

SEXUAL MISCONDUCT POLICY

In accordance with Title IX of the Educational Amendments Act of 1972 and its implementing regulations, Concordia University, St. Paul (CSP) prohibits discrimination on the basis of sex, including sexual harassment, in its education programs or activities. This prohibition on sex discrimination includes, but is not limited to, admission and employment as well as other benefits, programs, and activities.

Other forms of sex- and gender-based discrimination are addressed by separate University policies, including, but not limited to, Equal Employment Opportunity and Anti-Discrimination and Non-Harassment. All Covered Persons are expected to strictly adhere to all applicable policies.

To affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, and to ensure compliance with federal and state civil rights laws and regulations, Concordia University, St. Paul has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in sexual misconduct allegations. The policy below defines the forms of sexual misconduct and sexual harassment prohibited by Concordia University, St. Paul, describes options for reporting, and identifies the process Concordia University, St. Paul will use to investigate and respond to reports of alleged violations.

When an alleged violation of this policy is reported, the allegations are subject to resolution using CSP's procedures as detailed below. The policy which follows is not intended, nor implied, to be a contract and is solely a policy for addressing grievances of sex discrimination or sexual harassment.

Scope and Applicability

This policy applies to all Concordia University, St. Paul students, employees (faculty, staff, and student employees), members of the Board of Regents, contracted partners, volunteers, visitors, and participants in University-sponsored activities and/or events.

This policy governs conduct by or against a Covered Person on the Concordia University, St. Paul campus or at a University-sponsored event.

Definitions

Terms used in this policy have the following meanings:

“Advisor” means a person selected by the Complainant or Respondent, or appointed by CSP, who may be present during the Formal Resolution Process and meetings related thereto, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any. An Advisor may be an attorney.

“Alternative Resolution Process” is the process outlined herein for resolving a Formal Complaint with the voluntary written consent of both the Complainant and Respondent and consistent with the other conditions and procedures set out in the Resolution Process.

“Amnesty” means that a student who reports sexual misconduct in good faith, either as a Reporting Party, as a Third-Party Reporter, or as a witness in an investigation, will not be subject to disciplinary action under student conduct policies for their own personal consumption of alcohol or drugs in connection with the reported incident.

“Coercion” is conduct, including intimidation and express or implied threats of physical, emotional, or other harm, which is employed to compel someone to engage in sexual activity. Coercion may be physical or verbal. Consent may not be obtained through coercion.

“Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment and who is participating in, or attempting to participate in, an educational program or activity of CSP at the time the report is filed.

“Confidential Resource Persons” are campus members who provide confidential assistance and support to individuals who have experienced or witnessed an event that falls under the University’s definition of Title IX-Based Sexual Misconduct. Confidential Resource Persons are not required to notify the Title IX Coordinator or law enforcement about alleged sexual misconduct unless the allegations involve the physical or sexual abuse of a child or a vulnerable adult or there is imminent danger to the life of any person. Confidential Resource Persons may be available off campus through community resources or via an agreement with a contracted partner agency of the University. The Confidential Resource Persons available at Concordia University, St. Paul include members of the campus ministry team and Student Counseling Services employees and contracted partners.

“Consent” is knowing, voluntary and clear permission, by word or action, to engage in mutually agreed upon sexual activity by a party of legal age to provide consent per state law. Since individuals may experience the same interaction in different ways, each party must make certain the other has consented before engaging in the activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if an individual kisses someone, the person kissed can kiss the first individual back if they wish without the need to explicitly obtain consent to being kissed back. A current or previous relationship is not an indication of consent nor is silence or failing to resist a sexual act. A person cannot consent if they cannot understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including alcohol or other drug use. Consent can be withdrawn by words or actions at any time during sexual activity.

“Covered Person” means a student, employee (faculty, staff, or student employee), member of the Board of Regents, contracted partner associate, volunteer, visitor, or participant in University-sponsored activities and/or events.

“Education Program or Activity” includes locations, events, or circumstances over which the University exercises substantial control over both the respondent and the context in which the sexual harassment occurred, whether such programs or activities occur on-campus or off-campus. This generally includes all buildings and physical spaces owned and/or operated by Concordia University, St. Paul, and all off-campus University-sponsored events.

“Employee” is a person in an employment relationship with the University or any of its units, including full- and part-time faculty, staff, and student employees, but not including volunteers or emeritus status individuals or retirees of the University.

“Finding” is a conclusion by the preponderance of evidence that the conduct did, or did not, occur as alleged.

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

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

“Force” is the infliction, attempted infliction or threatened infliction of bodily harm or the act or threat of any other crime, violent activity, or wrongdoing. Force may include the use of physical violence, threats, or intimidation (implied threats). Forced sexual activity is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced.

“Formal Complaint” refers to a document submitted or signed by a Reporting Party or signed by the Title IX Coordinator alleging sexual harassment (as defined within this policy), against a Respondent and requesting that CSP investigate the allegation or address it through an Alternative Resolution Process.

“Formal Resolution Process” is the response and resolution process as defined within the policy.

“Hearing Officer” means the individual designated by Concordia University, St. Paul that hears and reaches a determination regarding a Formal Complaint alleging sexual harassment. The Hearing Officer is responsible for managing the conduct of a hearing on a Formal Complaint of sexual harassment.

“Hearing Panel” is the group of individuals (comprised of the Hearing Officer and at least one member of the Title IX committee) who attends and observes the live hearing and is responsible for determining sanctions when the Hearing Officer determines that a Title IX violation has occurred.

“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). This definition also applies to parties whose incapacity results from mental disability, involuntary physical restraint, and/or from the taking of, or being administered, incapacitating drugs.

“Investigator” means an internal (University employee) or external individual assigned to gather facts during the Formal Resolution Process. The role of the Investigator is to conduct a prompt, thorough, and impartial review of the information regarding a Formal Complaint and to provide an investigation report and file of evidence for use in a live hearing.

“Investigative Report” is a written report prepared by the Investigator that fairly summarizes relevant evidence gathered in an investigation and relating to a Formal Complaint.

“Official with Authority (OWA)” means a University official authorized to institute corrective measures on behalf of Concordia University, St. Paul related to sexual misconduct prohibited in this policy. The Title IX Coordinator and Deputy Coordinator are Officials with Authority.

“Parties” include the Complainant(s) and Respondent(s), collectively.

“Preponderance of Evidence,” also referred to as the “more likely than not” standard, is the evidentiary standard that the University uses to determine if a Respondent is responsible for a Sexual Misconduct policy violation. This standard requires the Hearing Officer to consider the relevance and reliability of all evidence and facts known to the Hearing Officer and to determine whether it is more likely than not that a policy violation occurred.

“Report” is an informal oral or written statement by a Reporting Party or a Third-Party Provider alleging sexual misconduct by or against a Covered Person. A report may be resolved by providing supportive measures to the Complainant or through a resolution process as defined in this policy.

“Reporting Party” means an individual who experiences conduct that they believe is or may be sexual misconduct prohibited by this policy.

“Required Reporter” is an employee of CSP who is required by this policy to promptly report knowledge, notice, and/or reports of discrimination, harassment, and/or retaliation with the Title IX Coordinator and includes:

1. Director of HR Operations
2. Associate Vice-President for Student Life
3. Dean of Students
4. Housing Officers including Graduate Assistants for University Housing
5. Security Director and Officers
6. President
7. Provost
8. Vice-Presidents
9. College Deans
10. Athletic Director and Coaches.

“Respondent” means an individual alleged to be the perpetrator of conduct that could constitute sexual harassment.

“Sanction” is a consequence imposed by CSP on an individual who has been found to have violated this policy.

“Sexual Harassment” is conduct on the basis of sex that meets conditions further defined in this policy.

“Sexual Misconduct” includes sexual harassment, sexual assault (including actual or attempted non-consensual sexual contact and actual or attempted non-consensual sexual penetration), sexual exploitation, dating violence, domestic violence, and stalking. Each is further defined in the Title IX-Based Sexual Misconduct section of this policy.

“Supportive Measures” means non-disciplinary, non-punitive, individualized services designed to restore or preserve equal access to Concordia University, St. Paul’s educational programs and/or activities. Supportive Measures may be offered to a Complainant and/or Respondent before or after filing a Formal Complaint or where no Formal Complaint has been filed.

Supportive Measures may include, but are not limited to:

- Counseling
- Coursework adjustments
- Modifications of schedules
- Campus escort services
- Mutual restrictions on contact
- Changes in work or housing locations
- Leaves of absence
- Increased security or monitoring

Supportive Measures provided to a Complainant or Respondent will be kept confidential to the extent feasible.

“Third-Party Reporter” means an individual, other than a Reporting Party, who notifies an Official with Authority that they have received information from a community member who believes they have experienced conduct that the individual believes is or may be sexual misconduct prohibited by this policy.

Jurisdiction

This policy addresses Concordia University, St. Paul’s response to reports of sexual harassment, as defined herein, in an education program or activity of Concordia University, St. Paul occurring against a person in the United States. The Title IX Coordinator is responsible for determining whether matters fall under the jurisdiction of this policy. Alleged conduct that may violate Concordia University, St. Paul’s prohibition on sex discrimination, sexual misconduct that does not constitute sexual harassment or conduct that may violate other Concordia University, St. Paul policies will be addressed under procedures applicable to those policies.

This policy addresses two categories of sexual misconduct: Title IX-based sexual misconduct as defined by federal regulations and non-Title IX-based sexual misconduct, which covers a broader range of prohibited conduct.

Title IX-Based Sexual Misconduct

Title IX Sexual Harassment is a specific form of discriminatory harassment based on sex. Acts of Title IX Sexual Harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved. Title IX-based sexual harassment includes verbal and/or physical conduct and may have occurred between people of the same gender or different genders.

Federal regulations require universities to address Title IX-based sexual misconduct in specific and prescribed ways that do not apply to non-Title IX-based sexual misconduct prohibited by Concordia University, St. Paul. Specifically, federal regulations stipulate the requirement of a live hearing to adjudicate Title IX-based sexual misconduct under certain circumstances.

Title IX Sexual Harassment is defined as conduct on the basis of sex that satisfies one or more of the following:

- 1) **Quid Pro Quo Harassment**, when an employee of Concordia University, St. Paul conditioning the provision of an aid, benefit, or service of Concordia University, St. Paul on an individual’s participation in unwelcome sexual conduct;
- 2) **Hostile Environment Harassment** where unwelcome conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it effectively denies a person equal access to Concordia University, St. Paul’s education programs or activities.
- 3) **Sexual assault**, meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the [Federal Bureau of Investigation. Relevant elements of the definition include the following:](#)

Rape: Penetration, no matter how slight, of the vagina or anus with any body part of object, or oral penetration by a sex organ of another person, without the consent of the Complainant.

Sodomy: Oral or anal sexual intercourse with another person, forcibly, and/or against that person’s will (non-consensually), or not forcibly or against the person’s will in instances in which

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

Sexual Assault with an Object: The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Fondling: The touching of the private body parts of another person for the purposes of sexual gratification without the consent of that person, including instances where that person is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.

4) **Dating violence**, meaning 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 shall be determined based on the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship;

5) **Domestic violence**, meaning 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 Minnesota or Oregon, 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 Minnesota or Oregon; or

6) **Stalking**, meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

A determination of conduct that constitutes sexual harassment is made based on the facts and circumstances involved in the situation. Most often, a finding of harassment requires a pattern of unwelcome conduct however, a single incident may constitute harassment depending on the facts and circumstances. This policy prohibits any form of sexual harassment, including forms of sexual harassment that would not meet the definition of Title IX-Based Sexual Misconduct.

Non-Title IX-Based Sexual Misconduct

To ensure fair and equitable treatment, the University follows the same process for sexual misconduct complaints regardless of whether the allegations are Title IX-based or non-Title IX-based. However, the University does not utilize live hearings to adjudicate reports of non-Title IX-based sexual misconduct unless the process could result in a student's suspension or expulsion.

1) **Sexual Harassment** is any form of sexual harassment, including forms of sexual harassment that would not meet the definition of Title IX Sexual Harassment. Sexual harassment is unwelcome sexual- or gender-based verbal, written, online, and/or physical conduct.

Sexual harassment creates a hostile environment and may be disciplined when it is sufficiently severe, pervasive, persistent, **or** objectively offensive that it:

- has the effect of unreasonably interfering with, denying, or limiting employment opportunities or the ability to participate in or benefit from the University's educational, social, and/or residential program, **or**

- is based on power differentials (quid pro quo), the creation of a hostile environment, or retaliation.

2) **Non-Consensual Sexual Contact with an Object**, defined as any intentional sexual touching; however slight; with any object; by a person upon another person; that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth, or other bodily orifice of another individual or any other bodily contact in a sexual manner.

3) **Sexual Exploitation** to include taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute Title IX Sexual Harassment under this policy.

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

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
- Invasion of sexual privacy.
- Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography
- Prostituting another person
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the infection
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
- Knowingly soliciting a minor for sexual activity
- Engaging in sex trafficking
- Creation, possession, or dissemination of child pornography

Title IX Coordinator

Concordia University, St. Paul has designated Milissa Orchard to serve as its Title IX Coordinator. Their contact information is:

Milissa Orchard
 Title IX Coordinator
 Meyer Hall 210
 651.641.8268
 TitleIX@csp.edu

When the Title IX Coordinator becomes aware of an incident or allegation of sexual misconduct, they will take the necessary steps to initiate the response and resolution procedures outlined within the

policy. The Title IX Coordinator is responsible to ensure the uniform application of this policy and related procedures as well as ensuring incidents and allegations by or against a Covered Person are addressed timely and appropriately. The University recognizes that each case is unique and specific to the involved parties and reserves the flexibility, at the discretion of the Title IX Coordinator their designee, to authorize departures from the procedures as warranted by the circumstances and consistent with state and federal laws and regulations.

In cases involving domestic violence, dating violence, sexual assault, stalking, and other cases where safety is of concern, the safety of the Reporting Party and the University community is of primary importance. The University will discuss these concerns with the Reporting Party and with other resources to determine, under the specific circumstances, how to proceed in a way that protects the safety of those involved.

Inquiries about the application of Title IX and its implementing regulations may be referred to the Title IX Coordinator.

Reporting

Concordia University, St. Paul is committed to preventing, investigating, and resolving all forms of sexual misconduct. Any person—regardless of whether the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment—is strongly encouraged to report their experience as soon as possible. Reports may be made in person, by mail, by telephone, by email, or by filing a confidential report located on the CSP website (<https://www.csp.edu/student-life/title-ix/>). Reports may be made at any time and by any person who has experienced or witnessed a potential violation of this policy.

Under no circumstance may a University employee who has received a report of sexual misconduct suggest that a Reporting Party is at fault for the incident or that the Reporting Party should have behaved differently to avoid being victimized. Moreover, the University is committed to treating all members involved in a complaint with dignity, while also supporting a fair, consistent, and impartial process.

Upon the receipt of a report, the Title IX Coordinator will assess the report to determine processes that may apply and coordinate resources and supportive measures (with or without the filing of a Formal Complaint). The University response and resolution procedures will be initiated when an Official with Authority becomes aware of an incident or allegation of sexual misconduct involving a Covered Person.

For additional information regarding reporting a potential violation to a University employee, please see the definitions above for **Confidential Resource Persons** and **Required Reporters**. Employees who are not assigned to either of these categories are encouraged to recommend that a reporting party discuss their concerns with the Title IX Coordinator but are not required by law to do so.

In addition, the following resources are available to Covered Persons as follows:

- **On-Campus Emergencies** should be reported to Campus Security by dialing 8777.
- **Off-Campus Emergencies** should be reported by dialing 911 from the nearest telephone.

Individuals who have personally experienced sexual misconduct have several options for sharing their experience and seeking support and resolution.

- **Confidential Resource Persons** are available through Counseling Services and Campus Ministry as soon as possible. This option is available for individuals who wish to keep the details of the incident confidential or who are uncertain whether they intend to pursue formal resolution but wish to seek supportive measures. If you are uncertain if someone is designated as a

Confidential Resource Person and is able to maintain confidentiality about a situation, ask the individual before revealing confidential information. Note that even when speaking with a Confidential Resource Person, information that may risk the safety and well-being of any community member may not be able to be maintained as confidential. In most cases when a report is necessary, the Confidential Resource Person may withhold the name and other identifying details upon request of the Reporting Party when contacting the Title IX Coordinator.

- **Law Enforcement** resources are available for individuals who have experienced misconduct that may violate criminal laws. Parties wishing to seek this option have the full support of Concordia University, St. Paul who will promptly assist with making such reports. The University also recognizes a Complainant's right to decline law enforcement assistance and support. Upon request by law enforcement officers, the University will assist with obtaining, securing, and maintaining evidence in connection with sexual misconduct allegations. Only at the request of a Complainant, or when subpoenaed, will the University share data related to the reported misconduct with law enforcement officers conducting a criminal investigation to the extent permitted by student data privacy laws.
- **Anonymous Reports** may be filed by using the reporting form on the University's Title IX page at www.csp.edu/student-life/title-ix/. Please note that, per state law, CSP is not obligated to investigate anonymous reports and such reports often hinder the University's ability to investigate and respond appropriately to such incidents.

Upon the determination of appropriate processes in response to an allegation of Sexual Misconduct, the Title IX Coordinator will request to meet with the Complainant within five (5) business days to discuss and provide for supportive measures and determine the appropriate resolution process. If the Complainant chooses not to file a Formal Complaint, the Title IX Coordinator may choose to do so. The Title IX Coordinator may also advise the Complainant about other available procedures and Supportive Measures.

If the Complainant or the Title IX Coordinator chooses to file a Formal Complaint, such Formal Complaint will be handled in accordance with the Formal Resolution Process within University policy at the time the complaint is filed.

When to Report

Reporting parties are encouraged to make a report of sexual misconduct as soon as possible so that the Complainant may receive information regarding accessing support measures and processes available. The University encourages that all violations be reported regardless of whether the Complainant knows the identity of the Respondent and regardless of whether the Complainant wishes to engage in a University resolution process.

There is no time limitation on providing reports and Formal Complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the University's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be limited or impossible.

Acting on reports and Formal Complaints at the discretion of the University based on the availability of witnesses and evidence. Regardless of when a report is made and the University's ability to provide an equitable process for resolution, supportive measures and resources will be made available.

Required Reporting by Concordia University, St. Paul

Under the Clery Act, the University has a responsibility to track and publish information about certain types of sexual misconduct and to report certain information in the University's annual Campus Security Report. Personally identifiable information is kept confidential and will not be included.

Under Minnesota law, the University has a responsibility to track and publish certain information about sexual assault and to report certain related statistics on its website and to the Minnesota Office of

Higher Education. Personally identifiable information and other data collected by the University is kept confidential, will not be published except in accordance with Minnesota law, and otherwise is available only to university employees whose work assignments require reasonable access.

The University is also required to issue timely warnings for reports of incidents it becomes aware of that pose the potential for a serious and continuing threat to members of the University community. Personally identifiable information of Reporting Parties will not be published in these timely warnings, but every effort will be made to provide enough information to protect all community members and help ensure the safety of the University community.

Confidentiality

If it is determined that there is an obligation to investigate an incident or allegation, the University will maintain confidentiality to the extent reasonably possible and consistent with a prompt, equitable, and impartial resolution process. This process will also be conducted consistent with applicable laws and University policies. In addition, the University will take steps to address any safety concerns for an individual or the greater University community. In all cases, the individuals responsible for investigating and facilitating the resolution process for reports of Sexual Misconduct are permitted to share information about the incident or allegation, investigation, and response, within and outside the University on a “need to know” basis. Complete confidentiality, however, is generally not possible due the University’s obligation to respond.

Reporting and Responding Parties have the right to speak or otherwise share information about reports and allegations by or against them and the related response and resolution process. Throughout the investigation and resolution process, both parties must ensure their communications are consistent with the non-retaliation provision of this policy and other applicable University policies. Other individuals involved in the resolution process, including witnesses, support persons, University employees, and other Covered Persons who are not parties in the complaint are expected to maintain the confidentiality of information related to reports, responses, and the resolution process.

Formal Resolution Process

Concordia University, St. Paul’s response to a Formal Complaint of sexual harassment will treat Complainants and Respondents equitably and provide a process in which the Title IX Coordinator, Investigator, Hearing Officer, Appeal Panel Member, and any facilitator of an Alternative Resolution Process are free from conflicts of interest or bias against the Complainant or Respondent (or against complainants and respondents generally).

These individuals will receive training on the definition of sexual harassment, the scope of Title IX, and how to serve impartially including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. These individuals will also receive training regarding their specific roles in the process.

Concordia University, St. Paul will strive to complete the Formal Resolution Process within a reasonable time after the receipt of a Formal Complaint (typically within ninety (90) calendar days). The Title IX Coordinator may allow for the temporary delay of all or part of the Formal Resolution Process for good cause and will provide written notice to the Complainant and Respondent of the delay and the reasons therefor.

Presumption

Respondents in a Formal Complaint are presumed not responsible for the alleged conduct until a determination is made regarding responsibility at the conclusion of the Formal Resolution Process.

Written Notice

Within a reasonable period, typically five (5) business days following receipt of a Formal Complaint, Concordia University, St. Paul will provide written notice to known parties:

- Of the Formal Resolution Process
- Of the allegations potentially constituting a violation of the Sexual Misconduct policy, including then-known details regarding:
 - the identities of the parties involved in the incident
 - the conduct allegedly constituting a policy violation
 - the date and location of the alleged incident(s)
- That the Respondent is presumed not responsible until after the process has concluded and a determination is made
- That a determination regarding responsibility is made at the conclusion of the Formal Resolution Process
- Of their right to an Advisor
- Of their ability to inspect and review evidence in connection with the Formal Complaint
- Of their obligation to promptly notify the Title IX Coordinator if at any time they believe the Title IX Coordinator, Investigator, facilitator of any Alternative Resolution Process, Hearing Officer, or Appeal Panel Member has a conflict of interest or bias
- Of any other provision in a policy or code of conduct (student or employee) that may be implicated by the allegations in the Formal Complaint
- Of any Alternative Resolution Process

If, during the course of an investigation, Concordia University, St. Paul decides to investigate allegations about the Complainant or Respondent that were not included in a previous written notice, it will provide notice of the additional allegations to known parties.

Grounds for Dismissal

If at any time subsequent to the filing of a Formal Complaint, Concordia University, St. Paul determines that the conduct alleged, even if proved, would not constitute sexual harassment, or does not otherwise fall under the jurisdiction of this policy, Concordia University, St. Paul will dismiss the formal inquiry with regard to that conduct. Such a dismissal does not preclude disciplinary action under other provisions of Concordia University, St. Paul's policies.

If, at any time subsequent to the filing of a Formal Inquiry: (1) Concordia University, St. Paul is notified by the Complainant that they wish to withdraw the Formal Complaint or any allegations therein; (2) the Respondent is no longer enrolled or employed; or (3) specific circumstances prevent Concordia University, St. Paul from gathering evidence sufficient to reach a determination; then Concordia University, St. Paul may, in its discretion, dismiss the Formal Complaint or a portion thereof.

In the event of the dismissal of a Formal Complaint (or a portion thereof) under this section, Concordia University, St. Paul will promptly (within one week) notify the Complainant and Respondent in writing.

Alternative Resolution Process

A Formal Complaint that does not involve allegations of an employee engaging in sexual harassment of a student may be resolved by an Alternative Resolution Process which may occur any time between the filing of a Formal Complaint and a determination of responsibility.

Prior to any Alternative Resolution, both the Complainant and Respondent will be given written notice of: (1) the allegations; (2) the circumstances under which Alternative Resolution precludes them from resuming the Formal Resolution Process, such as voluntarily agreeing to resolution of the Formal Complaint through the Alternative Resolution Process; (3) their right to withdraw from the Alternative Resolution Process and resume the Formal Resolution Process at any time prior to agreeing to a resolution; and (4) consequences resulting from participating in the Alternative Resolution Process, including records that will be maintained or could be shared.

Concordia University, St. Paul will facilitate an Alternative Resolution Process only after the Complainant and Respondent have received such written notice and provided voluntary, written consent to participate in Alternative Resolution. If an Alternative Resolution is agreed upon, the Title IX Coordinator (or the Title IX Coordinator's designee) will attempt to facilitate a resolution that is agreeable to both the Complainant and the Respondent. Any Alternative Resolution must adequately address the concerns of the complainant, as well as the rights of the respondent and the overall intent of Concordia University, St. Paul to stop, remedy, and prevent policy violations. The Complainant and Respondent equally have the option to discontinue the Alternative Resolution Process at any time and request a formal investigation. The University reserves the right to initiate a formal investigation should the situation warrant it. If at any point during the Alternative Resolution Process, the Complainant or Respondent or Concordia University, St. Paul wishes to cease the Alternative Resolution Process and to proceed through the Formal Resolution Process, the Alternative Resolution Process will stop and the Formal Resolution Process will be invoked.

Investigation

Following the filing of a Formal Inquiry, the Title IX Coordinator shall designate an Investigator for the matter. The Investigator will conduct a prompt, thorough, and impartial investigation and prepare a written Investigative Report (typically within thirty (30) calendar days). The Investigator will meet individually with the Complainant and Respondent at least once during an investigation. The Complainant and Respondent will receive written notice of the date, time, location, and individuals who will be present for any investigative interview or meeting and will be given sufficient time to prepare (no less than two (2) business days' notice). The Complainant and Respondent may be accompanied by one Advisor at any investigative interview or meeting.

The Complainant and Respondent may advise the Investigator of any witnesses they believe should be interviewed and any inculpatory or exculpatory evidence including, for example, e-mails, text messages, photographs, video surveillance, and/or other physical, documentary, or other evidence.

The burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University. After the Investigator has gathered evidence, both the Complainant and Respondent (and any Advisor) will be given the opportunity to inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint. Within ten (10) calendar days, the Complainant and Respondent may submit a written response to such evidence. Any written response(s) will be considered by the Investigator before completing the Investigative Report.

Investigative Report

The Investigative Report will fairly summarize the relevant evidence. In the event that a Formal Complaint proceeds to a hearing, the Investigative Report will be sent to both the Complainant and Respondent (and any Advisor). Within ten calendar days of receiving the Investigative Report, the Complainant and Respondent may provide a written response.

Live Hearing

A single Hearing Officer facilitates a hearing in response to a Formal Complaint. The purpose of the hearing is for the Hearing Officer to objectively evaluate relevant evidence to determine whether the Respondent is responsible for engaging in sexual harassment. If the Hearing Officer determines that the Respondent has committed sexual harassment, he or she is also responsible for determining appropriate sanctions.

Preparation for the Hearing

The Title IX Coordinator or a designee will arrange the administrative details for the hearing, including: (1) selecting the Hearing Officer; (2) arranging a time and virtual platform for the hearing; (3) making the Investigative Report and evidence that is directly related to the allegations raised in the Formal Complaint available at the hearing so that both the Complainant and Respondent will have equal opportunity to refer to such evidence during the hearing; and (4) arranging for a Complainant or Respondent who does not have an Advisor to be appointed an Advisor to conduct cross-examination on behalf of that party at the hearing.

The hearing will occur with the Complainant and the Respondent located in separate rooms with technology enabling the Hearing Officer, the Complainant, the Respondent, the hearing panel, any Advisor(s), and any witness(es) to simultaneously see and hear any party or witness answering questions.

Conduct of the Hearing

The Hearing Officer is responsible for managing the conduct of the hearing and ensuring that procedures are followed. The Hearing Officer facilitates all phases of the hearing and resolves all questions that arise during the hearing, including but not limited to procedural issues and issues regarding the propriety or relevance of specific questions, arguments, and information presented. The Hearing Officer will also seek to ensure an orderly and fair exchange of information during the hearing, and at the discretion of the Hearing Officer, may ask questions of any party or witness. If anyone attending the hearing acts without appropriate respect or decorum, including failure to comply with the Hearing Officer's instructions, the Hearing Officer may take appropriate action, including requiring that person to leave the hearing.

At the hearing, the Hearing Officer and both the Complainant's Advisor and the Respondent's Advisor will have the opportunity to ask the other party and any witnesses relevant questions and follow-up questions. Only relevant cross-examination and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a question, the Hearing Officer will determine whether the question is relevant. If the Hearing Officer excludes a question as not relevant, they will orally explain their decision to do so.

Questions and evidence about a Complainant's sexual predisposition or prior sexual behavior are not relevant unless: (1) they are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or (2) they concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

If a party or witness does not appear at the hearing, decision-makers can consider other statements made by that individual in the decision-making process. Refusing to answer a question(s) or appear at the hearing may be considered in determining how much weight to give a party's/witness' account or the credibility of their account. The decision-maker may not draw an inference based solely on a party's or witness' absence from the live hearing or refusal to answer questions.

An audio recording, audiovisual recording, or a transcript of the hearing will be made and provided upon request to the Complainant and Respondent for review subsequent to the conclusion of the hearing.

Determination & Sanctions

Following the presentation of information at the hearing, the Hearing Officer will determine whether the Respondent engaged in sexual harassment. In reaching a decision, the Hearing Officer will apply a preponderance of the evidence standard and will conclude that sexual harassment occurred if the evidence determines it is "more likely than not."

If the Hearing Officer determines that the Respondent violated the Sexual Misconduct policy, the hearing panel (comprised of the Hearing Officer and at least one Title IX Committee member) will then determine appropriate sanctions. Concordia University, St. Paul may implement any of the Supportive Measures outlined above at any time prior or subsequent to any finding of responsibility. However, disciplinary sanctions and remedies will not be implemented unless there is a determination of responsibility.

Possible remedies available in all Alternate or Formal Resolution include:

- A single or series of educational conversations between the Respondent and Title IX Coordinator
- An agreement by the University to provide additional training to the University community or to a particular audience of the University community;
- An agreement by the University to provide agreed support measures to the Complainant;
- A mutual no-contact directive

Possible remedies that include disciplinary sanctions for a Respondent found responsible for a policy violation include:

- Written warning;
- No-contact directive;
- Behavioral agreement;
- Disciplinary probation;
- Requirement for the Respondent to attend educational programs;
- Removal from University housing;
- Removal from specific course(s) and/or activities;
- Restrictions on campus privileges and access;

- Continuing any interim measures in place;
- Suspension; and/or
- Expulsion

Written Determination

The Hearing Officer will issue a written determination regarding responsibility within seven (7) calendar days of the conclusion of the hearing. The written determination will include:

- A description of the allegations potentially constituting sexual harassment
- A description of the procedural steps taken from the receipt of the Formal Complaint through the written determination
- Findings of fact supporting the determination
- Conclusions regarding the application of policy to the facts
- A statement of, and rationale for, the result as to each allegation, including any determination regarding responsibility and any sanctions or remedies
- The procedures and permissible grounds for appeal

The written determination will be provided to the parties simultaneously.

Appeals

A Complainant, Respondent, or Title IX Coordinator may appeal: (1) a determination regarding responsibility; or (2) any dismissal of a Formal Complaint or any portion thereof. Appeals are limited to the following grounds:

- A procedural irregularity, error, or omission occurred that significantly affected the outcome.
- New evidence that was not reasonably available at the time the determination or dismissal was made that could substantially affect the outcome. A summary of this new evidence or its potential impact must be included.
- The Title IX Coordinator, Investigator, or Hearing Officer had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent and that conflict of interest or bias affected the outcome.
- The sanctions imposed fall outside the range of sanctions the University has designated for this offense and the cumulative record of the responding party.

All requests for appeal consideration must be submitted in writing to the Title IX Coordinator within three (3) business days of the delivery of the written finding. Within five (5) business days, the Title IX Coordinator will determine if the submission meets the grounds for appeal and, if so, forward it to a hearing panel for review.

An appeal panel chosen from the Title IX team will be designated by the Title IX Coordinator from those who have not already been involved in the process. The appeal panel will review the appeal request(s). The original finding and sanction/responsive actions will stand if the appeal is not timely or is not based on the grounds listed above, and such a decision is final. The original findings and sanctions are presumed to have been decided reasonably and appropriately. When any party requests an appeal that meets the grounds for appeal, the Title IX Coordinator will share the appeal request with the other party(ies), who may file a response within three (3) business days and/or bring their own appeal on separate grounds. If new grounds are raised, the original appealing party will be permitted to submit a written response to these new grounds

within three (3) business days. These responses or appeal requests will be shared with each party.

The Title IX Coordinator will issue a written decision within five (5) business days regarding the result of the appeal and the rationale for the determination to both parties simultaneously. A determination of responsibility or dismissal becomes final either on the date that the Complainant or Respondent receives the written determination of the result of any appeal or the expiration of the deadline for any appeal.

Retaliation Prohibited

Concordia University, St. Paul, and federal and state law, prohibit retaliation against any individual who acts in good faith to make a report, testifies, assists, participates, or refuses to participate in any manner in an investigation, proceeding, or hearing under this policy. Retaliatory actions include, but are not limited to, threats or actual violence against a person or their property, adverse educational or employment consequences, ridicule, intimidation, bullying, or ostracism.

The University will take steps to prevent retaliation and will ensure a strong response to reports of such behaviors. Any conduct by a Covered Person that constituted retaliation is subject to disciplinary action, up to and including dismissal, expulsion, and/or prohibition from campus or University-sponsored activities.

Sanctions may be imposed through the student conduct process or by Human Resources if the University determines that an individual knowingly initiated a false claim of sexual misconduct or knowingly provided false information during an investigation or resolution process in response to an allegation of sexual misconduct.

PREGNANT AND PARENTING STUDENT'S RIGHTS UNDER TITLE IX

At Concordia University, we want you to be successful in your educational endeavors and career goals. Under Title IX you have a right to receive appropriate support to assist you in achieving these goals. The following information will provide you, as a student with children, additional details to assure that you continue to be on track with your education during this time.

Often Title IX is seen as prohibiting discrimination on the basis of sex. However, it also extends into supporting students who are pregnant, parenting, and all related conditions. This means that Concordia University is required to give all students who might be, are or have been pregnant the same access to school programs and other educational opportunities that other students have. Your professors or administrators should not tell you that you have to drop out of your classes or program or change your educational plans due to pregnancy.

Your absences due to pregnancy and or any other related condition must be excused as long as your doctor says it is necessary for you to be absent. If you take a leave of absence, you must be reinstated to the status you were before your leave. Like other students who are requesting for an excused absence due to medical reasons, Concordia may require you to submit a doctor's note explaining this need.

We want you to be successful in the classroom and for that reason, you cannot be penalized for pregnancy and other conditions. If there is a specific "point" system for class attendance, you must be given the opportunity to earn back the credit. You also will be given the opportunity to make up the work that you missed while you were out due to pregnancy or any related conditions, including recovery from

childbirth. For example, if you have a doctor's note that excuses you from class for several weeks because you were on "bed rest" before giving birth, Concordia must provide you with the appropriate assignments and information to make up all of the work that you would have been required to complete while you were out. It is important for you to be in continual contact with your instructor so that you do not fall far behind in making up this work.

Title IX requires that schools, such as Concordia, provide pregnant students with any special services that they provide to other students with temporary disabilities. This requires the coordination and support of Student Accessibility Services who are able to outline and connect you with the necessary services that are available.

During your pregnancy, you also are allowed to continue your participation in program-directed requirements such as internships. However, if you are a graduate assistant, you are considered an employee and your rights are different. It is important for you to work with the Human Resources Director if you are a graduate assistant.

Concordia University may not be terminated or reduce your athletic, merit or need-based scholarship funds based on pregnancy. If you stay in school, you can keep your scholarship during the period of its award. At times it may seem like it would be easier to just take the semester off. This is an option but only if your doctor says it is medically necessary. If it is not medically necessary, you must comply with Concordia's non-medical leave policy.

Once you return to school, if you are nursing, you should be provided with break times for pumping breast milk. Concordia University does have a Mother's Room that allows you the privacy and space to do this. Contact the Title IX Deputy Coordinator for assistance with gaining access to this space.

Concordia University is also a harassment-free university, and this includes harassment based on pregnancy. If you experience this sort of treatment at school, please contact the Title IX Deputy Coordinator. The law prohibits retaliation against you for making a complaint or raising a concern. Title IX also may intersect with the Americans with Disabilities Act (ADAAA). While pregnancy alone is not considered a disability, if you have complications from pregnancy that significantly limit a major life activity (e.g., ability to walk normal distances, require bed rest, etc.) you may be considered for a short-term disability under the ADAAA. (Department of Justice, 2010)

If you have questions regarding accommodations for short-term pregnancy issues or for access to the Mother's Room, please contact Gwynn Thompson (gthompson@csp.edu) or Jill Simon (simon@csp.edu) with Student Accessibility Services. For questions about rights under Title IX for Pregnancy and Parenting, please contact Amanda Johnson, Title IX Pregnancy and Parenting Liaison, at 651-603-6167 or ajohnson@csp.edu.