transmitted infections. If you have changed clothing since the assault, bring the clothing you had on at the time of the assault with you to the hospital in a clean, sanitary container such as a clean paper grocery bag or wrapped in a clean sheet (plastic containers do not breathe, and may render evidence useless). If you have not changed clothes, bring a change of clothes with you to the hospital, if possible, as they will likely keep the clothes you are wearing as evidence. Do not disturb a crime scene—leave all sheets, towels, and other items that may bear evidence of a crime. Victims are strongly encouraged to report the incident.

8.1.7.3.2. Fondling

Fondling entails touching of the private body parts of another person for the purpose of sexual gratification, without consent of the victim, including instances where the victim is

incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

To clarify, fondling includes intentional contact for the purpose of sexual gratification with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts.

8.1.7.3.3. Incest

In the state of Wisconsin, incest is sexual intercourse between persons who are related to each other within a degree of kinship closer than second cousin.

8.1.7.4. Domestic Violence

Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Wisconsin, 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 state of Wisconsin.

8.1.7.5. Dating Violence

Dating violence is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship will be determined based on consideration of the following factors:

- The length of the relationship.
- The type of relationship.
- The frequency of interaction between the persons involved in the relationship.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

8.1.7.6. Stalking

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for the person's safety or the safety of others

or

- Suffer substantial emotional distress.

8.1.8. Retaliation

See "Relation, including peer retaliation" in Section 3.1. of this policy for a definition of retaliation under Title IX. MSOE prohibits retaliation, including peer retaliation, in its education programs and activities. When MSOE receives information that may constitute retaliation under Title IX, MSOE is required to respond to the information in the same manner that it does with respect to a report of conduct that reasonably may constitute sex discrimination under Title IX—see Section 6.1.1.5. If MSOE receives a complaint of

retaliation, the University must initiate its Title IX grievance process or informal resolution process.

The assessment of retaliation under Title IX must include an assessment of the subjective state of mind of the Respondent in the matter for the purposes of determining whether the Respondent intended to retaliate.

A complaint of retaliation associated with the set of facts in a single complaint of alleged sex discrimination or sex-based harassment may be consolidated for the purposes of resolution.

Provided there is evidence of falsity apart from the outcome of a Title IX proceeding itself, MSOE may discipline a person for making false statements in any Title IX investigation, grievance process, informal resolution, and any other Title IX proceeding associated with the prompt and effective resolution of alleged sex discrimination under Title IX. Such discipline is not retaliation.

A counter-complaint generated by a Respondent is an example of retaliation if it is made in bad faith for the purpose of interfering with a Complainant's exercise of Title IX rights.

9.1. Grievance Process for Complaints of Alleged Sex Discrimination Including Sex-Based Harassment

See "Grievance process" in Section 3.1 of this policy for details about the Title IX grievance process.

In response to all complaints of alleged sex discrimination involving persons, including sex-based harassment, and including a student Complainant or a student Respondent, MSOE will initiate a grievance process for the prompt and equitable resolution of the complaint. When a sex discrimination complaint alleges that MSOE's policy or practice discriminates on the basis of sex, MSOE is not considered a Respondent—but see "Programmatic discrimination" in Section 3.1. of this policy.

9.1.1. MSOE Grievance Process General Procedures and Requirements

- MSOE treats Complainants and Respondents equitably and with due process (see "Due process" in Section 3.1 of this policy).
- MSOE requires that the Title IX Coordinator, Title IX investigators, the Title IX decisionmaker, and Title IX appeals personnel do not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. All MSOE Title IX personnel must exercise an impartial approach.
- Under MSOE's Title IX policy, the decisionmaker for a complaint is the Title IX Coordinator, except in those complaints where the Title IX Coordinator has designated another decisionmaker. The Title IX Coordinator may designate another decisionmaker for several reasons, including but not limited to the following: (i) Title IX law may require the procedure (e.g., see "Informal resolution" in Section 3.1 of this policy); the Coordinator may wish to avoid the appearance of, or an actual, conflict of interest; other reasons.

- MSOE presumes that the Respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of MSOE’s grievance procedure.
- MSOE will establish a reasonably prompt timeframe for the major stages in the grievance procedures associated with complaints. The major stages include evaluation of a complaint, investigation of a complaint, determination of the complaint, and the appeal of the complaint.
- MSOE allows reasonable extensions of timeframes on a case-by-case basis for good cause with written notice to both parties that includes the reason(s) for the delay. “Good cause” reasons include, but are not limited to, the absence of a party, a party’s advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.
- MSOE will take reasonable steps to protect the privacy of both parties and witnesses during the grievance process, provided that the steps do not restrict the ability of the Complainant and the Respondent to: (i) obtain and present evidence, including by speaking to witnesses (subject to the prohibition on retaliation—see Section 8.1.8. in this policy); (ii) consult with their family members, confidential resources, or advisors; (iii) or otherwise prepare for or participate in the grievance procedure.
- MSOE will not disclose personally identifiable information in its response to sex discrimination, except in the following circumstances: (i) When MSOE has obtained prior written consent from the person with the legal right to consent to the disclosure; (ii) When the information is disclosed to a parent, guardian, or other representative with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue; (iii) As required by federal law, Federal regulations, or the terms and conditions of a Federal award, including a grant award or other funding agreement; (iv) To carry out actions to address conduct that reasonably may constitute sex discrimination under Title IX in MSOE’s education programs and activity; (v) To the extent such disclosures are not otherwise in conflict with Title IX, when required by State or local law or when permitted under FERPA. To the extent that a conflict exists between MSOE’s obligations under Title IX and under the Family Educational Rights and Privacy Act (FERPA), MSOE’s obligation to comply with the Title IX regulations is not obviated or alleviated by the FERPA statute or regulations. In 1994, as part of the Improving America’s Schools Act, Congress amended GEPA, of which FERPA is a part, to state that nothing in GEPA shall be construed to “affect the applicability of . . . title IX of the Education Amendments of 1972[.]” 20 U.S.C. 1221(d). This has long been interpreted to mean that FERPA continues to apply in the context of enforcing Title IX, but if there is a direct conflict between FERPA’s requirements and Title IX’s requirements, such that enforcing FERPA would interfere with Title IX’s primary purpose to eliminate sex-based discrimination in schools, the requirements of Title IX override any conflicting FERPA provisions. 85 FR 30424.

- MSOE requires that the decisionmaker—and if applicable, appeals personnel—in a complaint engage in an objective evaluation of all evidence that is relevant and not otherwise impermissible, including both inculpatory and exculpatory evidence. “Inculpatory” evidence refers to specific evidence (or items of evidence) that indicate a policy violation. “Exculpatory” evidence refers to specific evidence (or items of evidence) that indicate no policy violation.
- MSOE requires that the decisionmaker and any appeals personnel (if applicable) in a complaint not assess the credibility of a person based on their status as a Complainant, Respondent, or witness.
- In a grievance process, MSOE requires the use of permissible evidence only. See “Evidence, impermissible” and “Evidence, relevant” in Section 3.1 of this policy.
- In a grievance process, MSOE requires the use of a preponderance of evidence proof standard. Using a preponderance of evidence in its grievance and resolution process, the decisionmaker (and appeals personnel, if applicable) evaluate the greater weight of all of the evidence with respect to deciding in favor of either the Complainant or the Respondent. That is, the preponderance of evidence standard is used to determine if it is more likely than not that sex discrimination occurred in MSOE’s education programs or activities. The preponderance of the evidence resides not in the amount of evidence, but rather in how weighty and convincing the evidence (for and against) is. Thus, one clearly knowledgeable witness may provide a preponderance of evidence over a dozen witnesses with hazy testimony. If the decisionmaker is not persuaded under the preponderance of evidence standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker must not determine that sex discrimination occurred.
- If the Complainant withdraws their complaint or allegations within a complaint, the Title IX Coordinator must obtain the Complainant’s withdrawal in writing.
- MSOE may dismiss a Title IX complaint in compliance with requirements in Section 7.1.2. of this policy.
- Upon the initiation of a Title IX grievance process, the MSOE Title IX Coordinator shall offer supportive measures to the Complainant and the Respondent—see “Supportive measures” in Section 3.1 of this policy.
- MSOE will maintain all recordkeeping of the entire grievance process, including investigation, determination, appeal (if applicable) or the entire informal resolution process in compliance with requirements itemized in “Recordkeeping” in Section 3.1. of this policy. As part of its recordkeeping responsibilities, for each complaint, MSOE will maintain an (i) evidence file and a (ii) case log, which may be in either electronic or hard copy format or both. The evidence file shall feature all relevant evidence not otherwise impermissible employed to make a determination concerning the complaint. Relevant evidence can include but not be limited to notes, recordings, and transcripts. For nontestimonial evidence, the evidence file shall contain

information on how such evidence can be accessed (e.g., physical evidence will be secured by MSOE). Both parties have the right to examine the evidence file. The purpose of the confidential case log is to serve as a project management tool for the Title IX Coordinator and/or the Title IX team. The case log shall be used to record in a chronological manner activities and documentation associated with all stages of a complaint. Dates and time expended for each activity shall be recorded.

- At the discretion of the Title IX Coordinator, MSOE may consolidate complaints if they arise out of the same facts and circumstances. More precisely, consolidation of complaints may be effectuated as to allegations of sexual discrimination against more than one Respondent, or by more than one Complainant against one or more Respondent, or by one party against the other party, where the allegations of sex discrimination arise out of the same facts and circumstances.

9.1.2. MSOE Grievance Process: Written Notice of Allegations

Upon the initiation of a complaint of alleged sex discrimination, including sex-based harassment involving a student Complainant or a student Respondent, MSOE will issue a written notice of allegations to the parties whose identities are known with sufficient time for the parties to prepare a response before any initial interview.

“[S]ufficient time to prepare” is understood here to mean ten (10) business days.

The written notice of allegations must feature the following elements:

- A notice of the specific allegations that potentially constitute Title IX sex discrimination, including sex-based harassment, and including sufficient details known at the time. Sufficient details include:
 - The identities of the parties involved, if known.
 - The specific conduct allegedly constituting Title IX sex discrimination, including sex-based harassment.
 - The date(s) and location(s) of the alleged conduct, if known.
- Information on how to access MSOE’s Title IX sex discrimination policy, and a statement that both a grievance process and an informal resolution process are available to resolve the complaint.
- A recommendation that the parties carefully review the MSOE Title IX sex discrimination policy.
- A statement that retaliation is prohibited.
- A statement that the Respondent is presumed not responsible for the alleged sex discrimination until a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement that prior to determination, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker.
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, and that the role of the advisor in the grievance process is subject to restrictions that are detailed in the MSOE Title IX sex discrimination policy.

- A statement that upon the request of any party, the parties have an equal opportunity to access the relevant and not otherwise impermissible evidence gathered during the grievance process.
- A statement that in MSOE's Title IX grievance process, any person is prohibited from knowingly giving false statements, information, testimony, and evidence, or knowingly misrepresenting the facts pertaining to a Title IX complaint, and that knowingly submitting false information is subject to discipline associated with the MSOE student code of conduct.

9.1.2.1. If in the course of the grievance process, MSOE decides to investigate allegations about the Complainant or Respondent that are not included in the notice of allegations, MSOE will provide written notice to the parties of the additional allegations.

9.1.2.2. To the extent that MSOE has reasonable concerns for the safety of any person as a result of providing a written notice of allegations, MSOE may reasonably delay providing the notice until the safety concerns have been appropriately addressed. Reasonable concerns must be based on individualized safety and risk analysis and not mere speculation or stereotypes.

9.1.2.3. MSOE may choose to consolidate complains of sex discrimination, including sex-based harassment, against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against another party, when the allegations arise out of the same facts or circumstances.

9.1.3. MSOE Grievance Process: The Complaint Investigation

After issuing a notice of allegations to both parties in a complaint of alleged sex discrimination, including sex-based harassment involving a student Complainant or a student Respondent, MSOE will conduct an adequate, reliable, and impartial investigation. The purpose of the investigation is to collect relevant inculpatory and exculpatory evidence not otherwise impermissible so that an impartial decision can be made by the decisionmaker concerning whether or not the alleged sex discrimination occurred. Inculpatory evidence tends to support the decision that a Respondent committed a sex discrimination violation, as alleged. Exculpatory evidence tends to support the decision that a Respondent did not commit a sex discrimination violation, as alleged. MSOE will assess all evidence gathered through the investigation and determine what evidence is relevant and not otherwise impermissible.

The complaint investigation features the following requirements:

- The burden to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred is on MSOE and not on the parties.
- MSOE generally employs a single-investigator or investigator team for an investigation and a separate decisionmaker in Title IX investigations, which feature individual meetings and the gathering of relevant non-testimonial evidence. MSOE Title IX investigators and decisionmakers are trained, impartial, avoid prejudgment of facts at issue, avoid bias and conflicts of interest, and act without bias towards all persons in a Title IX situation.
- In an investigation concerning a complaint of sex discrimination that does not feature sex-based harassment, a single investigator shall undertake the investigation,

and the Title IX Coordinator shall serve as the decisionmaker, although the Title IX Coordinator may designate another decisionmaker—see Section 9.1.1.

- In an investigation concerning sex-based harassment, an investigative team generally will be employed for the investigation and the Title IX Coordinator generally will serve as the decisionmaker, although the Title IX Coordinator may designate another decisionmaker—see Section 9.1.1.
- MSOE will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the party to prepare to participate. “Sufficient time” here is understood to be three (3) business days.
- For any meeting or proceeding in the investigation, parties have the right to be accompanied by an advisor (one person) of their choice, who may be, but is not required to be, an attorney. The choice or presence of the advisor is not limited for any meeting or proceeding. Advisors are subject to restrictions—see Section 9.1.3.1. No other persons are allowed to accompany the parties.
- Both parties are not permitted to present expert witnesses.
- MSOE will allow for the reasonable extension of timeframes on a case-by-case basis for good cause with written notice to the parties that includes the reason(s) for the delay.
- In an investigation, both parties have an equal opportunity to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible.
- At the conclusion of the complaint investigation, MSOE will provide each party and the party’s advisor, if any, with an equal and reasonable opportunity to access, to review, and to respond to the evidence that is relevant to the allegations of sex discrimination, including sex-based harassment, and not otherwise impermissible. Both parties shall have ten (10) business days to submit to the investigator(s) a written response to the evidence. The written responses may result in the need for additional investigation, and if additional relevant evidence is gathered, this evidence must also be shared equally and reasonably with the parties, and the parties will have 5 (five) business days submit a written response to the additional evidence.
- MSOE will take reasonable steps to prevent and address the parties’ and their advisors’ unauthorized disclosure of information and evidence obtained solely through the grievance process. These steps may include restrictions on the parties’ and advisors’ ability to redisclose the information. Disclosures of such information and evidence for purpose of administrative proceedings or litigation related to the complaint of sex discrimination, including sex-based harassment, are authorized.

9.1.3.1. Advisors During the Title IX Investigation

In the investigation stage of the Title IX grievance process, a party’s advisor (i) provides personal support, (ii) helps the party to prepare for meetings and interviews, (iii) accompanies the party to all meetings and interviews, and (iv) assists the party in reviewing the evidence prior to the close of the investigation.

In investigative interviews and proceedings, advisors must remain passive, and must not argue on behalf of their respective parties. Advisors must not represent nor speak for a party during an interview. Advisors must not impede nor obstruct communications between

MSOE and the parties during an investigation. MSOE may exclude from participation in the process an advisor who does not comply with these rules of conduct. If an advisor violates rules of conduct during an investigative interview, meeting, or interaction, the proceeding will be suspended and the advisor will be prohibited from further participation. If the party desires to name a new advisor, the proceeding may not be resumed until the new advisor is in place.

9.1.4. MSOE Grievance Process: The Complaint Decision-making Stage

The purpose of the complaint decision-making process is enable the decisionmaker after reviewing the evidence gathered in the investigation (i) to ask the parties and witnesses relevant and not otherwise impermissible questions and follow-up questions, including questions challenging credibility, to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination, including sex-based harassment, and (ii) to make a determination about whether sex discrimination, including sex-based harassment, occurred with respect to the complaint.

In most complaints, the MSOE Title IX Coordinator shall serve as the decisionmaker, although in some circumstances, the Title IX Coordinator may designate another trained decisionmaker—see Section 9.1.1.

Questioning of the parties and witnesses must take place consistent with the following provisions before determining whether a violation of this policy occurred.

- Decision-making questioning shall take place in individual meetings and follow-up meetings (as required) with a party or a witness. This stage features an asynchronous, iterative process.
- MSOE will provide, to a party whose participation is invited or expected in the decision-making stage, written notice of the date, time, location, participants, and purpose of all individual meetings and follow-up meetings with sufficient time for the party to prepare to participate. "Sufficient time" here is understood to be three (3) business days.
- For all individual meetings and follow-up meetings in the decision-making stage, parties have the right to be accompanied by an advisor (one person) of their choice, who may be, but is not required to be, an attorney. The choice or presence of the advisor is not limited for any meeting. Advisors are subject to restrictions—see Section 9.1.4.1. No other persons are permitted to accompany the parties.
- Each party has the right to propose such questions in writing that the party wants asked of any party or witness and have those questions asked by the decisionmaker during one or more individual meetings, including follow-up meetings, with a party or witness, subject to requirements concerning relevancy and permissible and impermissible evidence.
- The decisionmaker must determine whether a proposed question is relevant and not otherwise impermissible, prior to the question being posed, and must explain any decision to exclude a question as not relevant or otherwise impermissible. If a decisionmaker determines that a party's question is relevant and not otherwise impermissible, then the question must be asked, except that MSOE will not permit questions that are unclear or harassing of the party or witness being questioned. The decisionmaker must give a party an opportunity to clarify or revise a question that

the decisionmaker has determined is unclear or harassing and, if the party sufficiently clarifies or revises a question, the question must be asked.

- The decisionmaker may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The decisionmaker must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.
- MSOE will provide each party with an audio or audiovisual recording or a transcript of each individual meeting and follow-up meeting with enough time (i.e., three days) for the party to have a reasonable opportunity to propose follow-up questions in writing.
- The asynchronous, iterative decision-making stage is concluded by the decisionmaker when the decisionmaker is ready to issue the written determination with respect to the complaint.

9.1.4.1. Advisors During the Decision-making Stage

In the decision-making stage of the Title IX grievance process, a party's advisor (i) provides personal support, (ii) helps the party to prepare for individual meetings and follow-up meetings, and (iii) accompanies the party to all individual meetings and follow-up meetings.

In the decision-making individual meetings and follow-up meetings, advisors must remain passive, and must not argue on behalf of their respective parties. Advisors must not represent nor speak for a party during a meeting. Advisors must not impede nor obstruct communications between MSOE and the parties during a meeting. MSOE may exclude from participation in the process an advisor who does not comply with these rules of conduct. If an advisor violates rules of conduct during an individual meeting, or follow-up meeting, the proceeding will be suspended and the advisor will be prohibited from further participation. If the party desires to name a new advisor, the proceeding may not be resumed until the new advisor is in place.

9.1.5. MSOE Grievance Process: The Written Determination

After the asynchronous, iterative decision-making stage concludes, the decisionmaker must employ all relevant evidence not otherwise impermissible to determine whether sex discrimination, including sex-based harassment, occurred or not with respect to the complaint.

All relevant evidence not otherwise impermissible should be evaluated for weight and credibility. Not all evidence has equal value. Some evidence may be more reliable than other evidence. The weight of different pieces of evidence may vary depending on a range of factors, including credibility, corroboration, consistency, level of detail, expertise of a witness, and whether a witness is disinterested. Using a preponderance of evidence evidentiary standard, the decisionmaker must resolve disputed issues of fact, and using the facts as found, apply relevant provisions of MSOE's Title IX sex discrimination policy to those facts to determine whether sex discrimination, including sex-based harassment, occurred.

Following the determination of the decisionmaker, MSOE will issue a written determination concerning the complaint. Under Title IX law, the institution issues the written determination—as such, more than one person can contribute to the document.

The written determination will be issued to the parties simultaneously.

The written determination must include the following sections.

- A description of the alleged sex discrimination, including sex-based harassment.
- Information about the relevant provisions in the MSOE Title IX sex discrimination policy and the procedures that were employed to evaluate the allegations.
- The decisionmaker's evaluation of the relevant and not otherwise impermissible evidence and determination whether sex discrimination, including sex-based harassment, occurred.
- When the determination under a preponderance of evidence standard indicates that sex discrimination, including any sex-based harassment, occurred, the written determination shall include any disciplinary sanctions imposed on the Respondent.
- When the determination under a preponderance of evidence standard indicates that sex discrimination, including any sex-based harassment, occurred, the written determination shall include any remedies provided to the Complainant, as well as to other persons who experienced the effects of sex discrimination in the complaint. When the written determination indicates that no violation occurred, the Title IX Coordinator may also choose to initiate remedies for the Respondent.
- Information for the Complainant and the Respondent on how to appeal.

The determination regarding responsibility becomes final either (i) on the date that MSOE provides the parties with a written determination of the result of any appeal, or, if no party appeals, (ii) the date on which an appeal would no longer be considered timely, which is five (5) business days.

9.1.6. MSOE Grievance Process: Appeals

The purpose of the grievance process appeal is to permit either or both the Complainant and the Respondent to challenge on limited grounds the written determination regarding responsibility resulting from a Title IX grievance process. The appeal process is not an opportunity to re-argue the outcome of a complaint.

9.1.6.1. Either or both the Complainant and the Respondent are permitted to file a request for a grievance process appeal to challenge a determination regarding responsibility. No other persons can file an appeal on behalf of the parties, unless they are legally authorized to represent the parties.

9.1.6.2. The grievance process written determination must be appealed within five (5) business days from issuance of the written determination on one or more the following grounds:

- Procedural irregularity that would change the outcome.
- New evidence that would change the outcome and that was not reasonably available when the determination whether sex discrimination, including any sex-based harassment, was made.
- The Title IX Coordinator, investigator(s), or decisionmaker had a conflict of interest or bias for or against Complainants or Respondents in general or the individual Complainant or Respondent that would change the outcome.

9.1.6.3. To submit a request for an appeal of the written determination, either or both parties in a grievance process must submit a written statement featuring the following elements:

- A statement concerning the ground(s) of appeal.
- An explanation, featuring sufficient specificity, of the rationale for the appeal and why the appeal should be granted.

The written appeal statement must be submitted to the appeals decisionmaker. The name and contact information for the appeals decisionmaker must appear in the written determination associated with the complaint.

9.1.6.4. If the written determination is appealed by either or both parties, the decisionmaker of the appeal must not be the Title IX Coordinator nor the designated decisionmaker (if the Title IX Coordinator did not serve as the decisionmaker) nor an investigator in the grievance process. The decisionmaker for the appeal must be appropriately trained and must be free of conflicts of interest and bias.

9.1.6.5. If the written determination is appealed, the Title IX Coordinator shall notify simultaneously in writing both parties, implement the appeal procedures equally for both parties, provide the parties with five (5) additional business days to submit a written statement in support of, or challenging, the appeal. At the conclusion of these five (5) business days, the decisionmaker of the appeal must issue simultaneously to both parties with a copy to the Title IX Coordinator their written decision concerning the appeal, and the grounds for the decision.

9.1.6.6. The appeals decisionmaker shall immediately dismiss a request for the appeal if it has been filed after the timeline stated in this policy and/or if the appellant in their request for appeal fails to articulate one or more of the three permissible grounds for appeal.

9.1.6.7. When a request for the appeal is granted, the appeals decisionmaker must conduct a review of the record of the grievance process, including the written determination, and any other relevant documentation. The focus of the appeals decisionmaker is limited in scope. The decisionmaker examines the record with a focus only on information that is directly relevant to the ground(s) of the appeal. After reviewing the record, the appeals decisionmaker must produce a written decision that states the outcome of the appeal, together with the rationale for the decision. The written decision must be sent simultaneously to both parties.

Three outcomes are possible in the appeal of a written determination.

9.1.6.7.1. Appeal Denied

In this outcome, the appeal is denied, and the determination of responsibility is affirmed and final.

9.1.6.7.2. Appeal Granted with Determination Reversed

In this outcome, the appeal is granted, and the determination of responsibility is reversed. That is, a grievance process written determination concerning a complaint consists of one of two possible decisions—either the Respondent was determined to be in violation of the MSOE Title IX policy, or the Respondent was found not to be in violation of the policy. When the appeal is granted and the determination reversed, the original decision is reversed. This decision is final.

9.1.6.7.3. Appeal Granted with Determination Vacated and Remanded

In this outcome, the appeal is granted, and the determination of responsibility is vacated, or rendered null and void. The complaint is sent back to the Title IX Coordinator, who must ensure that the grievance process for the complaint is restarted with a new investigation and/or new decision-making stage, as applicable, featuring new Title IX personnel.

10.1. Informal Resolution Process for Complaints of Alleged Sex Discrimination Including Sex-Based Harassment

The informal resolution process is a voluntary process to complaints of alleged sex discrimination, including sex-based harassment, through a mechanism other than the grievance process. See “Informal resolution” in Section 3.1 of this policy for additional details. MSOE has the discretion to determine if an informal resolution process is appropriate to address a complaint. The University may decline to offer informal resolution despite one or more of the parties’ wishes. Circumstances when MSOE may decline to allow informal resolution include but are not limited to when MSOE determines that the alleged conduct would present a future risk of harm to others. MSOE will be less likely to offer informal resolution when an employee is accused of serious sexual misconduct against a student in MSOE’s education programs and activities and where the institution would likely face legal liability if the conduct recurred after informal resolution.

The informal resolution process is associated with the following requirements.

10.1.1. The MSOE Title IX Coordinator shall serve as the facilitator of the informal resolution process, except in the case where the complaint was previously addressed in MSOE’s grievance process where the Coordinator served as the decisionmaker. In this scenario, the Title IX Coordinator shall designate a different facilitator.

10.1.2. When MSOE offers an informal resolution process, the Title IX Coordinator must, to the extent necessary, take other appropriate prompt and effective steps to ensure that sex discrimination, including sex-based harassment, does not continue or recur within MSOE’s education programs and activities.

10.1.3. If offered, the informal resolution process is available at any time prior to the written determination of whether sex discrimination, including sex-based harassment, occurred.

10.1.4. MSOE will not require or pressure the parties to participate in an informal resolution process. MSOE must obtain the parties’ voluntary written consent to the informal resolution process and must not require waiver of the right to an investigation and determination of a complaint under the grievance process as a condition of enrolment, or employment or continuing employment, or exercise of any other right.

10.1.5. Before initiation of the informal resolution process, MSOE will provide to the parties written notice that includes information on the following elements:

- The allegations.
- The requirements of the informal resolution process.
- The type of informal resolution process.

- That, prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and to initiate or resume the MSOE Title IX grievance process.
- That the parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the parties from initiating or resuming the grievance process arising from the same allegations.
- The potential terms that may be requested or offered in an informal resolution agreement, including written notice that an informal resolution agreement is binding only on the parties.
- That the parties need to be aware that information shared during the informal resolution process subsequently may be shared in a grievance process if a grievance process is initiated or resumed.

10.1.6. The facilitator of an informal resolution process must not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. The facilitator must receive Title IX team training.

10.1.7. Potential terms that may be included in the informal resolution agreement include but are not limited to:

- Restrictions on contact.
- Restrictions on the Respondent's participation in one or more of MSOE's education programs or activities or attendance at specific events, including restriction MSOE could have imposed as remedies or disciplinary sanctions had MSOE determined at the conclusion of the grievance process that sex discrimination, including sex-based harassment, occurred.
- Training or education.
- Withdrawal or resignation.
- Apology.
- Negotiated discipline or sanctions.

10.1.8. MSOE employs a mediation between the parties in its informal resolution process, facilitated by the Title IX Coordinator (or designee), with the goal of reaching a mutually agreeable written settlement with terms. The mediation features individual meetings with the Title IX Coordinator (or designee) and each of the parties. Multiple meetings may be required.

10.1.9. At the discretion of MSOE, some or all terms associated with an informal resolution settlement may continue after the conclusion of the process, and after one or both parties are no longer participating in MSOE's education programs and activities as students. This provision may be necessary for several reasons—for example, after ending their participation as students, one or both parties may attend events as alumni associated with MSOE's education programs and activities.

10.1.10. The informal resolution process shall be reasonably prompt. The implementation of an informal resolution process may have the effect of suspending a grievance process entailing an investigation and decision-making. In this case, if the informal resolution process fails or appears futile, MSOE has the discretion to promptly resume the formal resolution process.

10.1.11. The informal resolution process must result in a written agreement that shall include all terms. The written agreement can feature a contingency clause or clauses. The purpose of a contingency clause is to provide either or both parties with recourse in the event that either party fails to fulfill the agreement in its entirety as stipulated. The Agreement typically ends when both parties stop participating in MSOE’s education programs and activities, but as indicated in Section 10.1.9, MSOE has the discretion to continue some of or all the terms of the agreement. The agreement shall be signed and dated by both parties and by the MSOE Title IX Coordinator.

10.1.12. The MSOE Title IX Coordinator shall maintain in a secure and confidential manner a copy of this Agreement. At the discretion of the Coordinator, the Agreement can be shared on a “need-to-know” basis (e.g., in the event of a violation of this Agreement).

V. ASSOCIATED LEGISLATION/REGULATIONS/ACCREDITATION STANDARD

This policy complies with the United States Department of Education final Title IX rule published on April 29, 2024, in 34 CFR Part 106 (Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance).

Campus Sexual Violence Elimination (SaVE) Act.

Family Educational Rights and Privacy Act (FERPA)

Reauthorization of the Violence Against Women Act of 2013 (VAWA).

Rehabilitation Act of 1973, 29 U.S.C. 794.

Title VII, as amended by the Pregnancy Discrimination Act.

Higher Learning Commission (HLC) Core Component 2A

This section to be completed by the Records Manager:

Due date for review

This policy shall be revised as necessary to comply with regulatory requirements and guidance issued by the United States Department of Education.

Public Location

MSOE Policy Library and linked at <https://www.msoe.edu/campus-experience/student-support-services/sexual-assault-resources/title-ix/>

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- Prior to 2017 the policy was published as part of the Whole Student Life Handbook

Records Manager

Assistant VP of Curriculum & Knowledge Management