



## **A. 2024 Title IX Policy - Sex-Based Harassment Involving a Student**

### **Section 1: Introduction and General Information**

**1.1 Nondiscrimination Policy Statement:** Marshall B. Ketchum University (“MBKU”) is committed to creating and maintaining a learning and working environment that is free from unlawful discrimination based on sex in accordance with Title IX of the Higher Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in education programs or activities it operates, including in admission and employment; Title VII of the Civil Rights act of 1964 (Title VII), which prohibits sex discrimination in employment; and the Campus Sexual Violence Elimination Act, Clery Act, and the Violence Against Women Act (VAWA). Sex Discrimination and Retaliation under this Policy will not be tolerated by MBKU and is ground for disciplinary action, up to and including, permanent dismissal from MBKU and/or termination of employment.

**1.2 Purpose:** MBKU takes all reported discrimination on the basis of sex seriously. MBKU will promptly discipline any individuals within its control who are found responsible for violating this Policy. Additionally, reported sexual misconduct or discrimination that does not meet the definitions and jurisdiction of this Policy will be referred for review to the Vice President for Enrollment and Student Services (VPESS) if allegedly committed by a student or the Vice President for Human Resources (VPHR) if allegedly committed by an employee under the respective Code of Conduct in compliance with VAWA and Clery Act.

**1.3 Applicability: This Policy applies as follows:**

- a. Students:** This policy applies to sex-based harassment, a form of sex discrimination, involving students.<sup>1</sup>
- b. Employees:** This policy applies to sex-based harassment, a form of sex discrimination, when one party is an employee and another party is a student.

**1.4: Title IX Coordinator and Title IX Designees:** The Title IX Coordinator is the MBKU administrator who oversees MBKU’s compliance with Title IX. The Title IX Coordinator is responsible for the response to notifications of discrimination on the basis of sex. The Title IX Coordinator is available to discuss the grievance procedures, coordinate supportive measures, modifications related to pregnancy and related conditions, explain MBKU’s policies and procedures, and provide education on relevant issues. The Title IX Coordinator may designate other employees to facilitate these responsibilities.

Any member of the MBKU community may contact the Title IX Coordinator or designees with questions. Title IX Coordinator and Deputy Title IX Coordinator contact information is as follows:

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<sup>1</sup> For allegations of sex discrimination that do not involve sex-based harassment, the Title IX Policy - Sex Discrimination applies. <https://catalog.ketchum.edu/university-student-handbook/student-conduct/title-ix-policy/>

**Melissa Contreras, OD, MPH**

Title IX Coordinator

2575 Yorba Linda Blvd.

Fullerton, CA 92831

[TitleIX@ketchum.edu](mailto:TitleIX@ketchum.edu) | 714-449-7405

Website: <https://www.ketchum.edu/student-life/title-ix>

Reporting Form (accessible after login): <https://my.ketchum.edu/ICS/>

**Wende Holtzen, MS, SPHR, SHRM-SCP**

Title IX Deputy

Vice President for Human Resources

2575 Yorba Linda Blvd.

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In addition to the Title IX Coordinator, MBKU appoints investigators, decisionmakers and informal resolution facilitators who have roles in the formal grievance process more fully explained in Sections six (6) through nine (9) of this policy.

The Title IX Coordinator, Deputy Title IX Coordinators, investigators, decisionmakers, and informal resolution facilitators will receive annual training in compliance with Title IX. All administrators in these roles will not rely on sex stereotypes and will provide impartial investigations and adjudications of Complaints of Sexual Harassment. All materials used to train these administrators will be publicly made available on MBKU's website in accordance with Title IX requirements.

The Title IX Coordinator, Deputy Title IX Coordinators, investigators, decisionmakers, and informal resolution facilitators shall not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

**1.5 Communication:** MBKU will use University electronic mail (email) for purposes of communication under this Policy.

**1.6 Free Speech:** Freedom of speech and principles of academic freedom are central to the mission of institutions of higher education. Constitutionally protected expression cannot be considered discrimination on the basis of sex under this policy.

**1.7 Dissemination of policy of and Notice of Nondiscrimination:** MBKU will publish the Notice of Nondiscrimination on its [website](#) and in each handbook, catalog, announcement, bulletin, and application form made available to students, parents/guardians, and employees, or which are otherwise used in connection with the recruitment of students. This posting will include a link to this policy and reporting options.

**1.8 Effective Date:** The effective date of this policy is August 1, 2024. Matters that occurred prior to August 1, 2024 will be resolved using the policy and procedures in place at the time of the alleged event.

**1.9 False Statements:** Alleged violations of the terms in this section will be sent to the VPES for student Respondents or to the VPHR for employee Respondents for investigation and adjudication under the MBKU Code of Conduct (“Harassment Prevention Policy” in the Employee Handbook). The following are violations of the Code of Conduct for Students regarding knowingly providing false information or disruption and will be resolved through the Student/Employee Conduct process:

- Falsification, distortion, or misrepresentation of information under review by a University Conduct Officer (UCO), the University Conduct Committee (UCC), and/or Appellate Officer.
- Disruption or interference with the orderly conduct of a conduct meeting/Hearing.
- Attempting to discourage an individual’s proper participation in, or use of, the student conduct process.
- Attempting to influence the impartiality of a UCO prior to and/or during the conduct meeting/Committee Hearing.
- Harassment (verbal or physical) and/or intimidation of a UCO prior to, during and/or after a conduct meeting/Committee Hearing.
- Influencing or attempting to influence another person to commit an abuse of the student conduct process. Retaliation against any person submitting a complaint of any alleged policy violation or against any person cooperating in the fact-finding (including testifying as a witness) of any alleged violation of this Code.

**1.10 Amnesty:** Reporting discrimination on the basis of sex and other inappropriate conduct is encouraged at MBKU. Thus, it is imperative that parties and witnesses share information without fear of potential consequences for minor violations of the [Student Code of Conduct](#) that do not cause harm or place the health or safety of any other person at risk. MBKU offers parties and witnesses amnesty from such violations, but individuals may be responsible for other, more serious conduct that does harm or place the health or safety of any other person at risk. After granting Amnesty, MBKU may include educational opportunities for individuals in lieu of a finding of responsibility or punitive sanctions with the student. This Section does not apply to reports to the police; rather, it applies only to discipline for violations of MBKU’s [Student Code of Conduct](#).

**1.11 Other MBKU Policies:** This Policy takes precedence over other MBKU policies and procedures concerning discrimination on the basis of sex in the event of a conflict.

**1.12: Modification and Review of this Policy:** MBKU reserves the right to modify this Policy to take into account applicable legal requirements. MBKU will regularly review this Policy to determine whether modifications should be made.

**1.13 Additional Code of Conduct Violations:** Alleged violations of the student or employee Code of Conduct that arise from the same events as alleged discrimination on the basis of sex under this Policy will be investigated and resolved under the grievance procedures in this Policy unless the sex discrimination has been dismissed under Section 5.4 of this Policy.

**1.14 Standard of Proof:** The burden rests with MBKU to prove that a violation of this policy occurred by a Preponderance of the Evidence (more likely than not).

**1.15 Application:** This policy applies to all sex based harassment when one of the parties is a student occurring under MBKU's education program or activity in the United States. Conduct that occurs under a MBKU's education program or activity includes but is not limited to conduct that occurs in a building owned or controlled by a student organization that is officially recognized by MBKU and conduct that is subject to MBKU's disciplinary authority. MBKU has an obligation to address a sex-based hostile environment under its education program or activity, even when some conduct alleged to be contributing to the hostile environment occurred outside of MBKU's education program or activity or outside the United States.

**1.16 Prohibited disclosure of personally identifiable information:** MBKU will not disclose personally identifiable information obtained in the course of complying with this policy and/or grievance procedures except in the following circumstances:

- (1) When MBKU has obtained prior written consent from a person with the legal right to consent to the disclosure;
- (2) When the information is disclosed to an authorized legal representative with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;
- (3) To carry out the purposes of this policy and procedure including action taken to address conduct that reasonably may constitute sex discrimination under this policy in MBKU's education program or activity;
- (4) As required by Federal law, Federal regulations, or the terms and conditions of a Federal award, including a grant award or other funding agreement; or
- (5) To the extent such disclosures are not otherwise in conflict with Title IX or this policy when required by State or local law or when permitted under FERPA, 20 U.S.C. 1232g, or its implementing regulations, 34 CFR part 99.

## **Section 2: Definitions**

**2.1 Definitions of Prohibited Conduct Under this Policy:**<sup>2</sup> This policy applies to all sex discrimination in the form of sex-based harassment when one of the parties is a student. Sex discrimination that is not sex-based harassment and retaliation will be resolved using the *Title IX Policy for Sex Discrimination*.

**2.1.1 Sex-Based Harassment:** a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity, that is:

**(1) Quid pro quo harassment:** An employee, agent, or other person authorized by MBKU to provide an aid, benefit, or service under MBKU's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;

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

(i) The degree to which the conduct affected the complainant's ability to access MBKU's education program or activity;

(ii) The type, frequency, and duration of the conduct;

(iii) The parties' ages, roles within the university's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(iv) The location of the conduct and the context in which the conduct occurred; and

(v) Other sex-based harassment in MBKU's education program or activity.

**(3) Specific offenses: Sexual Assault, Dating Violence, Domestic Violence, or Stalking as defined in this Policy.**

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<sup>2</sup> See Appendix 1 for reference to California state law definitions that may apply to the definitions contained within this policy.

**2.1.2 Sexual Assault:** An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, including Rape, Fondling, Incest, and Statutory Rape as defined in this Policy.

**2.1.3 Rape<sup>3</sup>:** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the Consent of the victim.

**2.1.4 Fondling<sup>4</sup>:** The touching of the private body parts of another person for the purpose of sexual gratification, without the Consent of the victim, including instances where the victim is incapable of giving Consent because of his/her age or because of his/her temporary or permanent mental Incapacity.

**2.1.5 Incest<sup>5</sup>:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**2.1.6 Statutory Rape<sup>6</sup>:** Sexual intercourse with a person who is under the statutory age of Consent.

**2.1.7 Dating Violence:** Violence committed by a person:

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

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

- The length of the relationship;
- The type of relationship; and

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<sup>3</sup> Rape as defined in the Uniform Crime Reporting Program (UCR) includes:

Forcible Rape: The carnal knowledge of a person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity.

Forcible Sodomy: Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

Sexual Assault with an Object: To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

<sup>4</sup> Fondling is referred to as Forcible Fondling in the UCR.

<sup>5</sup> Incest is a Nonforcible Offense in the UCR.

<sup>6</sup> Statutory Rape is a Nonforcible Offense in the UCR.

- The frequency of interaction between the persons involved in the relationship;

**2.1.8 Domestic Violence:** Felony or misdemeanor crimes committed by a person who:

(1) Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of MBKU, or a person similarly situated to a spouse of the victim under the domestic or family violence laws of California;

(2) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;

(3) Shares a child in common with the victim; or

(4) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of California.

**2.1.9 Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(1) Fear for the person's safety or the safety of others; or

(2) Suffer substantial emotional distress.

**2.1.10 Retaliation, including Peer Retaliation:** Intimidation, threats, coercion, or discrimination against any person by MBKU, a student, or an employee or other person authorized by MBKU to provide aid, benefit, or service under MBKU's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or this policy, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy, including in an informal resolution process, in grievance procedures, and in any other actions taken by MBKU under this policy. Nothing in this definition or this Policy precludes MBKU from requiring an employee or other person authorized by MBKU to provide aid, benefit, or service under MBKU's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing.

## **2.2 Definitions Related to Sex Discrimination: Consent, Course of Conduct, Incapacitation, On the Basis of Sex, Reasonable Person, Substantial Emotional Distress**

**2.2.1 Consent:** Consent is affirmative, conscious, voluntary, and revocable. Consent to sexual activity requires of each person an affirmative, conscious, and voluntary agreement to engage in sexual activity.

It is the responsibility of each person to ensure they have the affirmative Consent of the other to engage in the sexual activity. Lack of protest, lack of resistance, or silence do not, alone, constitute consent. Affirmative consent must be ongoing and can be revoked at any time during sexual activity.

The existence of a dating relationship or past sexual relations between the Complainant and Respondent will never by itself be assumed to be an indicator of consent (nor will subsequent sexual relations or dating relationship alone suffice as evidence of Consent to prior conduct).

The Respondent's belief that the Complainant consented will not provide a valid defense unless the belief was actual and reasonable. In making this determination, the decision-maker will consider all the facts and circumstances the Respondent knew, or reasonably should have known, at the time. In particular, the Respondent's belief is not a valid defense where:

**2.2.1.1** The Respondent's belief arose from the Respondent's own intoxication or recklessness;

**2.2.1.2** The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented; or

**2.2.1.3** The Respondent knew, or a reasonable person should have known, that the Complainant was unable to Consent because the Complainant was incapacitated, in that the Complainant was:

- asleep or unconscious
- unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication
- unable to communicate due to a mental or physical condition.

**2.2.2 Course of Conduct:** Two or more acts, including, but not limited to, acts in which the individual directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.

**2.2.3 Incapacitation:** A person lacks the ability to actively agree to sexual activity because the person is asleep, unconscious, under the influence of alcohol or other drugs such that the person does not have:

(1) control over their body, is unaware that sexual activity is occurring, or

(2) their mental, physical or developmental abilities render them incapable of making rational informed decisions.



Incapacitated is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking, using drugs, or taking medication.

A person violates this policy when they engage in sexual activity with another person who is Incapacitated and a Reasonable Person in the same situation would have known that the person is Incapacitated. Incapacitation can be voluntary or involuntary. Signs of Incapacitation may include, without limitation: sleep; total or intermittent unconsciousness; lack of control over physical movements (e.g., inability to dress/undress without assistance; inability to walk without assistance); lack of awareness of circumstances or surroundings; emotional volatility; combativeness; vomiting; incontinence; unresponsiveness; and inability to communicate coherently. Incapacitation is an individualized determination based on the totality of the circumstances.

**2.2.4 On the Basis of Sex (Scope):** Includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

**2.2.5 Reasonable Person:** A reasonable person under similar circumstances and with similar identities to the victim.

**2.2.6 Substantial Emotional Distress:** Significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

## 2.3 Other Defined Terms

**2.3.1 Business Day:** Any weekday not designated by MBKU as a holiday or administrative closure day. When calculating a time period of Business Days specified in this Policy, the Business Day of the event that triggers a time period is excluded.

**2.3.2 Complainant:** A student or employee of MBKU who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or a person other than a student or employee of MBKU who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in MBKU's education program or activity.

**2.3.3 Complaint:** An oral or written request to MBKU that objectively can be understood as a request for MBKU to investigate and make a determination about alleged discrimination.

### 2.3.4 Confidential Employee:

(1) An employee of MBKU whose communications are privileged or confidential under Federal or State law. The employee's confidential status, for purposes of this Policy, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies;

(2) An employee of MBKU whom MBKU has designated as confidential under this Policy for the purpose of providing services to persons related to sex discrimination. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about sex discrimination in connection with providing those services; or

(3) An employee of a post-secondary institution who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination—but the employee's confidential status is only with respect to information received while conducting the study.

**2.3.5 Disciplinary Sanctions:** Consequences imposed on a respondent following a determination under Title IX that the respondent violated MBKU's prohibition on Sex Discrimination.

**2.3.6 Education Program or Activity:** Any academic, extracurricular, research, occupational training, or other education program or activity.

**2.3.7 Impermissible Evidence:** The following information must not be discussed, otherwise used, accessed or considered, even if relevant, except by MBKU to determine whether an exception exists.

(1) Evidence that is protected under a privilege as recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;

(2) A party's or witness' records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless MBKU obtains that party's or witness' voluntary, written consent for use in MBKU's grievance procedures; and

(3) Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

**2.3.8 Party:** A complainant or respondent.

### **2.3.9 Pregnancy or Related Conditions:**

- (1) Pregnancy, childbirth, termination of pregnancy, or lactation;
- (2) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
- (3) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

**2.3.10 Relevant:** Related to the allegations of sex discrimination under investigation as part of the grievance procedures. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

**2.3.11 Remedies:** Measures provided, as appropriate, to a complainant or any other person MBKU identifies as having had their equal access to MBKU's education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to MBKU's education program or activity after MBKU determines that sex discrimination occurred.

**2.3.12 Respondent:** A person who is alleged to have violated MBKU's prohibition on sex discrimination.

**2.3.13 Student:** A person who has gained admission.

**2.3.14 Student with a Disability:** A student who is an individual with a disability as defined in the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(9)(B), (20)(B), or a child with a disability as defined in the Individuals with Disabilities Education Act, 20 U.S.C. 1401(3).

**2.3.15 Supportive Measures:** Individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to:

- (1) Such measures are designed to restore or preserve that party's access to MBKU's education program or activity, including measures that are designed to protect the safety of the parties or the MBKU's educational environment; or
- (2) Provide support during MBKU's grievance procedures or during the informal resolution process.

## **Section 3: Reporting Sex Discrimination and Preservation of Evidence**

### 3.1 Reporting to MBKU

**3.1.1 Reporting to/ Notifying the Title IX Coordinator:** Reports of Sex Discrimination may be made to the Title IX Coordinator. The Title IX Coordinator may be notified at any time by email, phone, online form or mail. Notifications may be made in person during business hours at 2575 Yorba Linda Blvd. The Title IX Coordinator will promptly respond by offering supportive measures regardless of whether a complaint is initiated.

**3.1.2 Reporting to all Employees Who are Not Designated as Confidential Employees:** If any employee who is not designated as a confidential employee has information about conduct that may reasonably constitute sex discrimination, the employee must notify the Title IX Coordinator.

**3.1.3 Reporting to Confidential Employees:** Confidential employees at MBKU include the following:

**Alyse Kirschen, PhD**

Director of University Student Counseling Services  
2575 Yorba Linda Blvd.  
Fullerton, CA 92831  
Main Campus, F112  
[AKirschen@ketchum.edu](mailto:AKirschen@ketchum.edu) | 714-595-9700

**Ketchum Health Medical Clinic Providers** (including staff involved in direct patient care) operate as confidential employees only in the context of providing medical care to students or employees of MBKU.

Ketchum Health Medical Clinic  
5460 E. La Palma Ave  
Anaheim, CA 92807  
[khmedicalclinic@ketchum.edu](mailto:khmedicalclinic@ketchum.edu) | 714-463-7505

Reports made to confidential employees are considered confidential reports. The confidential employee must explain the following to a person who informs them of conduct that reasonably may constitute sex discrimination:

- (1) The employee's status as confidential for purposes of this policy, including any circumstances in which the employee is not required to report to the Title IX Coordinator;
- (2) How to contact the Title IX Coordinator and how to make a complaint of sex discrimination; and

(3) That the Title IX Coordinator may be able to offer and coordinate supportive measures, as well as initiate an information resolution or an investigation under the grievance procedures.

**3.1.4 Public Awareness Events:** When the Title IX Coordinator is notified of information that may reasonably constitute sex-based harassment that was provided during a public event to raise awareness about sex-based harassment that was held on MBKU's campus or through an online platform sponsored by MBKU, MBKU is not obligated to act in response to the information unless it indicates an imminent and serious threat to the health or safety of a complainant, any students, employees, or other individuals. However, MBKU must use information to inform its efforts to prevent sex-based harassment.

**3.1.5 Anonymous Reporting:** Anonymous reports may be made by telephone, in writing, or [electronically](#) (sign-in required) with the Title IX Coordinator. A decision to remain anonymous, however, may greatly limit MBKU's ability to stop the alleged conduct, collect evidence, or take action against parties accused of violating this policy.

**3.2 Reporting to Law Enforcement:** Reports may be filed with local law enforcement agencies. The Title IX Coordinator can assist with contacting law enforcement agencies. Law enforcement investigations are separate and distinct from MBKU investigations.

Fullerton Police Department	714-738-6800
Placentia Police Department	714-993-8164
Anaheim Police Department	714-765-1900
Brea Police Department	714-990-7625

**3.3 Reporting to Outside Agencies:** Reports may be made to external agencies:

**(1) Students:**

**Office for Civil Rights**  
**U.S. Department of Education**  
50 United Nations Plaza  
San Francisco, CA 94102  
Telephone: 415-486-5555  
Facsimile: 415-486-5570  
Email: [OCR.SanFrancisco@ed.gov](mailto:OCR.SanFrancisco@ed.gov)

**Office for Civil Rights**  
**U.S. Department of Health and Human Services**  
90 70th Street, Suite 4-100  
San Francisco, CA 94103  
Telephone: 800-368-1019

Facsimile: 202-619-3818

Email: [ocrmail@hhs.gov](mailto:ocrmail@hhs.gov)

**(2) Employees:**

**U.S. Equal Employment Opportunity Commission**

California Workforce Commission

Roybal Federal Building

255 East Temple St., 4th Floor

Los Angeles, CA 90012

Telephone: 1-800-669-4000

Facsimile: 213-894-1118

[info@eeoc.gov](mailto:info@eeoc.gov)

**3.4 Outside Agency Confidential Support and Resources:**

Sexual Assault Victim Services	714-834-4317
Rape Crisis Hotline	714-957-2737
OC Domestic Violence Hotline	714-992-1931 or 800-799-7233
Legal Aid Society of Orange County	714-835-8806

**Local Emergency Facilities**

<b>St. Jude Medical Center</b>	714-871-3280
101 E Valencia Mesa Drive Fullerton, CA 92835	
<b>Placentia Linda Hospital</b>	714-993-2000
1301 N Rose Drive Placentia, CA 92870	
<b>Kaiser Permanente</b>	714-644-2000
3430 E La Palma Avenue Anaheim, CA 92806	

**3.5 Time Limits on Reporting:** There are no time limits on reporting sex discrimination to the Title IX Coordinator or MBKU. If the respondent is no longer subject to MBKU's Education Program or Activity or significant time has passed, MBKU will have limited ability to investigate, respond, and/or provide disciplinary remedies and sanctions.

**3.6 MBKU Federal Reporting Obligations:** Certain MBKU employees, called Campus Security Authorities (CSAs), have a duty to report certain incidents of misconduct to comply with the Clery Act. CSAs are not required to report personally identifiable information for Clery Act purposes, but statistical information must be sent regarding the type of incident that occurred and its general location (e.g., on or off-campus) for publication in an annual report of crime statistics, called the

Annual Security Report. Statistics published in the Annual Security Report help to provide the campus community with a clearer picture of the extent and nature of campus crime, but the statistics do not personally identify Complainants or Respondents. Reports by CSAs are not official police reports and do not initiate criminal investigations.

When Sexual Assault, Domestic Violence, Dating Violence, and/or Stalking are reported under the Clery Act, MBKU must issue timely warnings for such incidents that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

MBKU will not disclose a Complainant's name and other identifying information in a timely warning but will provide sufficient information for MBKU community members to make informed safety decisions in response to potential danger.

**3.7 Preservation of Evidence:** MBKU recognizes that a complainant may need time to decide whether to report an incident of sex discrimination to the police and/or MBKU. The purpose of this section is to provide Complainants with suggestions on preserving evidence while they decide whether to report an incident.

MBKU encourages complainants, as soon as possible after experiencing Sexual Assault, to take steps to preserve evidence such as:

- (1) Have a forensic sexual assault nurse examination performed as soon as possible after the incident;
- (2) When possible, prior to having a forensic sexual assault nurse examination performed, avoid: changing clothing, bathing, showering, using a douche, using the bathroom, brushing one's teeth, drinking liquids, washing one's hands or face, or combing one's hair;
- (3) Preserve any clothing, sheets, or other materials (items containing bodily fluids should be stored in cardboard boxes or paper bags);
- (4) Preserve or capture electronic communications such as text messages, e-mails, social media posts, or exchanges (e.g., Snapchat, Facebook, Twitter);
- (5) Preserve or capture video, audio (e.g., voice mail messages), or photographs, including those stored on smartphones or other devices; and
- (6) Preserve any other physical, documentary, and/or electronic data that might be helpful to an investigator.

#### **Section 4: Grievance Procedures: Evaluation and Supportive measures**

**4.1 Initial Response to Notification of Sex Discrimination:** Upon notification of conduct that reasonably may constitute sex discrimination, the Title IX Coordinator will promptly contact the

complainant regardless of whether the complainant was the individual who initiated the notification. During the initial contact with the complainant the Title IX Coordinator will:

- (1) Provide the complainant with notice of their rights and options;
- (2) Explain the process for initiating a complaint, including the factors considered to determine when the Title IX Coordinator will initiate a complaint.
- (3) Explain the Grievance Procedures and Informal Resolution Process;
- (4) Discuss the availability of Supportive Measures regardless of whether a complaint is initiated;
- (5) Consider the complainant's wishes with respect to Supportive Measures.

**4.2 Supportive Measures:** Supportive measures must be offered and coordinated by MBKU.

Supportive measures must not unreasonably burden either party and must be designed to protect the safety of the parties or MBKU's educational environment, or to provide support during MBKU's grievance procedures or during the informal resolution process. MBKU must not impose such measures for punitive or disciplinary reasons.

Supportive measures may differ based on what MBKU deems to be reasonably available. Examples of supportive measures include, but are not limited to:

- (1) Counseling;
- (2) Extensions of deadlines and other course-related adjustments;
- (3) Campus escort services;
- (4) Increased security and monitoring of certain areas of the campus;
- (5) Restrictions on contact applied to one or more parties;
- (6) Leaves of absence;
- (7) Changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

Supportive measures may be modified or terminated at the conclusion of the grievance procedures or at the conclusion of the informal resolution process or MBKU may continue with the supportive measures indefinitely.

**4.2.1 Supportive Measures Review:** Complainants or respondents may seek modification or reversal of MBKU's decision to provide, deny, modify, or terminate supportive measures



applicable to them. The impartial employee (Supportive Measures Review Administrator) must have authority to modify or reverse the decision if the Supportive Measures Review Administrator determines that the decision to provide, deny, modify, or terminate the supportive measure was inconsistent with the definition of supportive measures in this Policy. The parties will be provided with additional opportunity to seek review by the Supportive Measures Review Administrator of supportive measures if circumstances change materially.

Request for review of supportive measures must be made in writing to:

**Students requests for a review of supportive measures**

Wende Holtzen, MS, SPHR, SHRM-SCP

Title IX Deputy for Employees

Vice President for Human Resources

2575 Yorba Linda Blvd.

Fullerton, CA 92831

[TitleIX@ketchum.edu](mailto:TitleIX@ketchum.edu) | 714-449-7459

**Employee requests for a review of supportive measures**

Carmen Barnhardt, OD, MS Ed

Title IX Deputy for Students

Vice President for Enrollment and Student Services

2575 Yorba Linda Blvd.

Fullerton, CA 92831

[TitleIX@ketchum.edu](mailto:TitleIX@ketchum.edu) | 714-449-7423

(2) Within 10 business days.

Upon receipt of a request for review, the Supportive Measures Review Administrator will evaluate the request and provide a written response with their determination as to whether the prior decision to provide, deny, modify, or terminate the supportive measure was inconsistent within 10 business days.

**4.2.2 Privacy of Supportive Measures Information:** MBKU will not disclose information about any supportive measures to individuals other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless necessary to provide the supportive measure or restore or preserve a party's access to the education program or activity.

**4.2.3. Consultation for Student with Disability:** If the complainant or respondent has a disability, the Title IX Coordinator may consult, as appropriate, with Student Disability Services to determine how to comply with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, in the implementation of supportive measures.

## **Section 5: Complaint**

MBKU will use the grievance procedures or the informal resolution process for all allegations of sex discrimination in a complaint.

**5.1 Initiating a Complaint:** A complaint must be an oral or written request to MBKU that can objectively be understood as a request for MBKU to investigate and make a determination about alleged sex discrimination.

The following persons have a right to initiate a complaint:

**(1) For Allegations of Sex-Based harassment:**

- (i) A complainant.
- (ii) An authorized legal representative with the legal right to act on behalf of a complainant.
- (iii) The Title IX Coordinator.

**(2) For Allegations of Sex Discrimination Other than Sex-Based Harassment:**

- (i) Any student or employee; or
- (ii) Any person other than a student or employee who was participating or attempting to participate in MBKU's education program or activity at the time of the alleged sex discrimination.

**5.2 Title IX Coordinator Considerations for Initiating a Complaint:** In the absence of a complaint or the withdrawal of the allegations in a complaint, the Title IX Coordinator must determine whether to initiate a complaint of sex discrimination. The Title IX Coordinator must consider, at a minimum the following factors:

- (1) The complainant's request not to proceed with initiation of a complaint;
- (2) The complainant's reasonable safety concerns regarding initiation of a complaint;
- (3) The risk that additional acts of sex discrimination would occur if a complaint is not initiated;
- (4) The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
- (5) The age and relationship of the parties, including whether the respondent is an employee of MBKU;

(6) The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;

(7) The availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred; and

(8) Whether MBKU could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures.

**5.2.1 Notification of Complainant:** If the Title IX Coordinator initiates a complaint, the Title IX Coordinator must notify the complainant prior to doing so and appropriately address reasonable concerns about the complainant's safety or the safety of others, including providing additional supportive measures.

**5.3 Response Regardless of Whether Complaint is Initiated:** Regardless of whether a complaint is initiated, the Title IX Coordinator will take other appropriate, prompt and effective steps, in addition to steps necessary to effectuate remedies provided to an individual complaint, if any, to ensure that sex discrimination does not continue to recur within MBKU's education program or activity.

**5.4 Dismissal of a Complaint:** MBKU may dismiss a complaint of sex discrimination for any of the following reasons:

(1) MBKU is unable to identify the respondent after taking reasonable steps to do so;

(2) The respondent is not participating in MBKU's education program or activity and is not employed by MBKU;

(3) The complainant voluntarily withdraws any or all of the allegations in the complaint *in writing*, the Title IX Coordinator declines to initiate a complaint under, and MBKU determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under this policy even if proven; or

(4) MBKU determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX or this Policy. Prior to dismissing the complaint under this section, MBKU will make reasonable efforts to clarify the allegations with the complainant.

**5.4.1 Notification of Dismissal of a Complaint:** Upon dismissal, MBKU will promptly notify the complainant of the basis for the dismissal in writing. If the dismissal occurs after the respondent has been notified of the allegations, then MBKU will simultaneously notify the respondent of the dismissal and the basis for the dismissal.

**5.4.2 Appeal of Dismissal of a Complaint:** MBKU will notify the complainant that a dismissal may be appealed. If the dismissal occurs after the respondent has been notified of the allegations, then MBKU will also notify the respondent that the dismissal may be appealed. The complainant and respondent (if respondent has been notified of the allegations) may appeal on the basis set forth in section 10.

If the dismissal is appealed, MBKU will:

- (1) Notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;
- (2) Implement appeal procedures equally for the parties;
- (3) Ensure that the appellate decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
- (4) Ensure that the decisionmaker for the appeal has been trained;
- (5) Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- (6) Notify the parties of the result of the appeal and the rationale for the result.

**5.4.3 After Dismissal of Complaint:** If MBKU dismisses a complaint, MBKU will, at a minimum:

- (1) Offer supportive measures to the complainant.
- (2) Offer supportive measures to the respondent if the respondent has been notified of the allegations.
- (3) Take other appropriate, prompt and effective steps to ensure that sex discrimination does not continue or recur within the MBKU's education program or activity.

**5.5 Consolidation of Complaints:** MBKU may consolidate complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances.

If one of the complaints to be consolidated is a complaint of sex-based harassment involving a student complainant or student respondent at a postsecondary institution, the grievance procedures for investigating and resolving the consolidated complaint must comply with the requirements in this Title IX policy.

## **Section 6: Grievance Procedures- General Requirements**

**6.1 Equitable Procedures:** The grievance procedures within this Policy are designed to treat complainants and respondents equitably.

**6.1.1 Burden of Proof and Burden of Gathering Evidence:** All investigations and proceedings, including hearings, relating to sex discrimination will be conducted using a “preponderance of the evidence” (more likely than not) standard. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibly rest on MBKU not the parties.

**6.1.2 Presumption of Not Responsible:** The respondent is presumed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the end of the grievance process.

**6.1.3 Time Frames for Grievance Process:** MBKU strives to complete the grievance process within one hundred twenty (120) business days. MBKU strives to complete the evaluation period within ten (10) business days after meeting with the complainant, the investigation period within sixty (60) business days after initiation of complaint, the determination period within thirty (30) business days, and the appeal within twenty (20) business days. Temporary delays and/or extensions of the time frames within this Policy may occur for good cause. Written notice will be provided to the parties of the delay and/or extension of the time frames with explanation of the reasons for such action. Examples of good cause for delay/extensions include, but are not limited to, considerations such as the absence of a party, a party’s advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

**6.1.4 Range of Disciplinary Sanctions:** Sanctions that may be required if an individual is found responsible for violating this policy include, but are not limited to:

### **For Students**

*Written Warning* – A notice in writing to the student that the student is violating or has violated University policy and a copy of the warning letter is placed in the student’s conduct file (notation in their disciplinary record).

*Professional Probation* – Places students at a higher risk of more severe disciplinary sanctions if the student is found to violate any University policy during the probationary period. Any MBKU student on Professional Probation may not participate in leadership roles on campus, including federal work-study positions. Temporarily noted on the student transcript.

*Loss of Privileges* – Denial of specified privileges.

*Restitution* – Compensation for loss, damage, or injury. This may take the form of

appropriate service, monetary, or material replacement.

*Educational/Developmental Sanctions* – Work assignments, essays, service to MBKU, community service or other related discretionary or educational assignments.

*Suspension* – Separation of the student from the University for a definite period after which the student shall be eligible to return without reapplying. Conditions for return may be specified. Based on the UCC’s decision, Suspensions may be effective immediately or deferred, pending an appeal process.

*Dismissal\** – Separation of the student from the University for a definite period after which the student shall be eligible to reapply for admission.

*Expulsion\** – Separation of the student from the University permanently.

\*Dismissal and expulsion sanctions are permanently noted on the student transcript.

### **For Employees**

- Warning - Verbal or Written
- Performance Improvement Plan
- Referral for Counseling
- Required Training or Education
- Loss of Potential Merit Pay Increase
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Suspension with Pay
- Suspension without Pay
- Termination
- Other Actions: In addition to, or in place of, the above sanctions, MBKU may assign any other sanctions as deemed appropriate.

**6.1.5 Prohibition Against Bias or Conflict of Interest:** The Title IX Coordinator, investigator, decisionmaker, or appellate decisionmaker must not have a bias for or against complainants or respondents generally or an individual complainant or respondent. The decisionmaker may be the same person as the Title IX Coordinator or investigator.

**6.1.6 Privacy Protection:** MBKU will take reasonable steps to protect the privacy of the parties and witnesses during the pendency of the grievance procedures, provided that the steps do not restrict the ability of the parties to: obtain and present evidence, including by speaking to witnesses, consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures.

**6.1.7 Objective Evaluation of Evidence:** MBKU will conduct an objective evaluation of all evidence that is relevant, as defined and not otherwise impermissible, including both

inculpatory and exculpatory evidence—and provide that credibility determinations must not be based on a person’s status as a complainant, respondent, or witness.

## **Section 7: Grievance Procedures - Investigation**

MBKU will conduct an investigation following a complaint and Notice of Allegations. During all meetings and interviews the parties may be accompanied by an advisor of their choice, which can be, but is not required to be, an attorney. The advisor’s role is limited to assisting, advising, and/or supporting a complainant or respondent. An advisor is not permitted to speak for or on behalf of a complainant or respondent or appear in lieu of a complainant or respondent.

MBKU has discretion to determine whether parties may present expert witnesses and will make that determination equally to the parties.

**7.1 Notice of Allegations:** Upon initiation of MBKU’s grievance procedures, MBKU will provide notice of the allegations to the parties whose identities are known which includes:

- (1) MBKU’s grievance procedures.
- (2) Sufficient information available at the time to allow the parties to respond to the allegations. Sufficient information includes:
  - (i) The identities of the parties involved in the incident(s),
  - (ii) The conduct alleged to constitute sex discrimination (sex based harassment) under this policy, and
  - (iii) The date(s) and location(s) of the alleged incident(s), to the extent that information is available to MBKU.
- (3) A statement that retaliation is prohibited.
- (4) A statement that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence, or an accurate description (report) of this evidence and if MBKU provides a report depicting the evidence, the parties are entitled to an equal opportunity to access to the relevant and not otherwise impermissible evidence upon the request of any party.
- (5) A statement that respondent is presumed not responsible for the alleged sex-based harassment until a determination is made at the conclusion of the grievance procedures and that prior to the determination, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker.
- (6) A statement that they may have an advisor of their choice to serve in the role set out in paragraph 7.6 of this section, and that the advisor may be, but is not required to be, an attorney.

(7) A statement that they are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence and an investigative report that accurately summarizes the evidence.

(8) A statement that the code of conduct prohibits knowingly making false statements or knowingly submitting false information during the grievance procedure.

**7.1.1 Updating Notice of Allegations:** If, in the course of an investigation, MBKU decides to investigate additional allegations of sex discrimination by the respondent toward the complainant that are not included in the notice of allegations or that are included in a complaint that is consolidated, MBKU will provide notice of the additional allegations to the parties whose identities are known.

**7.1.2 Reasonable Delay of Notice of Allegations to Address Safety:** If MBKU has reasonable concerns for the safety of any person as a result of providing this notice, MBKU may reasonably delay providing written notice of the allegations in order to address the safety concern appropriately. Reasonable concerns will be based on individualized safety and risk analysis and not on mere speculation or stereotypes.

**7.2 Burden:** MBKU will ensure that the burden is on MBKU—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.

**7.3. Witnesses:** MBKU will provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible.

**7.4 Unauthorized Access:** MBKU will take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized.

**7.5 Written Notice of Meetings:** Parties and witnesses will be provided notice of any meeting, interview, and/or hearing when their presence is invited or expected with sufficient time to prepare to participate. This notice will include the date, time, location, participants, and purposes of the meeting or proceeding.

**7.6 Advisor of Choice:** Parties may be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. MBKU may establish restrictions regarding the extent to which the advisor may participate in the grievance procedures, but the restrictions will apply equally to the parties.

**7.7 Questioning of Parties and Witnesses:** The investigator will ask questions and follow up questions of parties and witnesses to adequately assess a party's or witness' credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.



The investigator will allow each party to propose questions that the party wants asked of any party or witness. The questions that are relevant and not otherwise impermissible will be asked by the investigator during one or more individual meetings, including follow-up meetings, with a party or witness.

The meetings with the parties and witnesses will be recorded using audio or audiovisual technology.

The investigator will provide each party with an audio or audiovisual recording or transcript of the meetings with enough time for the party to have a reasonable opportunity to provide follow up questions.

### **Section 8 Grievance Procedures - Review of Evidence**

MBKU will provide an equal opportunity to access either the relevant and not otherwise impermissible evidence, and an accurate description of this evidence in the form of a report. If MBKU provides a description of the evidence, it must further provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.

MBKU will provide a reasonable opportunity to respond to the evidence and to the accurate description of the evidence. The parties will have five (5) business days to review the evidence and provide written response upon receipt of the evidence and report.

### **Section 9: Grievance Procedures - Determination**

**9.1 Notification:** At the conclusion of the investigation and review of the evidence and report, the decisionmaker (who may be the same or separate than the investigator) will simultaneously notify the parties in writing of the determination whether sex discrimination occurred, include the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal.

**9.2 Determination:** At the conclusion of the investigation and review of the evidence and report, the decisionmaker (who may be the same or separate than the investigator) will simultaneously notify the parties in writing of the determination whether sex discrimination occurred. The determination will include:

- (1) A description of the alleged sex discrimination;
- (2) Information about the policies and procedures that MBKU used to evaluate the allegations;
- (3) The decisionmaker's evaluation of the relevant and not otherwise impermissible evidence and determination whether sex discrimination occurred;
- (4) If the decisionmaker finds that sex discrimination occurred, any disciplinary sanctions that imposed on the respondent, whether remedies other than the imposition of disciplinary

sanctions will be provided to the complainant, and, to the extent appropriate, other students identified to be experiencing the effects of the sex discrimination; and

(5) The postsecondary institution's procedures for the complainant and respondent to appeal.

**9.2.1 Remedies and Disciplinary Sanctions:** If there is a determination that sex discrimination occurred, as appropriate, Title IX Coordinator will coordinate the provision and implementation of remedies to the complainant and other persons identified as having had equal access to MBKU's education program or activity limited or denied by sex discrimination, coordinate the imposition of any disciplinary sanctions on a respondent, and take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur.

**9.2.2 Finality of Determination:** The determination regarding responsibility becomes final either on the date MBKU provides the parties with the written determination of the result of any appeal, or, if no party appeals, the date on which an appeal would no longer be considered timely.

**9.2.3 Discipline Outside of Grievance Procedures:** MBKU will not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedures that the respondent engaged in prohibited sex discrimination.

MBKU will not discipline a party, witness, or others participating in MBKU's grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.

## **Section 10: Appeals**

Appeals are offered to both parties equitably to challenge the determination as to whether sex discrimination occurred and the dismissal of a complaint or allegation therein.

Appeals may be made on the following bases:

- (1) Procedural irregularity that would change the outcome;
- (2) New evidence that would change the outcome and that was not reasonably available when the determination whether sex-based harassment occurred or dismissal was made; and
- (3) The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

## **Section 11 : Informal Resolution**

At any time prior to determining whether sex discrimination occurred, the parties may agree, with the support of the Title IX Coordinator, to participate in an informal resolution process facilitated by MBKU, that does not involve the grievance procedures.

MBKU will not require or pressure the parties to participate in an informal resolution process and will not require waiver of the right to an investigation and determination of a complaint as a condition of enrollment, continuing enrollment, employment, continuing employment, or exercise of any other right.

The facilitator for the informal resolution process will not be the same person as the investigator or decisionmaker in the grievance procedures.

Types of informal resolution include, but are not limited to, mediation, facilitated dialogue, conflict coaching, restorative justice, and resolution by agreement of the parties.

**11.1 Discretion of Title IX Coordinator:** The Title IX Coordinator has discretion to determine whether it is appropriate to offer an informal resolution and may decline to offer informal resolution despite one or more of the party's wishes. When determining whether to offer informal resolution, the Title IX Coordinator will consider whether the alleged conduct presents a future risk of harm to others.

**11.2 Informal Resolution Notice:** Prior to the initiation of the informal resolution process, MBKU will provide the parties written notice that explains:

- (1) The allegations;
- (2) The requirements of the informal resolution process;
- (3) Notice that, prior to agreement to a resolution, any party has the right to withdraw from the informal process and to initiate or resume the grievance procedures;
- (4) Notice that the parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the parties from initiating or resuming grievance procedures arising from the same allegations;
- (5) The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and
- (6) What information MBKU will maintain and whether and how MBKU could disclose such information for use in grievance procedures if the grievance procedures are initiated or resumed.

**11.3 Potential Informal Resolution Terms:** Potential terms that may be included in an informal resolution agreement include but are not limited to:

(1) Restrictions on contact; and

(2) Restrictions on respondent's participation in one or more of the MBKU's programs or activities or attendance at specific events, including restrictions MBKU could have imposed as remedies or disciplinary sanctions had the decisionmaker determined at the conclusion of the grievance procedures that sex discrimination occurred.

**11.4 Informal Resolution Availability:** The informal resolution process is not permitted to resolve allegations that an employee committed sex discrimination against a student.

## **Section 12: Emergency Removal and Administrative Leave**

**12.1 Emergency Removal:** At any time after the Title IX Coordinator is on notice of sex discrimination, MBKU may remove a Respondent on an emergency basis. MBKU will only conduct an emergency removal after:

(1) Undertaking an individualized safety and risk analysis,

(2) Determining that an immediate and serious threat to the health or safety of a complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies removal, and

(3) Providing the Respondent with notice and an opportunity to challenge the decision to the Title IX Coordinator, immediately following removal.

**12.2 Administrative Leave:** MBKU may place an employee respondent on administrative leave during the pendency of the grievance process in this Policy.

## **Section 13: Recordkeeping**

The following records will be maintained by MBKU for at least seven (7) years:

(1) Records documenting the informal resolution process or grievance procedures for each complaint of sex discrimination including the resulting outcome.

(2) Records documenting the actions MBKU took to provide supportive measures and remedies and a fair and equitable response under this policy and Title IX.

(3) Training materials used to provide training to all employees, the Title IX Coordinator, designees, investigators, decisionmakers, informal resolution facilitators, appellate decisionmakers, and supportive measures review administrators.

## **Section 14: Appendix 1: Applicable State Laws**

This section includes California definitions related to and referenced in the defined prohibited conduct under this Policy.

### **Sexual Assault Related Crimes**

**Rape:** Cal. Pen Code § 261:

(a) Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances:

(1) Where a person is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act.

(2) Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.

(3) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused.

(4) Where a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, "unconscious of the nature of the act" means incapable of resisting because the victim meets any one of the following conditions:

(A) Was unconscious or asleep.

(B) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(D) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

(5) Where a person submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief.

(6) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(7) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, "public official" means a person employed by a governmental agency

who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(b) As used in this section, “duress” means a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total circumstances, including the age of the victim, and his or her relationship to the defendant, are factors to consider in appraising the existence of duress.

(c) As used in this section, “menace” means any threat, declaration, or act which shows an intention to inflict an injury upon another.

**Rape of a Spouse:** Cal. Pen Code § 261:

(a) Rape of a person who is the spouse of the perpetrator is an act of sexual intercourse accomplished under any of the following circumstances:

(1) Where it is accomplished against a person’s will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.

(2) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known, by the accused.

(3) Where a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, “unconscious of the nature of the act” means incapable of resisting because the victim meets one of the following conditions:

(A) Was unconscious or asleep.

(B) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator’s fraud in fact.

(4) Where the act is accomplished against the victim’s will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, “threatening to retaliate” means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(5) Where the act is accomplished against the victim’s will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, “public official” means a person employed by a governmental agency who has

the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(b) As used in this section, “duress” means a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total circumstances, including the age of the victim, and his or her relationship to the defendant, are factors to consider in apprising the existence of duress.

(c) As used in this section, “menace” means any threat, declaration, or act that shows an intention to inflict an injury upon another.

**Statutory Rape:** Cal. Pen Code § 261.5

Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator if the person is a minor. For the purposes of this section, a “minor” is a person under the age of 18 years and an “adult” is a person who is at least 18 years of age.

**Sexual Battery:** Cal. Pen Code § 243.4

(a) Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery.

(b) Any person who touches an intimate part of another person who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated, if the touching is against the will of the person touched, and if the touching is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery.

(c) Any person who touches an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuse, and the victim is at the time unconscious of the nature of the act because the perpetrator fraudulently represented that the touching served a professional purpose, is guilty of sexual battery.

(d) Any person who, for the purpose of sexual arousal, sexual gratification, or sexual abuse, causes another, against that person’s will while that person is unlawfully restrained either by the accused or an accomplice, or is institutionalized for medical treatment and is seriously disabled or medically incapacitated, to masturbate or touch an intimate part of either of those persons or a third person, is guilty of sexual battery.

**Incest:** Cal. Pen Code § 285

Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who intermarry with each other, or who being 14 years of age or older, commit fornication or adultery with each other

**Stalking:** Cal. Pen Code § 246.9

Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking.

### **Domestic Assault/Dating Violence Related Crimes**

#### **Domestic Battery:** Cal. Pen Code § 243

When a battery is committed against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship.

#### **Corporal Injury to a Spouse or Cohabitant:** Cal. Pen Code § 273.5

Any person who willfully inflicts corporal injury resulting in a traumatic condition upon a victim who is one or more of the following:

- (1) The offender's spouse or former spouse.
- (2) The offender's cohabitant or former cohabitant.
- (3) The offender's fiancé or fiancée, or someone with whom the offender has, or previously had, an engagement or dating relationship

### **A. Prohibited Discrimination, Harassment & Sexual Misconduct Outside the Scope of Title IX**

Alleged Conduct will be evaluated by the Title IX Coordinator to determine whether it will be investigated under the Student Code of Conduct or Employee Code of Conduct if it is determined prior to a Formal Complaint or after the dismissal of a Formal Complaint under the MBKU Title IX Policy, that the Respondent is a student or employee of MBKU and the alleged conduct meets one or more of the following:

1. the alleged conduct does not fall within the definition of Sexual Harassment as defined in the Title IX Policy,
2. the alleged conduct, if proved, would constitute a violation of Sexual Harassment as defined in the Title IX Policy and did not occur in the Education Program or Activity of MBKU but would have a substantial impact on MBKU,
3. the alleged conduct, if proved, would violate the definition of Sexual Harassment as defined in the Title IX Policy and did not occur in the U.S.,
4. the Complainant is not participating in or attempting to participate in MBKU's Education Program or Activity, AND/OR
5. the alleged conduct, if proved, would constitute any of the following:
  - 5.1 Non-Title IX Sexual Harassment: Unwelcome verbal or physical behavior which is directed at an individual based on sex, when these behaviors are sufficiently severe or pervasive to have the effect of unreasonably interfering with an individual's



educational experience, working conditions, or living conditions by creating an intimidating, hostile, or offensive environment.

**5.2 Sexual Exploitation:** Any act whereby one individual violates the sexual privacy of another or takes unjust or abusive sexual advantage of another who has not provided consent.