

# **Title IX Policy and Procedures**

## **Complaints of Sexual Harassment**

### **I. Purpose and Intent**

Mount Marty University (“Mount Marty”) is a Catholic liberal arts university in the Benedictine tradition. In accord with its history and mission, as well as in compliance with federal, state, and local laws, Mount Marty does not discriminate in its employment decisions, programs, or any other activities on the basis of sex, race, age, color, national origin, religious preference, disability or any other basis prohibited by law.

Mount Marty is committed to providing a learning, living, and working community that is free from discrimination and harassment. In accordance with Title IX of the Education Amendments of 1972, Mount Marty prohibits discrimination on the basis of sex in all programs and activities, including academic programs, extracurricular programs, and intercollegiate athletic activities. Title IX also prohibits retaliation against any person who files a report concerning Sexual Harassment, or who participates or refuses to participate in any investigation concerning an allegation of Sexual Harassment.

#### **Title IX Coordinator**

All complaints concerning misconduct should be directed to Katie Harrell, Mount Marty’s Title IX Coordinator at [katie.harrell@mountmarty.edu](mailto:katie.harrell@mountmarty.edu) or at (605) 668-1491. The Title IX Coordinator oversees the University’s centralized review, investigation, and resolution of reports of prohibited conduct. The Title IX Coordinator also coordinates Mount Marty’s compliance with Title IX. The Title IX Coordinator undergoes annual training to maintain knowledge of relevant state and federal laws and University policies and procedures. The Title IX Coordinator is an available resource to advise any individual, including a Complainant or Respondent, about the courses of action available, both informally and formally. The Title IX Coordinator also assists all members of the Mount Marty community regarding how to respond appropriately to reports of misconduct. The Title IX Coordinator retains discretion to modify any of the timelines set forth in this policy if the Title IX Coordinator determines, in the interests of fairness, that such an adjustment is necessary. Extensions of time may be granted, for instance, if the campus is not in session due to breaks in the academic calendar which limit the availability of witnesses and Mount Marty employees needed to investigate and hear complaints.

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#### **Scope:**

This policy addresses sexual harassment by or against all individuals who participate in Mount Marty’s programs and activities, including students, faculty, staff, and third parties. The prohibition against Sexual Harassment applies to the educational, residential and working

communities, which includes all other associated settings such as Mount Marty sponsored trips and social activities, athletic trips, and internship placements. It does not apply, however, to sexual harassment that occurs off-campus in a private setting that is not part of Mount Marty's education program or activity.

The policy applies to all terms and conditions of employment including, but not limited to, hiring, placement, benefits, promotion, termination, layoff, recall, transfer, leaves of absence, compensation and training.

Finally, the policy applies to all complaints against Mount Marty students or employees who are alleged to have committed Sexual Harassment in the provision of Mount Marty's education programs and activities.

### **Required Reporting**

Any Mount Marty employee who has authority to take corrective action is required to immediately report any allegations of Sexual Harassment to the Title IX Coordinator. These employees include all faculty members, residence and student life employees, human resource employees, campus security officials, coaches, athletic trainers, and administrators.

### **Privacy and Confidentiality**

Mount Marty recognizes the sensitive nature of Sex Discrimination allegations. Mount Marty will do its utmost to protect the privacy of the parties involved to the extent that it is consistent with the law and Mount Marty's need to protect the safety of its community. Any information concerning a complaint will be shared only on a need-to-know basis. Information that is private and information that is confidential are not the same. "Private" information means information that will only be shared with a limited circle of individuals on a "need to know" basis to allow active review, investigation, or resolution of the report. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process. Confidential information is information that will not be shared by the receiving party with any other party.

On MMU's campus, students, faculty, and staff may speak with the Campus Chaplain (phone 605-668-1386) or MMU counselor (phone: 605-668-1518) confidentially about any allegations concerning Sexual Harassment. Conversations with Father or the counselor are protected and will not be reported to the Title IX Coordinator without consent. Additionally, Mount Marty community members may call the River City Domestic Violence crisis line at (605) 665- 1488 at any time to confidentially discuss sexual assault and other situations.

## **II. Definitions**

For purposes of this policy, the following definitions apply:

**Advisor**: An Advisor is a third party selected by either the Complainant (the "Complainant's Advisor") or the Respondent (the "Respondent's Advisor") to advocate on that party's behalf. The Advisor does not need to be an attorney, but can be. If at the time of hearing on a Formal Complaint, either the Complainant or Respondent does not have an Advisor, Mount Marty will appoint an Advisor for that party. Mount Marty is not required to appoint an attorney to act as an Advisor.

**Complainant:** The Complainant is the individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.

**Consent:** Consent means freely agreeing to engage in sexual activity. A person is not capable of giving consent in many circumstances, including, but not limited to, when the person is: (1) asleep or unconscious; (2) physically helpless; (3) under the influence of drugs or alcohol; or (4) unable to give consent due to an intellectual or other disability. Past consent to sexual activity does not imply future consent. Consent can be withdrawn at any time.

**Formal Complaint:** A Formal Complaint is a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that Mount Marty investigate the allegation of Sexual Harassment. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in an education program or activity at Mount Marty. The phrase a “document filed by a Complainant” means a document or electronic submission (such as by email) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint.

**Respondent:** The Respondent is an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

**Sexual Harassment:** Sexual Harassment includes conduct on the basis of sex that satisfies one or more of the following categories:

1. **Quid Pro Quo.** Quid Pro Quo Sexual Harassment occurs when a Mount Marty employee conditions educational benefits on participation in unwelcome sexual conduct.
2. **Hostile Environment.** A Hostile Environment involves unwelcome conduct that a reasonable person would determine to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Mount Marty’s education programs or activities.
3. **Sexual Assault.** Sexual Assault includes: (a) any sexual act directed against another person, forcibly and/or against that person’s will; (b) any sexual act directed against another person where the person is incapable of giving consent; (c) incest; or (b) statutory rape.
4. **Dating Violence.** Dating Violence is violence committed by a person who is or has been in a social or romantic relationship with the victim. The existence of such a relationship is determined based on (a) the length of the relationship; (b) the type of relationship; and (c) the frequency of interaction between the persons involved in the relationship.
5. **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 South Dakota, 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 South Dakota.

6. Stalking. Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to either (a) fear for the person's safety or the safety of others; or (b) suffer substantial emotional distress.

### **III. Supportive Measures & Resources**

#### **Supportive Measures**

Supportive Measures are intended to restore or preserve access to Mount Marty's education program and activities in a manner that does not provide an unreasonable burden to any party. Supportive Measures may include counseling, deadline extensions, mutual no contact orders, leaves of absence, provision of escorts, residence modifications, and academic and campus work accommodations. The provision of Supportive Measures will be kept confidential to the extent that maintaining confidentiality does not impact Mount Marty's ability to provide them. Supportive Measures will be non-disciplinary, non-punitive, individualized, and narrowly tailored. No fee will be charged to any party for the provision of the Supportive Measures.

Upon notification of a potential report, The Title IX Coordinator will work with all parties involved to implement appropriate Supportive Measures or accommodations that are reasonably available to protect the safety and well-being of the Complainant, the accused party (i.e., the Respondent), and the campus community.

#### **Community Resources and Support**

There are many community resources available to victims of Sexual Harassment. Victims are encouraged to report crimes to the Yankton Police Department by dialing 911 or 605-668-5210. Mount Marty campus safety may be reached by dialing 605-661-9883. Victims may also seek assistance from any of the following agencies:

Avera Sacred Heart Emergency Room (605-668-8100);  
Lewis and Clark Behavioral Health Service Crisis Line (605-665-4606);  
Yankton 24 Hour Domestic Violence Crisis Line (605-665-1488)  
Mount Marty Counseling Office (605-668-1518).

#### **Additional Interim Measures**

In addition to initiating Supportive Measures, the Title IX Coordinator may, after undertaking an individualized safety and risk analysis, impose an interim suspension or leave of absence on a Student Respondent if the Title IX Coordinator determines that there is an immediate threat to the physical health or safety of Mount Marty's students, faculty or staff arising from the allegations of

Sexual Harassment. For students with disabilities, any removal process will also comply with Section 504 of the Rehabilitation Act. If the Student Respondent objects to the imposition of the interim suspension or leave of absence, the Student Respondent may request an expedited administrative hearing and appeal pursuant to the process set out in Student Code of Community Conduct.

If the Respondent is a faculty or staff member, the Title IX Coordinator may impose a paid administrative leave on the Respondent if the Title IX Coordinator determines there is an immediate threat to the health or safety of Mount Marty's students, faculty or staff.

### **Protection Order**

Mount Marty will work to implement orders of protection issued by courts as those orders impact education programs and activities on Mount Marty property. If any member of the Mount Marty community obtains an order of protection or restraining order, that individual should promptly provide Mount Marty campus safety as well as the Title IX Coordinator with a copy of that order so that Mount Marty can implement it as it relates to Mount Marty property, education programs, and activities.

### **Retaliation Prohibited**

No one may retaliate against any individual for filing a reasonable complaint alleging Sexual Harassment, for assisting in a complaint investigation, or for refusing to assist in a complaint investigation. Any member of the Mount Marty community who attempts to interfere with, restrain, coerce, discriminate against, or harass (whether overtly or covertly) any individual pursuing a complaint of Sexual Harassment or assisting in a complaint investigation will be subject to prompt and appropriate disciplinary action, up to and include dismissal of employment or suspension from the school. Any retaliatory conduct should be reported immediately to the Title IX Coordinator.

## **IV. Reporting a Claim**

### **Title IX Coordinator Response**

Upon receipt of notification of a potential violation, the Title IX Coordinator will promptly and confidentially contact the Complainant to discuss the availability of Supportive Measures and the Complainant's wishes with respect to Supportive Measures. The Title IX Coordinator will notify the Complainant that Supportive Measures are available whether or not the Complainant elects to file a Formal Complaint. The Title IX Coordinator will also explain the process of filing a Formal Complaint to the Complainant, and that a Formal Complaint can be filed at any time. If a Complainant does not wish to file a Formal Complaint, Mount Marty will generally respect those wishes and no further investigation will occur. However, if the Title IX Coordinator makes a reasonable determination that, under the known circumstances, an investigation is necessary even in the absence of the Complainant's filing of a Formal Complaint, the Title IX Coordinator may submit a signed Formal Complaint to initiate the investigation.

### **Process of Filing a Report**

To file a report, Mount Marty students, faculty, and staff who become aware of or are the victims of Sexual Harassment should notify the Title IX Coordinator in person, by mail, by phone, by

email, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. The person reporting does not need to be the alleged victim of the conduct that could constitute Sexual Harassment. The claim may be made at any time, including non-business hours, by using the telephone number, mailing address, or electronic mailing address of the Title IX Coordinator.

### **Filing of Formal Complaint**

If a Formal Complaint is filed, Mount Marty will conduct an investigation as set out below. However, if the allegations in a Formal Complaint do not meet the definition of Sexual Harassment, or did not occur in Mount Marty's education program or activities against a person in the United States, the Title IX Coordinator may dismiss the Formal Complaint but may still address the allegations in any matter appropriate under Mount Marty's separate rules and code of conduct.

Mount Marty will maintain the confidentiality of the Complainant, Respondent, and witnesses except as permitted by the Federal Educational Rights Privacy Act ("FERPA"), as required by law, or as necessary to conduct the investigation of the allegations raised by the Formal Complaint.

### **Mandatory Dismissal of Formal Complaint**

If at any point prior to entry of a final determination on the Formal Complaint, Mount Marty determines that the conduct alleged in the Formal Complaint, if assumed true: (a) does not constitute Sexual Harassment; (b) did not occur in Mount Marty's education program or activity; or (c) did not occur against a person in the United States, then Mount Marty must dismiss the complaint for purposes of this Title IX procedure. The complaint may be addressed under another policy, such as the student code of conduct, if it is applicable.

### **Optional Dismissal of Formal Complaint**

Mount Marty may dismiss a Formal Complaint prior to final determination in its discretion if (a) the Complainant would like to withdraw the Formal Complaint; (b) the Respondent is no longer enrolled or employed by Mount Marty; or (c) specific circumstances prevent Mount Marty from gathering evidence sufficient to make a final determination.

## **V. Investigation of a Formal Complaint**

### **Notice of Investigation**

Upon receipt of a Formal Complaint, the Title IX Coordinator will provide the Complainant and Respondent with a written copy of this Title IX Policy. The Title IX Coordinator will also, in writing, fully disclose to both the Complainant and Respondent (1) the allegations of wrongdoing, including, if known, the specific Mount Marty policies that were violated, the conduct allegedly constituting Sexual Harassment, and the date and the location of the alleged incident(s); (2) the rights and responsibilities of all parties, including the fact that Respondent shall be presumed not responsible at the commencement of the investigation and that the ultimate determination will be made at the conclusion of the grievance process; (3) that each party has the right to request and inspect the evidence; (4) the formal and informal resolution process; (5) the prohibition against retaliation; (6) the need to preserve any relevant evidence or documentation in the case, not only

for use in the hearing process, but also for use in other proceedings, including criminal matters, civil proceedings, and protection order proceedings; (7) the availability of supportive measures and accommodations; (8) the need to prove the allegations by a preponderance of the evidence; and (9) possible remedies and outcomes. The notice will also inform all parties that they may request to inspect and review evidence, and that knowingly making false statements or submitting false information during the process is prohibited. This notice will be provided to the Complainant and the Respondent with sufficient time for each to prepare a response before any initial interview.

### **Overview of the Investigation**

The Title IX Coordinator will appoint one or more trained investigators to conduct a prompt, impartial, and fair investigation of the Formal Complaint. The investigator may be a University employee or an external investigator engaged to assist the University in conducting an investigation. The investigation begins with the presumption that the Respondent is not responsible for the alleged conduct, and that presumption remains until a final determination is made regarding the formal complaint. All parties involved, including witnesses, will be treated with respect and with sensitivity.

The investigation will be completed within 90 days of the filing of the Formal Complaint unless the Title IX Coordinator determines that good cause exists to extend this time period. Good cause includes, but is not limited to, concurrent law enforcement activity, campus closure for holidays and breaks, and witness availability. The Title IX Coordinator will notify the parties in writing if good cause is found to extend the deadlines. The Title IX Coordinator will provide the parties with periodic updates regarding the status of the process and will provide notice to the Complainant and Respondent of any additional allegations of Title IX violations discovered in the course of the investigation.

During the investigation, the investigator will:

- Be objective, and will consider all relevant evidence, both inculpatory and exculpatory. The investigator will not make credibility determinations based on a person's status as Complainant, Respondent, or witness;
- Treat all parties involved, including witnesses, with respect and sensitivity;
- Allow both the Complainant and Respondent the opportunity to discuss the allegations and to gather evidence in support of the claim or defense;
- Interview both the Complainant and Respondent, as well as any witnesses. The Title IX Coordinator or the investigator will notify the Complainant and Respondent (and their Advisors, if any) of the date, time, place, and purpose of all hearings, interviews, or other meetings to which the Complaint or Respondent is expected to attend with sufficient time for the party to prepare to participate;
- Allow the Advisor for the Complainant and the Advisor for the Respondent to attend any interviews or other meetings in which the investigator requests the presence of the party. However, the Advisor will attend these interviews or meetings in an advisory capacity only and the investigator may limit the Advisor's participation in the meetings or interviews as long as the investigator does so equally for both the Advisor to the Complainant and the Advisor to the Respondent;
- Give both the Complainant and Respondent full opportunity to present evidence and

- witnesses (both factual and expert) in support of or in opposition to the allegations contained in the Formal Complaint; and
- Ensure that all interviews are properly documented and that the investigation is conducted in a thorough, objective manner that is considerate of all parties involved.

### **Review of the Evidence**

Prior to the conclusion of the investigation, the Title IX Coordinator will give both the Complainant and Respondent equal opportunity to review and inspect any evidence gathered during the investigation that is directly related to the allegations raised in the Formal Complaint, including inculpatory and exculpatory evidence as well as evidence that Mount Marty does not intend to rely on during the grievance hearing. Each party will then have 15 days to submit a written response to the investigator. If a party needs additional time to respond, the party should make that request in writing to the Title IX Coordinator who may, in the Title IX Coordinator's discretion, grant an extension. If an extension is granted to one party, it shall also be granted to the other party. The investigator will consider the written response from each party prior to finalizing the investigation.

### **Investigator's Report**

Upon conclusion of the investigation, the investigator will provide the Title IX Coordinator with a report that fairly summarizes and analyzes the relevant facts and any supporting documentation (which may include statements by the parties, third-party witnesses, or others with information and any physical, written, or electronic or other evidence). The Title IX Coordinator shall provide a copy of the Investigator's Report to both the Complainant and the Respondent at least 15 days prior to the Grievance Hearing, and either party may provide a written response to the report prior to the hearing.

### **Informal Process**

Except in cases involving allegations that a Mount Marty employee has sexually harassed a student, at any time prior to the final determination of responsibility, the Complainant and Respondent may agree to utilize an informal resolution process such as mediation or restorative justice to resolve the Formal Complaint. If either the Complainant or Respondent is unwilling to participate, no informal process can occur. Prior to implementing an informal process, in addition to the information noted above, the Title IX Coordinator will provide the parties a written notice of the terms of the proposed informal resolution process, and any consequences resulting from an informal resolution, including the records maintained. The Title IX Coordinator will obtain the parties' voluntary, written consent to informal resolution.

The parties to the informal process will not be required to deal directly with one another unless both parties agree. Instead, either the Title IX Coordinator or a neutral third party appointed by the Title IX Coordinator will act as a facilitator who will share the results of the investigation with the parties, meet with the parties either jointly or separately, and make recommendations for resolution of the Formal Complaint. The Complainant and the Respondent may each have an Advisor present at all meetings in which they participate. The facilitator does not have the authority to impose a resolution on the parties but will attempt to reach a satisfactory resolution of the Formal Complaint. Steps taken by the facilitator to help the parties achieve informal resolution, and the results of the informal resolution process will be documented and provided to the Title IX Coordinator. The Title IX Coordinator will contact the Complainant and Respondent to determine whether the



informal resolution has adequately resolved the Formal Complaint. Any party may request that the informal resolution process stop at any time, at which point the grievance process shall resume.

## **VI. Grievance Hearing**

### **Live Hearing**

A live hearing in front of a Hearing Officer appointed by the Title IX Coordinator will be conducted to make a final determination concerning whether the Formal Complaint is supported by a preponderance of the evidence. The live hearing may either be conducted with all parties physically present in the same geographic location, or, at Mount Marty's discretion, any or all parties and witnesses may appear at the live hearing virtually. Additionally, either Complainant or Respondent may request that the live hearing occur with the parties located in separate rooms or locations with technology enabling the parties, witnesses, and Hearing Officer to simultaneously see and hear the party answering questions. If the hearing is to be held via remote technology, Mount Marty will provide training to the Complainant, Respondent, their respective Advisors, and the Hearing Officer in advance of the hearing.

The hearing is intended to provide fair and ample opportunity for each party to present their account/narrative; to enable the hearing officer to determine the facts of the case; to make a determination regarding the alleged violations of this policy, Mount Marty regulations, policies, and community standards; and to recommend appropriate educational outcomes (sanctions), if necessary.

### **Pre-Hearing Notification**

Title IX Coordinator will provide a copy of the investigator's report and all documentary evidence gathered by the investigator to the Hearing Officer, the Complainant, and the Respondent at least 15 days prior to the scheduled hearing. Only the Complainant, Respondent, their respective Advisors, the Title IX Coordinator, the Hearing Officer, and Mount Marty's legal advisor may be present at the hearing. The Complainant and Respondent will also each be given at least 15 days written notice of the date, time, location, and purpose of the hearing, as well as the name of the Hearing Officer who will preside at the hearing. Either party may challenge the Hearing Officer on the basis of conflict of interest or bias. In the event of such a challenge, the Title IX Coordinator shall appoint a substitute Hearing Officer to handle the hearing.

### **Presence of Advisor**

Both the Complainant and Respondent will be represented at the hearing by an Advisor of their choice, who may or may not be an attorney. If either the Complainant or Respondent cannot locate an Advisor, Mount Marty will provide one for them, but Mount Marty is not required to provide either party with an attorney. If a party is unable to locate an Advisor, that party must give Mount Marty notice of the need for Mount Marty to appoint an Advisor. If this notice is given less than 10 days prior to the hearing date, or if the Title IX Coordinator determines more time is needed to allow Mount Marty to locate an Advisor or for the Advisor to prepare for the hearing, the Title IX Coordinator may reschedule the hearing to allow the Advisor to become familiar with the file.

### **Witnesses/Written Documents**

It is the responsibility of each party to request that their witnesses attend the hearing. The parties must notify the Hearing Officer and the other party of the witness names at least 2 business days prior to the hearing date. Each party shall also provide the Title IX Coordinator and the other party a copy of all written evidence it intends to introduce at the hearing at least 2 business days prior to the hearing. The Hearing Officer may allow witnesses to testify at the hearing or other evidence to be introduced even if it was not disclosed if the Hearing Officer determines there is good cause to allow the testimony or consider the written evidence.

### **Hearing Process**

- Prior to commencing the hearing, the Hearing Officer shall inform the parties of the hearing procedures and answer any questions the parties may have regarding those procedures.
- The Complainant and the Respondent shall have an equal opportunity to present witnesses and evidence.
- Both the Complainant and Respondent will have an opportunity to cross-examine each other and any witnesses called by either party. However, all cross-examination must be conducted by the Advisor, not by either the Complainant or Respondent directly.
- The Hearing Officer may also ask questions of each witness, but shall permit the Complainant and Respondent or their Advisor to ask follow-up questions at the conclusion of the Hearing Officer's questioning.
- The Complainant shall present the Complainant's case first, followed by the Respondent.
- Witnesses shall only be present while presenting testimony.
- Before any question is answered, the Hearing Officer must first determine whether the question is relevant. If the Hearing Officer determines the question is not relevant, the Hearing Officer shall explain on the record why the Hearing Officer has made that determination.
- The strict rules of evidence do not apply to the hearing. The Hearing Officer may allow introduction of any relevant evidence bearing upon the issues which is not inherently untrustworthy. However, any questions concerning the Complainant's prior sexual behavior will be excluded unless such questions are offered to prove that someone other than Respondent committed the alleged conduct, or that specific prior incidents demonstrate consent of the Complainant to the alleged conduct.
- After submission of all of the evidence, the Complainant or the Complainant's Advisor may make a final argument, which shall address itself both to the substantive issues and to the question of the appropriate sanction should the Hearing Officer find that a violation has occurred. The Respondent or the Respondent's Advisor will be given a like opportunity to make a similar argument. The Complainant or Complainant's Advisor may make a second argument limited to matters of rebuttal.
- The hearing shall be recorded by means of electronic audio recording. Both the Complainant and Respondent and their respective Advisors shall have the right, upon request, to listen to the recording in the presence of the Title IX Coordinator. To protect the privacy of the parties and witnesses, the recording will not be available in any other manner.

### **Refusal to Participate**

If a party or witness refuses to submit to cross-examination, the Hearing Officer must disregard

any statement made by that party or witness in making a determination regarding responsibility. However, the Hearing Officer may not draw an inference about responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross examination or other questions.

### **Hearing Officer Decision**

Within 30 days of the conclusion of the hearing, the Hearing Officer will make a final written determination explaining for each allegation whether the Respondent is responsible or not responsible by a preponderance of the evidence, including the facts and evidence upon which the conclusion is based. Credibility determinations are for the Hearing Officer to make. The Hearing Officer's written report will include the following:

- a. Identification of the section(s) of Mount Marty policies alleged to have been violated by the Respondent;
- b. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- c. Findings of fact supporting the determination;
- d. Conclusions regarding the application of the facts to the policy language;
- e. A statement of rationale for each allegation, including a determination regarding responsibility, sanctions, if any, on Respondent, and any remedies to be provided by Mount Marty to the Complainant designed to restore or preserve access to the Complainant's education program or activity; and
- f. Mount Marty's procedures and bases for appeal. The Hearing Officer should also inform the parties that the decision is not final until any appeal process is exhausted.

## **VII. Final Appeal to Mount Marty's President**

Either party may appeal the Hearing Officer's decision to Mount Marty's President. The request for an appeal, including the grounds upon which the request is based, should be submitted in writing to Mount Marty's President within ten (10) business days of the date the party is informed of the Hearing Officer's decision. The appeal is limited, and may only be made on the following grounds: (a) procedural irregularities that affected the outcome of the matter; (b) newly discovered evidence or additional information that was not reasonably available at the time of the grievance hearing and which could alter the outcome of the case; (c) a conflict of interest held by the Title IX Coordinator, an investigator, or Hearing Office that affected the outcome of the matter; or (d) that the sanction imposed by the Hearing Officer was too severe or not severe enough. The Title IX Coordinator will provide a copy of the appeal to the non-appealing party who will have five (5) business days to respond in writing to the President if the non-appealing party elects to do so.

The Title IX Coordinator shall provide the President with a copy of the investigator's report and the Hearing Officer's decision. These documents plus the request for appeal and any response to that request constitute the "appeal record." The President shall review the appeal record. The President may conduct an additional interview of the Complainant and Respondent, provided, however, that if the President interviews either party the President shall also interview the other party. If any interviews occur, the party's Advisor shall also be present.

The President may (a) affirm the Hearing Officer's decision and sanctions; (b) affirm the Hearing Officer's decision and modify the sanction(s) which shall be effective on the date specified by the President; (c) remand the case to the Hearing Officer for a new hearing if proper procedures were not followed; or (d) reverse the Hearing Officer's decision or remand for a new hearing due to new information that was not reasonably available at the time of the hearing. The President shall provide the President's written decision to the Title IX Coordinator within 30 business days after the President receives the appeal record. The results of the President's decision will be communicated in writing to the appropriate Mount Marty authorities, to the Complainant, and to the Respondent consistent with Mount Marty's obligations under state and federal law. The President's decision is final.

## **V. Records & Rights**

### **Record Retention**

The Title IX Coordinator will maintain, for a period of seven years, records of any actions, including any Supportive Measures, taken in response to a report of alleged Sexual Harassment or a Formal Complaint. With respect to allegations that do not result in the filing of a Formal Complaint, Mount Marty will retain records of any actions, including Supportive Measures, taken in response to those allegations. Additionally, for Formal Complaints, Mount Marty will maintain, for a period of seven years, all records of:

- a. The investigation, including determination, sanction, and remedies;
- b. Any appeal and the results of that appeal;
- c. The results of informal resolution attempts, if any; and
- d. All materials used to train investigators, coordinators, and adjudicators with regard to Prohibited Conduct. Upon request of either the Complainant or Respondent involved in the Formal Complaint, MOUNT MARTY will make the records concerning that Formal Complaint available to one or both parties.

### **Other Reporting Options**

Members of the Mount Marty community who believe they have been subject to Sexual Harassment are encouraged to use this policy. In addition, individuals also have the right to file a complaint with outside enforcement agencies, including the United States Department of Education Office of Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), the South Dakota Department of Labor, and state or local law enforcement authorities. Whether or not an individual chooses to contact law enforcement and initiate criminal charges, the individual retains the right to file a Formal Complaint. Individuals may also file a civil lawsuit against the offending party. If criminal or civil proceedings are commenced, Mount Marty reserves the right to conduct its investigation and take disciplinary actions despite the ongoing legal proceedings and regardless of the outcome or disposition of any legal proceeding.

### **Misuse of Policy**

A person who brings a reasonable charge of Sexual Harassment in good faith, even if it may be erroneous, will not be subject to discipline. However, the use of this policy for false, malicious, or frivolous purposes is strictly prohibited. Any student, faculty, or staff member who brings a false or malicious charge of Sexual Harassment may be subject to disciplinary action.