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## MSU CODE OF STUDENT CONDUCT - SEXUAL MISCONDUCT POLICY

### *2017-2018 Midwestern State University Student Handbook*

Midwestern State University maintains a policy of zero tolerance for sexual misconduct regardless of the sexual orientation or gender identity of individuals engaging in sexual activity. Members of the university community, guests and visitors have the right to be free from sexual violence. When an allegation of sexual misconduct is brought to the administration, and an accused student/responding party is found to have violated this policy, serious sanctions will be imposed to ensure that such actions are never repeated. All members of the university community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The Midwestern State University sexual misconduct policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy has dual purposes; it serves as a measure to determine, after-the-fact, if behaviors trespassed on community values and as a guide for students on the expectations Midwestern State University has, preventatively, for sexual communication, responsibility and respect.

While the policy below is quite detailed and specific, the expectations of this community can be summarized in this simple paragraph: Consent is clear sexual permission and can only be given by one of legal age. Consent can be given by word or action, but non-verbal consent is more ambiguous than explicitly stating one's wants and limitations. Consent to one form of sexual activity should not, and cannot, be taken as consent to any other sexual activity. Individuals who consent to sex must be able to fully understand what they are doing. Under this policy, "No" always means "No" and "Yes" may not always mean "Yes." For example, when alcohol or other drugs are used, a person will be considered unable to give valid consent if the person is inebriated, blacked out, unconscious, or cannot appreciate the *who, what, where, when, why, or how* of a sexual interaction. In addition, silence—without clear actions demonstrating permission—cannot be assumed to indicate consent.

Finally, there is a difference between seduction and coercion; coercion is defined in this policy as unreasonably pressuring another person for sex. Coercing someone into engaging in sexual activity violates this policy in the same way as physically forcing someone into engaging in sexual activity.

#### A. Violations of the university Sexual Misconduct Policy

Sexual misconduct is a serious offense and such violations are subject to any combination of conduct sanctions. Conduct procedures with individuals found responsible for violation of the nonconsensual sexual intercourse policy face a recommended sanction of university suspension or university expulsion. Refer to the Code of Student Conduct, Section 8: Conduct Procedures, for a full list of conduct sanctions available at the University.

A partial list of Midwestern State University sexual misconduct policy violations is listed below.

- a) *Sexual Harassment*: Gender-based verbal or physical conduct that has the effect of unreasonably interfering with an individual's work or academic performance or creates an intimidating, hostile or offensive working or educational environment. There are two types of sexual harassment:
  1. *Hostile Environment* includes situations in which there is harassing conduct that is sufficiently severe, pervasive/persistent and objectively offensive so that it alters the conditions of education or employment, from both a subjective (the alleged victim's) and objective (a reasonable person's) viewpoint. The determination of

whether an environment is “hostile” must be based on all the circumstances. These circumstances could include, but are not limited to:

- The frequency of the speech or conduct;
- The nature and severity of the speech or conduct;
- Whether the conduct was physically threatening;
- Whether the speech or conduct was humiliating;
- The effect of the speech or conduct on the alleged victim’s mental and/or emotional state;
- Whether the speech or conduct was directed at more than one person;
- Whether the speech or conduct arose in the context of other discriminatory conduct;
- Whether the speech or conduct unreasonably interfered with the alleged victim’s educational or work performance;
- Whether a statement is a mere utterance of an epithet which engenders offense in an employee or a student or offends by mere discourtesy or rudeness; and/or
- Whether the speech or conduct deserves the protections of academic freedom.

2. *Quid Pro Quo* sexual harassment exists when there are unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature where submission to, or rejection of, such conduct results in educational or employment action.

b) *Nonconsensual Sexual Intercourse* (or attempts to commit the same):

- Any sexual intercourse (anal, oral or vaginal), however slight, with any object, by a person upon another person, without consent and/or by physical force.

c) *Nonconsensual Sexual Contact* (or attempts to commit the same):

- Any intentional sexual touching, however slight, with any object, by a person upon another person, without consent and/or by physical force.

d) *Sexual Exploitation*: Taking nonconsensual or abusive sexual advantage of another for one’s own advantage or benefit, or to benefit a person other than the one being exploited. Examples of sexual exploitation include, but are not limited to:

1. Prostituting another student;
2. Non-consensual video or audio recording of sexual activity;
3. Exceeding the boundaries of explicit consent, such as allowing friends to hide in a closet to be witness to one’s consensual sexual activity;
4. Engaging in voyeurism (Peeping Tommerly); and/or
5. Knowingly transmitting a sexually transmitted disease/infection or HIV to another student.

e) *Dating Violence*: Violence between those in a continuing relationship of an intimate or romantic nature with one another. The existence of such a relationship shall be determined with consideration of:

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

f) *Domestic Violence*: Violence committed by a current or former spouse or intimate partner of the victim, a person with whom the victim shares a child in common, a person who is cohabitating or had cohabitated with the victim as a spouse or intimate partner, or a person similarly situated to a spouse, adult or youth victim protected by domestic or family violence laws.

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

for his or her safety or the safety of others, or suffer substantial emotional distress. For the purpose of this definition...

1. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker 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. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

h) Retaliation is defined as any adverse actions (e.g. harassment, intimidation, revocation, limitation etc) taken against a person because of the person's participation in an investigation of discrimination or sexual misconduct or their support of someone involved in an investigation of discrimination or sexual misconduct. Retaliatory actions include, but are not limited to, threats or actual violence against the person or their property, adverse educational, organizational or employment consequences, ridicule, intimidation, bullying, or ostracism. The university will impose sanctions on any individual found to be engaging in retaliation. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator, Director of Student Conduct or Director of Human Resources, and will be promptly investigated. Northwestern State University is prepared to take appropriate steps to protect individuals who fear they may be subjected to retaliation.

## B. Reporting Sexual Misconduct and Confidentiality

University officials, depending on their roles at the university, have varying reporting responsibilities and abilities to maintain confidentiality. In order to make informed choices, one should be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality, offering options and advice without any obligation to inform an outside agency or individual unless you have requested information to be shared. Other resources exist for you to report crimes and policy violations and these resources will take action when you report victimization to them. Most resources on campus fall in the middle of these two extremes; neither the university nor the law requires them to divulge private information that is shared with them, except in the rare circumstances. The following describes the three reporting options at Northwestern State University:

- a) *Confidential Reporting:* If you would like the details of an incident to be kept confidential, you may speak with on-campus counselors, campus health service providers or victim advocates, off-campus rape crisis resources, or off-campus members of the clergy/chaplains who will maintain confidentiality. Campus counselors in the Counseling Center and medical staff in the Vinson Health Center are available to help you free of charge and can be seen on an emergency basis during normal business hours. Through a partnership with First Step, Inc., confidential advocates are also available to students through appointments in the Vinson Health Center and on an emergency basis.
- b) *Private Reporting:* You may seek advice from certain resources who are not required to tell anyone else your private, personally identifiable information unless there is cause for fear for your safety, or the safety of others. These resources include employees without supervisory responsibility or remedial authority to address sexual misconduct, such as hall directors, faculty members, advisors to student organizations, academic advisors, admissions officers, student activities personnel, and many others. If you are unsure of someone's duties and ability to maintain your privacy, ask them before you talk to them. They will be able to tell you and can help you make decisions about who can help you best. Some of these resources, such as resident assistants (RAs), are required to share incident reports with their supervisors. If your personally identifiable information is shared, it will be shared with as few people as possible and all efforts will be made to protect your privacy to the greatest extent.
- c) *Formal Reporting Options:* You are encouraged to speak to university officials, such as the Title IX Coordinator, Director of Student Conduct, Campus Police, Director of Human Resources, Academic Deans, Athletic Head Coaches, and Vice Presidents to make formal reports of incidents of sexual misconduct. You have the right, and can expect, to have incidents of sexual misconduct taken seriously by the university when formally reported, and to have those incidents

investigated and properly resolved through administrative procedures. Formal reporting still affords some privacy to the reporter, as only a small group of university officials who need to know will be told. Information will be shared as necessary with investigators, witnesses, and the accused student/responding party. The circle of people with this knowledge will be kept as tight as possible to preserve your rights and privacy.

#### C. Accommodations and Protective Measures

Victims of sexual misconduct will be made aware of options for available assistance in and how to request changes to academic, living, transportation, and working situations or protective measures. Additionally, information on existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services either within the institution or local community will be available. MSU will make such accommodations or provide such protective measures if requested by a victim and reasonably available, regardless of whether the victim chooses to report the incident to campus or local law enforcement.

#### D. Federal Timely Warning Obligations

Victims of sexual misconduct should be aware that university administrators must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. The university will make every effort to ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger.

### **MSU CODE OF STUDENT CONDUCT - SPECIAL PROVISIONS FOR SAFE HARBOR / AMENESTY**

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The Midwestern State University community encourages the reporting of conduct code violations and crimes by victims. Sometimes, victims are hesitant to report to university officials because they fear that they themselves may be accused of policy violations, such as underage drinking, at the time of the incident. It is in the best interest of this community that as many victims as possible choose to report to university officials. To encourage reporting, Midwestern State University pursues a policy of offering victims of conduct code violations amnesty from minor policy violations related to the incident.

If any Midwestern State University student brings their own use, addiction or dependency to the attention of university officials outside the threat of drug tests or conduct sanctions and seeks assistance, a conduct complaint will not be pursued. A written action plan may be used to track cooperation with the Safe Harbor / Amnesty program by the student. Failure to follow the action plan can nullify the Safe Harbor / Amnesty protection and campus conduct processes can be initiated.

Per Texas Senate Bill 966, offenses involving the consumption or possession of alcohol by a student under the legal drinking age of 21 do not apply if the student reports a sexual assault of the minor or another person to university officials.

Per Texas Senate Bill 969, amnesty for a violation of the MSU Code of Student Conduct will be provided to students who in good faith report an incident of sexual misconduct. MSU will take no disciplinary action against an enrolled student who in good faith reports to the institution being the victim of, or a witness to, an incident of sexual harassment, sexual assault, dating violence, domestic violence, or stalking for a violation by the student of the MSU Code of Student Conduct occurring at or near the time of the incident, regardless of the location at which the incident occurred, or the outcome of MSU's disciplinary process regarding the incident, if any. Amnesty does not apply to an enrolled student who reports the student's own commission or assistance in the commission of sexual harassment, sexual assault, dating violence, domestic violence or stalking.

**MSU CODE OF STUDENT CONDUCT - SPECIAL CONDUCT PROCEDURES FOR SEXUAL MISCONDUCT,  
SEXUAL HARRASSMENT, AND OTHER FORMS OF DISCRIMINATION**

*2017-2018 Midwestern State University Student Handbook*

A. Investigation of Sexual Misconduct, Sexual Harassment and Other Forms of Discrimination

The Title IX Coordinator, in consult with the Director of Student Conduct, will appoint investigators for complaints that fall under Title IX or involve any form of discrimination. The investigator(s) will take the following steps, if not already completed by the Coordinator or designee:

- In coordination with the Coordinator, initiate any necessary remedial actions or accommodations on behalf of the victim;
- Determine the identity and contact information of the reporting party, whether that person is the initiator of the complaint, the alleged victim, or a university proxy or representative;
- Conduct an immediate preliminary investigation to identify a complete list of all policies that may have been violated, to review the history of the parties, the context of the incident(s), any potential patterns and the nature of the complaint;
  - If the victim is reluctant to pursue the complaint, determine whether the complaint should still be pursued and whether sufficient independent evidence could support the complaint without the participation of the victim;
  - Notify the victim of whether the university intends to pursue the complaint regardless of their involvement, and inform the victim of their rights in the process and option to become involved if they so choose;
  - The preliminary investigation usually takes up to one week to complete;
- If indicated by the preliminary investigation and authorized by the Coordinator, conduct a comprehensive investigation to determine if there is reasonable cause to charge the accused individual, and to determine what specific policy violations should be alleged as part of the complaint;
  - If there is insufficient evidence through the investigation to support reasonable cause, the grievance will be closed with no further action;
  - A comprehensive investigation usually takes up to three weeks;
- Meet with the reporting party to finalize the complaint, which will be drawn up by the university as a result of this meeting;
- Commence a thorough, reliable and impartial investigation;
  - Prepare the notice of charges on the basis of the reasonable cause determination, which may be delivered prior to, during or after the accused individual is interviewed, at the discretion of the investigator(s);
- Interview all relevant witnesses, obtain statements from each, and have each witness sign their statements to verify them;
- Obtain all documentary evidence and information available;
- Obtain all physical evidence available;
- Complete the investigation by analyzing all available evidence without unreasonable deviation from the intended timeline;
- Make a finding, based on a preponderance of the evidence standard (whether a policy violation is more likely than not to have occurred);
- Present the investigation report and findings to the accused individual, who may:
  - accept the findings,
  - accept the findings in part and reject them in part,
  - or may reject all findings;
- Share the findings and update the reporting party on the status of the investigation and outcome.

## B. Findings

Where the accused individual is found not responsible for the alleged violation(s), the investigation will be closed. The reporting party may request that the Title IX Coordinator re-open the investigation or convene a hearing. The decision to re-open an investigation or convene a hearing rests solely in the discretion of the Coordinator in cases such as this, and is granted only on the basis of extraordinary need.

## C. Accused Individual Accepts the Findings

Where the accused individual accepts the finding that s/he violated university policy, the investigator will recommend appropriate sanctions/responsive actions for the violation that will act to end the discrimination, prevent its recurrence, and remedy its effects on the victim and the university community. If the accused individual accepts these sanctions/responsive actions, the process ends. The sanctions/responsive actions are implemented by the Director of Student Conduct.

If the accused individual accepts the findings but rejects the recommended sanctions/responsive actions, there will be an administrative hearing on the sanction/responsive actions only. This will usually occur within 1-2 weeks from the end of the investigation. Administrative hearing procedures are detailed below.

The Coordinator, Director of Student Conduct, or investigator will make timely notification in writing to the parties of the outcome, any sanctions/responsive actions, and the rationale for the decision.

## D. Accused Individual Rejects the Findings

Where the accused individual rejects the finding that s/he violated university policy, there will be an SCC hearing on the allegations usually within 2 weeks. At the hearing, the investigator(s) will present their findings to the SCC, the SCC will hear from the parties, and any called witnesses. The investigation findings will be considered by the SCC, but are not binding on the SCC, which renders an independent and objective finding within 2-3 business days of the hearing. SCC findings are provided to the Director of Student Conduct who will make timely notification in writing to the parties of the outcome, any sanctions/responsive actions, and the rationale for the decision.

## E. Special Hearing Provisions for Sexual Misconduct/Discrimination Complaints

All hearings under this section will be conducted by a three member staff/administrative and faculty panel drawn from the SCC and/or Administrative Hearing Officer pool. For sexual misconduct complaints (and other complaints of a sensitive nature), whether the alleged victim is serving as the reporting party or as a witness, alternative testimony options are available, such as placing a privacy screen in the hearing room or allowing the alleged victim to testify from another room via live video (i.e. Skype) or similar technology. While these options are intended to help make the alleged victim more comfortable, they are not intended to work to the disadvantage of the accused student/responding party.

The past sexual history or character of a party will not be admissible by the other parties in hearings unless such information is determined to be highly relevant by the SCC Chair. All such information sought to be admitted will be presumed irrelevant and any request to overcome this presumption by the parties must be included in the complaint/response or a subsequent written request which must be received by the Director of Student Conduct in advance of the hearing.

While previous conduct violations of the accused student/responding party are not generally admissible as information about the present violation, the Director of Student Conduct or Title IX Coordinator may supply previous complaint information to the SCC, or may consider it in an administrative hearing, only if the following criteria is met:

1. The accused student/responding party was subject to a previous credible allegation and/or previously found responsible for a policy violation or crime;
2. The previous incident was similar to the present allegation; or
3. The information indicated a pattern of behavior by the accused student. The alleged victim in any complaint alleging sexual misconduct will: be notified in writing of the outcome of a hearing and any sanctions assigned; have the right to a review if the appeal criteria is met; and be kept apprised of the status of the investigation.