

Sexual Discrimination, Sexual Harassment, Sexual Violence, and Title IX Policy and Adjudication Procedures

1. Definitions and Jurisdiction:

Sexual discrimination, as defined herein, is strictly prohibited by Methodist University.

Sexual discrimination includes sexual harassment and sexual violence. Sexual harassment is unwanted conduct of a sexual nature. It includes unwanted requests for sexual favors and other unwelcome sexual advances, and may be verbal or non-verbal. Sexual violence is a form of sexual harassment, and means physical sexual acts perpetrated against a person's will, or when the person is incapable of giving consent because of a disability, drug or alcohol use, or another reason. Consent is words or actions that demonstrate a knowing or voluntary willingness to engage in mutually agreed upon sexual activity. Examples of sexual violence include rape, "date-rape," sexual assault, and forcefully coercing someone to have sex or perform a sexual act.

The procedures of this section apply only to complaints made against a Methodist University student for engaging in some form of sexual discrimination. The person making the report of sexual discrimination is known as the "Complainant." The person whose conduct is complained about is known as the "Respondent."

Additional Definitions for the Student Code of Conduct:

Sexual Consent:

Consent, is words or actions that demonstrate a knowing or voluntary willingness to engage in mutually agreed upon sexual activity.

Through its sexual misconduct prevention efforts, response resources, and Title IX sexual misconduct process, Methodist University strives to create a climate in which all community members feel safe and respected. Promoting a thorough understanding of sexual consent is crucial to establishing such a climate.

Consent is:

- Knowing,
- Clear,
- Voluntary (freely given),
- Active, meaning that, through the demonstration of clear words or actions, a person has indicated permission to engage in mutually agreed-upon sexual activity at the same time, in the same way.

Silence, without articulable actions demonstrating permission, cannot be assumed to show consent.

A person who wants to engage in a specific sexual activity is responsible for obtaining Consent for that activity. Consent may be withdrawn by any party at any time and is not unlimited. A party withdrawing consent should clearly communicate the withdrawal by words or actions. Once Consent is withdrawn, the sexual activity must cease immediately. Consent to one form of Sexual Contact or activity does not constitute consent to other or all forms of Sexual Contact or activity. Each person in a sexual encounter must consent to each form of Sexual Contact or activity with each participant. Having a previous relationship or sexual encounters does not imply consent for future Sexual Contact or activity. However, in cases of prior relationships, the manner and nature of prior communications between the parties and the context of the relationship may have a bearing on whether there has been Consent.

Consent cannot be obtained by Force. Force includes (a) the use of physical violence, (b) threats, (c) intimidation, and/or (d) coercion. These types of conduct also constitute Prohibited Conduct under this policy. (Defined terms, below, are for the reader's understanding and are not included in the MU official Code of Conduct.)

- **Physical violence** means that a person is exerting control over any person through the use of physical force. Examples include but are not limited to hitting, punching, slapping, kicking, restraining, choking, and brandishing or using a weapon.
- **Threats** are words or actions that would compel a reasonable person to submit unwanted sexual activity. Examples include but are not limited to threats to harm the person physically; to end a relationship unless they submit to sexual activity at that time; to reveal private information to harm a person's reputation; to cause a person academic or economic harm; or threats to harm oneself or others.
- **Intimidation** is an implied threat that a reasonable person knows or should know menaces or causes fear in another person. A person's size alone does not constitute intimidation; however, a person's size may be used in a way that constitutes intimidation (e.g. blocking access to an exit or phone).
- **Coercion** is the use of unreasonable pressure to gain sexual access. Coercion is more than a momentary effort to persuade, entice, or attract another person to engage in sexual activity. When a person makes clear a decision not to engage in sexual activity, or makes a decision to stop sexual activity, or a decision not to go beyond a certain sexual activity, continued pressure to engage can be coercive. In evaluating whether coercion was used, the University will consider: (i) the frequency of the application of pressure; (ii) the intensity of the pressure; (iii) the degree of isolation of the person being pressured; (iv) the duration of the pressure; and (v) any other similar or related conduct.

INCAPACITATION

Incapacitation means that a person lacks the ability to make rational, reasonable judgments about whether or not to engage in sexual activity and give Consent. Consent cannot be gained by taking advantage of the Incapacitation of another person, where the person initiating sexual activity actually knew or reasonably should have known the person was incapacitated.

A person who is incapacitated is unable, temporarily or permanently, to give Consent because of mental or physical helplessness, sleep, unconsciousness, or lack of awareness that sexual activity is taking place. A person may be incapacitated as a result of the consumption of alcohol or other drugs, or due to a temporary or permanent physical or mental health condition.

Incapacitation is a state beyond drunkenness or intoxication. A person is not necessarily "incapacitated" merely as a result of drinking or using drugs. The impact of alcohol and other drugs varies from person to person.

In evaluating Consent in cases of alleged incapacitation, the University asks two questions (1) Did the person initiating sexual activity actually know that the other person was incapacitated? (2) If not, should a sober, reasonable person in the same situation have known that the other party was incapacitated? If the answer to either of these questions is "yes," Consent was absent and the conduct is likely a violation of this policy.

2. General Procedure

- a. Receiving a Complaint: Complaints of sexual discrimination may be made to the Director of Human Resources at 910-630-7385, who is Methodist University's designated Title IX coordinator. Complaints against students will be forwarded to the Dean of Students for further processing. Complaints of sexual violence will be forwarded to campus police and to the Dean of Students. Concurrently, after an initial investigation with the complainant, the Respondent will be given written notice that a complaint has been made against him or her, and given a copy of these Procedures. Confidential reporting is available online through the "Silent Witness" report on the Methodist University Public Safety webpage.
- b. Police investigation separate: A Complainant may make a report of sexual discrimination, including sexual violence, to the campus police or another law enforcement agency, to the Director of Human Resources, or both. The fact that a police investigation is ongoing does not relieve Methodist University of its obligation to investigate reports of sexual discrimination as provided herein. Furthermore, administrative hearings may proceed even if a criminal matter is pending. If campus police receives a report of sexual discrimination, campus police shall promptly notify the Director of Human Resources.
- c. Investigation: Upon receiving a complaint, the Dean of Students or designee shall fully investigate the facts alleged in the complaint. The Complainant may request to pursue student conduct proceedings, interim measures or both, however the final decision regarding how to proceed with the complaint will remain with the Dean of Students or designee and the Title IX Coordinator. If student conduct proceedings are not pursued and the Complainant desires to informally resolve the issue, a Title IX Investigation may still be completed. The Dean of Students or designee may at any time determine that a full investigation and/or conduct proceedings are required. The Complainant may also decide to change the process from an informal resolution to a formal investigation at any time. In cases where sexual violence is alleged, a full investigation will be required. A full investigation involves, at a minimum, an interview with the Complainant, an interview with the Respondent, and an interview with any witnesses to the conduct complained of. A Respondent shall not be required to be interviewed, and the Dean of Students will draw no negative inference from the Respondent's refusal to be interviewed. The interviews shall be recorded, and any relevant documents or other evidence gathered by the Dean of Students or designee will be preserved. All Title IX related investigations and complaints will be communicated to the Title IX Coordinator, who may at any time request additional information or investigations. The Dean of Students or designee shall make all reasonable efforts to conduct a full and fair investigation within thirty calendar days from receipt of a complaint. Throughout the process, every effort will be made to keep complainants and respondents separated and will not be allowed to cross-examine each other.
- d. Interim Measures: The University will not automatically restrict a student from attending classes or participating in other University activities on the basis of a complaint of sexual discrimination. However, Methodist University reserves the right to impose interim remedial measures at any time upon receiving a report of sexual discrimination, if the University has concerns about the safety of the Methodist community, including, without limitation, the Respondent. Such measures may include, but are not limited to, restrictions regarding movement on campus, removal from University housing and/or removal from campus. The decision to impose interim measures is made by the Dean of Students. The University will also enforce any court order. At the time of the initial meetings, students will be notified in writing of interim measures and sources of counseling and support.
- e. Retaliation prohibited: Retaliation against anyone who brings forward a complaint of sexual discrimination is strictly prohibited. Anyone responsible for retaliation or threats of retaliation, whether that person is the accused party, someone affiliated with the accused (i.e. a friend or family member), or any other party, will be subject to disciplinary action by the University. Retaliation should be reported promptly to the Dean of Students. Retaliation by a person not affiliated with the University may be addressed by the police.

3. Adjudication

- a. Dean of Student's Referral: Upon completion of his or her investigation the Dean of Students or designee shall:
 - i. If, in the interview with the Dean of Students or designee, the Respondent denied committing the conduct complained of or if the Respondent refused to be interviewed, the Dean of Students or designee shall refer the case to the Administrative Hearing Board.
 - ii. If, in the in the interview with the Dean of Students or designee, the Respondent admitted committing the conduct complained of, the Dean of Students or designee shall order an appropriate sanction, and shall consider a range of sanctions from no sanction to expulsion.
- b. Administrative Hearing Board: The Hearing Board shall be made up of up to five members of the Methodist University community and shall be comprised of faculty and staff. Hearing Board members whose participation in the hearing may represent a conflict of interest will recuse themselves from the process, and a replacement member shall be appointed to the appropriate Hearing Board. The Hearing

Board shall convene within five calendar days of the Dean of Students or designee referring his or her report to its Chairperson. The proceedings of the Hearing Board shall be recorded or memorialized, and the recording or memorialization shall be preserved. Attorneys shall not be permitted at the proceedings, and the proceedings shall not be open to the public.

- i. The Hearing Board shall consider the investigation of the Dean of Students or designee, including recorded interviews, documents, and other evidence, and the submissions of the Complainant and Respondent, if any. The Hearing Board will not draw an inference of responsibility from the Respondent's refusal to submit materials for its consideration or refusal to be interviewed by the Dean of Students. The Hearing Board may decide the case based solely on the record presented to it.
 - ii. If the Hearing Board believes further investigation is necessary, it may:
 - (1) Send a written request or email to the Dean of Students asking him or her to conduct further recorded interviews or attempt to obtain other evidence, which request the Dean of Students shall make every effort to comply with within five calendar days; and/or,
 - (2) Recess and gather additional documents and evidence on its own, and then reconvene to consider it; and/or
 - (3) Recess to make arrangement to question witnesses, and reconvene to do so. Witnesses may be questioned, in-person or through other means, except that the Respondent may not be required to testify in front of the Hearing Board and no negative inference may be drawn by the Respondent's refusal to do so.
 - iii. When the Hearing Board has satisfied itself that it has fully considered the facts alleged in the complaint, it shall, by a simple majority vote, make a determination that more likely than not the Respondent committed sexual discrimination as defined herein, or more likely than not the Respondent did not commit sexual discrimination as defined herein. Evidence of past consensual sexual relationships or previous Title IX complaints will not be considered when making a determination regarding a current complaint.
 - iv. The Hearing Board shall promptly inform the Title IX Coordinator and Dean of Students or designee, in writing or by email, of its determination.
- c. **Sanctions:** If the Hearing Board determines that the Respondent committed sexual discrimination as defined herein, the Hearing Board shall order an appropriate sanction, and shall consider a range of sanctions from no punishment to expulsion. The Dean of Students shall promptly inform the Respondent of the Hearing Board's determination and of the sanction imposed, if any, and shall promptly inform the Complainant of the Hearing Board's determination and of any sanction imposed which relates directly to the Complainant (e.g., a transfer of the Respondent to another residence hall or out of the Complainant's classes). Furthermore, as part of this process and within the broad authority granted to the Dean of Students or designee additional measures may be imposed on the Respondent and/or accommodations provided to the Complainant to meet the University's Title IX obligations. Decisions will be provided to the Complainant and Respondent verbally as well as in writing.
4. **Appeal:** The Complainant or Respondent may appeal the Hearing Board's determination, the sanction, or both within two business days of being informed of the Hearing Board's determination. Appeals must be in writing and are made and adjudicated by the Appeal Board pursuant to the procedures of that body. However, notwithstanding any provision of the Student Handbook to the contrary, when adjudicating an appeal of sexual discrimination, the Appeal Board shall simultaneously consider whether grounds for an appeal exist, and adjudicate the appeal. When so proceeding, the Appeal Board may consider only the record of the case, including any written submissions by the Complainant, and its proceedings are closed. Its proceedings, however, shall be recorded or memorialized and the recordings or memorialization preserved. The decision of the Appeal Board is final. When adjudicating cases of sexual discrimination, the Appeal Board may, in its sole discretion and if it deems doing so is necessary to prevent a manifest injustice, receive and consider new evidence not previously considered in a matter, if such new evidence was not available at an earlier stage of the investigation and adjudication. The Appeal Board shall make all reasonable efforts to render its decision within ten calendar days of receiving an appeal.
 5. **Notice to Complainant:** After the Appeal Board determines the appeal, or after the time for an appeal lapses if no appeal is filed, the Dean of Students or designee shall inform the Complainant that no appeal was filed, or if an appeal was filed, of the determination of the Appeal Board and of any sanction imposed which relates directly to the Complainant (e.g., a transfer of the Respondent to another residence hall or out of the Complainant's classes).
 6. **Timeline and Communication:** Only under extraordinary circumstances will resolution of complaints be finalized in more than 60 days. Otherwise, students should expect that cases will be concluded within the Federal recommendations of no more than 60 days. Timelines apply equally to both the complainant and the respondent. Both parties will be given regular updates in writing until the process is complete.