

**Midwestern State University
Administrative Council
July 8, 2013
Meeting No. 13-05
E-Meeting**

The Administrative Council met Monday, July 8, 2013, via e-mail.

MSU Student Handbook, Code of Student Conduct

Dr. Lamb submitted **attachment A** to replace Section VI, Code of Student Conduct. Consensus of the Council members recommended placing the policy on the August Board of Regents agenda.



Jesse W. Rogers, President



Cindy Ashlock, Secretary

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Midwestern State University students are responsible for knowing the information, policies and procedures outlined in this document. The university reserves the right to make changes to this code as necessary and once those changes are posted online, they are in effect. Students are encouraged to check online for the most current versions of all policies and procedures.

Midwestern State University Student Code of Conduct

The *Midwestern State University Student Code of Conduct* is based upon the Model Code of the National Center for Higher Education Risk Management (NCHERM) authored by Brett A. Sokolow, Esq. Rights of use have been granted by NCHERM to Midwestern State University. No other use is permitted without the express permission of NCHERM.

Section 1: Introduction

Philosophy

The Midwestern State University community is committed to fostering a campus environment that is conducive to academic inquiry, a productive campus life and thoughtful study and discourse. The student conduct program within the Office of Student Conduct is committed to an educational and developmental process that balances the needs of individual students with the needs of the Midwestern State University community.

A community exists on the basis of shared values and principles. At Midwestern State University, student members of the community are expected to uphold and abide by certain standards of conduct that form the basis of the *Student Code of Conduct*. These standards are embodied within a set of core values that include integrity, social justice, respect, community, and responsibility. When members of the community fail to exemplify these values, campus conduct proceedings are used to assert and uphold the *Student Code of Conduct*. Midwestern State University takes great pride in that it treats all students with the dignity and respect they deserve. The aspect of community is paramount and is reflected throughout the entire university community.

Ultimately, each member of the Midwestern State University community is expected to assume responsibility for his/her conduct and to assume reasonable responsibility for the behavior of others. On occasion, this will involve kind and courteous admonition done when one member observes another in inappropriate conduct. At other times, it will involve cooperation when the authorities are investigating instances of alleged misconduct.

The student conduct process at Midwestern State University is not intended to punish students; rather, it exists to protect the interests of the community and to challenge those whose behavior is not in accordance with our policies. Sanctions are intended to challenge students' moral and ethical decision-making and to help bring their behavior into accord with our community expectations.

Students should be aware that the student conduct process is quite different from criminal and civil court proceedings. Procedures and rights in student conduct procedures are conducted with fairness to all, but do not include the same protections of due process afforded by the courts. Fair process, within

these procedures, assures written notice and a hearing before an objective decision-maker. No student will be found in violation of university policy without information showing that it is more likely than not that a policy violation occurred and any sanctions will be proportionate to the severity of the violation and to the cumulative conduct history of the student.

Section 2: Jurisdiction over Student Conduct

Students at Midwestern State University are annually given a copy of the *Student Code of Conduct* in the form of a link on the Midwestern State University website; the student code of conduct is contained in the Student Handbook, hard copies are available from the Office of Student Conduct, at the Clark Student Center Information Desk or in the residence halls. Students are charged with the responsibility of having read the provisions of the *Student Code of Conduct*. The *Student Code of Conduct* and the student conduct process apply to the conduct of individual students and university-affiliated student organizations. Because the *Student Code of Conduct* is based on shared values, it sets a range of expectations for Midwestern State University students no matter where or when their conduct may take place; therefore, the *Student Code of Conduct* applies to behaviors that take place on the campus, at university-sponsored events and may also apply off-campus when the administration determines in its discretion that the off-campus conduct affects a substantial university interest.

The *Student Code of Conduct* may be applied to conduct that takes place from the time a person is admitted as a student and continues until the student withdraws or graduates, including periods during semester breaks and between semesters. Further, the *Student Code of Conduct* applies to guests of community members whose host(s) may be held accountable for the misconduct of their guests.

Visitors to and guests of Midwestern State University are also protected by the *Student Code of Conduct* and may initiate grievances for violations of the *Student Code of Conduct* committed against them by members of the Midwestern State University community.

There is no time limit on reporting violations of the *Student Code of Conduct* as long as the offending student is still enrolled at Midwestern State University; however, the longer someone waits to report an offense, the harder it becomes for Midwestern State University officials to obtain information and witness statements and to make a determination regarding alleged violations. Though anonymous complaints are permitted, doing so may limit the university's ability to investigate and respond to a complaint. Those who are aware of misconduct are encouraged to report it as quickly as possible to the Office of Student Conduct and/or to Campus Police.

Midwestern State University email is the university's primary means of communication with students. **Students are responsible for all communication delivered to their Midwestern State University email address.**

Section 3: Violations of the Law

Alleged violations of federal, state and local laws are incorporated as offenses under the *Student Code of Conduct*. When a student is accused, arrested, charged, or indicted for an off-campus crime, the university may elect to take action for violation of the *Student Code of Conduct*.

When an offense occurs over which the university has jurisdiction, the university conduct process will usually go forward notwithstanding any criminal complaint that may arise from the same incident. The university may pursue investigation and resolution of campus conduct complaints, regardless of whether the student participates, and the university may impose sanctions that need to be satisfied for a student to be considered in good standing.

When it has reasonable cause to separate a student from the community, the university may suspend a student for a reasonable time pending the scheduling of a campus hearing for violation of the *Student Code of Conduct*. The university reserves the right to exercise its authority of interim suspension upon notification that a student is facing criminal investigation and/or complaint. The university will permit a student who receives an interim suspension to request a meeting with the Vice President of Student Affairs and Enrollment Management to show cause as to why an interim suspension is not merited. Regardless of the outcome of this meeting, the university may still proceed with the scheduling of a campus hearing.

When criminal charges are pending, the university may be delayed or prevented from conducting its own investigation and moving forward with a campus hearing. When this happens, the university will delay its hearing until such time as it can conduct an internal investigation or obtain sufficient information from law enforcement upon which to proceed. In cases governed by Title IX, this delay will be no longer than two weeks from notice of the incident.

Section 4: Special Provisions

A. Attempted Violations

In most instances, Midwestern State University will treat attempts to commit any of the violations listed in the *Student Code of Conduct* as if those attempts had been completed.

B. Misconduct Online

Students are cautioned that behavior conducted online, such as harassment or bullying via email, can subject them to university conduct action. Students must also be aware that blogs, web page entries on sites such as Google+, Facebook, LinkedIn, YouTube and Twitter and other similar online postings are in the public sphere and are not private. These postings can subject a student to allegations of conduct violations if evidence of policy violations is posted online. The university does not regularly search for this information but may take action if and when such information is brought to the attention of university officials.

C. University as Complainant

Midwestern State University reserves the right to initiate a complaint, to serve as complainant and to initiate conduct proceedings without a formal complaint by the victim of the alleged misconduct.

D. False Reports

Midwestern State University will not tolerate intentional false reporting of incidents. It is a violation of the *Student Code of Conduct* to make an intentionally false report of any policy violation and it may also violate state criminal statutes and civil defamation laws.

E. Group Violations

A student group or organization and its officers and membership may be held collectively and individually responsible when violations of this code by the organization or its members take place at organization-sponsored events, have received the consent or encouragement of the organization or of the organization's leaders or officers, or was known or reasonably should have been known to the membership or its officers. Hearings for student groups or organizations follow the same general student conduct procedures.

In any such action, individual determinations as to responsibility will be made and sanctions may be assigned collectively and individually and will be proportionate to the involvement of each individual.

F. Amnesty for Victims

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.

G. Bystander Intervention

The welfare of students in our community is of paramount importance. At times, students on and off-campus may need assistance. Midwestern State University encourages students to offer help and assistance to others in need. Sometimes, students are hesitant to offer assistance to others for fear that they may get themselves in trouble. For example, a student who has been drinking underage might hesitate to help take a sexual misconduct victim to Campus Police. Midwestern State University pursues a policy of amnesty for minor violations when students offer help to others in need.

H. Parental Notification

Midwestern State University reserves the right to notify the parents/guardians of dependent students regarding alcohol and other drug violations. The university may also notify parents/guardians of non-dependent students who are under the age of 21 of alcohol and/or other drug violations. Midwestern State University will attempt to contact the parents/guardians of a student to inform them of situations in which there is a health and/or safety risk. Midwestern State University also reserves the right to designate which university employees have a legitimate need to know about individual conduct complaints pursuant to the Family Educational Rights and Privacy Act (FERPA) and will share information accordingly.

I. Notification of Outcomes

The outcome of a campus hearing is part of the education record of the accused student/respondent and is protected from release under the Federal Education Rights and Privacy Act (FERPA), except under certain conditions. In accordance with FERPA, when a student is accused of a policy violation that would constitute a "crime of violence" or forcible or nonforcible sex offense, the university will inform the alleged victim/complainant in writing of the final results of a hearing regardless of whether the university concludes that a violation was committed. Such release of information may only include the alleged student's/respondent's name, the violation committed and the sanctions assigned

(if applicable). In cases of sex offenses, the rationale for the outcome will also be shared with all parties to the complaint.

In cases where the university concludes that a student violated a policy that would constitute a “crime of violence” or nonforcible sex offense, the university may also release the above information publicly and/or to any third party. FERPA defines “crimes of violence” to include:

- a) Arson
- b) Assault offenses
- c) Burglary
- d) Criminal Homicide—manslaughter by negligence
- e) Criminal Homicide—murder and non negligent manslaughter
- f) Destruction/damage/vandalism of property
- g) Kidnapping/abduction
- h) Robbery
- i) Forcible sex acts

Students who bring any Title IX-related complaints against any member of the campus community will be informed in writing of the outcome of the complaint and any sanctions or responsive actions implemented.

J. Defenses

It is increasingly common for individuals accused of policy violations to defend their actions with explanations such as, but not limited to, prescription drug interactions, self defense and disability. The university’s policy on defenses is that providing an explanation for a policy defense is equivalent to the admission of engaging in a policy violation. While explanations will not excuse an individual’s commission of a policy violation, Midwestern State University will take the legitimacy of an individual’s explanation into consideration in the determination of appropriate sanctioning.

Section 5: Student Code of Conduct: The Rules

A. Definitions

- a) The term “the university” refers to Midwestern State University.
- b) The term “student” includes all persons who have accepted admission to, enrolled at, are taking courses at, and/or have a continuing relationship with the university, including those who attend full- or part-time at the undergraduate, graduate, or non-matriculated level.
- c) The term “faculty member” refers to any person employed by the university to conduct instructional activities.
- d) The term “university official” includes any person employed by the university who is designated as an official or who holds administrative or professional supervisory responsibilities.

- e) The term “member of the university community” refers to any person employed by, volunteering for or attending the university as a student, faculty member, administrator, staff member, intern, or volunteer.
- f) The term “university property” includes all land, buildings, facilities, and other property in the possession of, owned or controlled, whether leased or rented, by the university.
- g) The term “organization” refers to any number of persons who have complied with the formal requirements for university registration, or who are members of university sponsored groups.
- h) The terms “Student Conduct Committee” or “SCC” refers to a body responsible for assisting in the interpretation and implementation of the *Student Code of Conduct*. Members are responsible for hearing complaints and ensuring that students receive the procedural fairness rights granted them.
- i) The term “Administrative Hearing Officer” refers to any persons authorized by the Director of Student Conduct or a delegated representative to determine whether a student has violated the *Student Code of Conduct* and to impose sanctions. The Student Conduct Committee constitutes an Administrative Hearing Officer.
- j) The term “Appeals Panel” refers to any person or persons authorized by the Director of Student Conduct to consider a review or appeal of the decisions of an Administrative Hearing Officer, the SCC, and the Director of Student Conduct.
- k) The term “policy” is defined as the written rules of the university found in, but not limited to: the *Student Code of Conduct*, the Student Handbook, University Catalog, and Housing and Residence Life Handbook
- l) The term “working day” refers to a regular university business day. This does not include Saturday, Sunday or holidays as set forth by the Board of Regents. In the fall and spring semesters this would be Monday through Friday and during the summer I and II terms Monday through Thursday.

B. Core Values and Behavioral Expectations

The university considers the behavior described in the following sections as inappropriate for the Midwestern State University community and in opposition to the core values set forth in this document. These expectations and rules apply to all students, whether undergraduate, graduate, or non matriculated. The university encourages community members to report to university officials all incidents that involve the following actions. Any student found to have committed or to have attempted to commit the following misconduct is subject to the sanctions outlined in Section 8: Conduct Procedures.

- a) *Integrity*: Midwestern State students exemplify honesty, honor and a respect for the truth in all of their dealings. Behavior that violates this value includes, but is not limited to:

1. Knowingly furnishing false, falsified or forged information such as falsification or misuse of documents, accounts, records, identification or financial instruments;
 2. Acts of academic dishonesty as outlined in the *Academic Misconduct Policy in Appendix E*.
 3. Unauthorized possession, duplication or use of means of access to any university building (i.e. keys, cards, etc.);
 4. Action or inaction by someone in collusion with another or others to violate these rules;
 5. Violations of positions of trust within the community; or
 6. Tampering with the election of any university-recognized student organization.
- b) *Community*: Midwestern State students honor and value their community. Behavior that violates this value includes, but is not limited to:
1. Misuse of access privileges to university premises or unauthorized entry to or use of buildings, including trespassing;
 2. Misuse or unauthorized use of university or organizational names and images;
 3. Knowingly taking possession of stolen property;
 4. Intentional and unauthorized taking of university property or the personal property of a member of the university community;
 5. Intentional and unauthorized destruction of, or damage to, university property or to the personal property of a member of the university community;
 6. Violating the Midwestern State University Computer and Network Services Policy, found in the Student Handbook. Examples of actions which violate these policies include, but are not limited to:
 - Use of computing facilities to send harassing or abusive messages;
 - Use of computing facilities to interfere with the work of other community members;
 - Unauthorized access to a file or personal or group account;
 - Use of computing facilities to interfere with normal operation of the university computer system; or

- Copying or transmitting copyrighted material when you are not legally authorized to do so. Anonymous or forged network news articles or email messages;
7. Unauthorized transfer of a file;
 8. Unauthorized use of another individual's identification and password;
 9. Gambling in any form by the use of cards, dominoes, billiards, dice, pool, table tennis, snooker, or any other means specifically defined by state law, shall be prohibited on university grounds or property or in approved student housing;
 10. Possession, use, or distribution of explosives (including fireworks and ammunition), guns (including air, BB, paintball, and pellet guns), or other weapons or objects that could be construed as weapons such as arrows, axes, machetes, nun chucks, throwing stars, or knives with a blade of longer than five and one-half (5 ½) inches;
 11. Use of alarmed doors for entry into or exit from a Midwestern State University building, not during an emergency.
 12. Failing to report a lost Midwestern State University identification card.
 13. Violation of local, state, federal or campus fire policies including, but not limited to:
 - Failure to evacuate a university-controlled building during a fire alarm;
 - Improper use of university fire safety equipment; or
 - Tampering with or improperly engaging a fire alarm or fire detection/control equipment while on university property. Such action may result in a \$4,000 fine in addition to university sanctions;
 - Intentionally or recklessly causing a fire which damages university or personal property or which caused injury to any member of the community.
- c) *Social Justice*: Midwestern State students exemplify just and equitable treatment of all members of the community in their dealings and interactions. Behavior that violates this value includes, but is not limited to:
1. Disruption of university operations including obstruction of teaching, research, administration, other university activities, or other authorized non-university activities which occur on campus;
 2. Obstruction of freedom of movement by community members or visitors;
 3. Abuse or interference of, or failure to comply in, university processes including conduct code investigations and hearings; or

4. Abuse of the campus conduct system including, but not limited to:

- Failure to appropriately respond to a letter of notice, or summons letter;
- Failure to attend meetings scheduled for conduct code administration purposed;
- Falsification, distortion or misrepresentation of information;
- Failure to provide, destroying or hiding information during an investigation of an alleged policy violation;
- Attempting to discourage an individual's proper participation in, or use of, the campus conduct system;
- Harassment (verbal or physical) and/or intimidation of a member of a campus conduct body prior to, during, and/or following a campus conduct proceeding;
- Failure to comply with the sanction(s) imposed by the campus conduct system; or
- Influencing, or attempting to influence, another person to commit an abuse of the campus conduct system.

d) *Respect*: Midwestern State students show positive regard for each other, for property and for the community. Behavior that violates this value includes, but is not limited to:

1. Threatening, or causing, physical harm, written or verbal abuse or other conduct that threatens or endangers the health or safety of any person.
2. Discrimination, defined as any distinction, preference, advantage for or detriment to an individual compared to others that is based upon an individual's actual or perceived sex, gender, race, color, age, creed, national or ethnic origin, physical or mental disability, veteran status, pregnancy status, religion or sexual orientation that is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the university's educational program or activities.
3. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another.
4. Discriminatory Harassment, defined as detrimental action based on an individual's actual or perceived gender, race, color, age, creed, national or ethnic origin, physical or mental disability, veteran status, pregnancy status, religion, sexual orientation or other protected status that is unwelcome and unreasonably interferes with or limits a student's ability to participate in or benefit from the university's educational program or activities.

5. Retaliatory Harassment, defined as any intentional, adverse action taken by an accused individual or allied third party, absent legitimate non-discriminatory purposes, that harms an individual as reprisal for filing or participating in a civil rights grievance proceeding.
6. Bullying, or cyber bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally that includes, but is not limited to: creating web pages with a negative focus; posting insults or lewd photos on social networking sites; or spreading rumors with malicious intent;
7. Hazing is a criminal violation under Texas law. A person may be found guilty of criminal conduct for hazing, encouraging hazing, permitting hazing, or having knowledge of the planning of hazing incidents and failing to report in writing his/her knowledge to the Director of Student Conduct. Both failing to report hazing and hazing that does not result in serious bodily injury are Class B misdemeanors. Hazing that results in serious bodily injury is a Class A misdemeanor. Hazing resulting in a death is a state jail felony. An organization found guilty of hazing may be fined \$5,000 to \$10,000 or, for incidents causing personal injury or property damage, an amount double the loss or expenses incurred because of the hazing incident. It is not a defense to prosecution that the person hazed consented to the hazing activity. Any person reporting a specific hazing incident to the appropriate institutional official is immune from civil and criminal liability unless the report is in bad faith or malicious. This state law does not limit or affect an educational institution's right to enforce its own penalties against hazing. The Education Code defines hazing as "any intentional, knowing, or reckless act occurring on or off the campus of an educational institution, by one person or acting with others, directed against a student, that endangers the mental or physical health or safety of a student for the purpose of pledging, being initiated into, affiliating with, holding office in, or maintaining membership in an organization." The statute contains a list of conduct that constitutes hazing;
8. Violence between those in a continuing relationship of an intimate or romantic nature with one another;
9. 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 a person similarly situated to a spouse, adult or youth victim protected by domestic or family violence laws
10. Stalking as defined as repetitive and/or menacing pursuit, following harassment and/or interference with the peace and/or safety of a member of the community or the safety of any of the immediate family of a member of the community;
11. Sexual misconduct including sexual harassment, non-consensual sexual contact, non-consensual sexual intercourse, or sexual exploitation (See Section 12: Sexual Misconduct Policy for further information);

12. Inappropriate conduct which is disorderly, disruptive, obscene or indecent while on campus or at functions sponsored, or participated in, by the university;
 13. Failure to comply with the directives of university officials or law enforcement officers during the performance of their duties and/or failure to identify oneself to these persons when requested to do so;
 14. Smoking or use of tobacco or tobacco-derived products in any area of campus;
- e) *Responsibility*: Midwestern State students are given, and accept, a high level of responsibility as role models. Behavior that violates this value includes, but is not limited to:
1. Use, possession or distribution of alcoholic beverages except as expressly permitted by law and the university's Alcohol Policy (See Section 10 of this document for further information);
 2. Use, possession or distribution of narcotics or other controlled substances or drug paraphernalia, except as expressly permitted by law;
 3. Abuse, misuse, sale, or distribution of prescription or over-the-counter medications;
 4. Assisting in, inciting or condoning the violation of university policies or local, state or federal laws;
 5. Allegations of violation of local, state or federal laws which affect the substantial interests of the university community whether the violation occurs on or off-campus;
 6. Intentional failure of any organized group to exercise preventative measures relative to violations of the *Student Code of Conduct* by its members;
 7. Knowingly condoning or remaining in the presence of a clear violation of these rules without:
 - Leaving the area where the violation was occurring; or
 - Intervening or confronting the violation in an effort to stop it; or
 - Contacting the appropriate staff members to address the violation.
 8. Violation of other published university policies or rules, including all Housing policies;

Section 6: Student Conduct Authority

The Vice President for Student Affairs and Enrollment Management is vested with the authority of chief conduct officer by the Board of Regents. The chief conduct officer appoints a Director of Student Conduct to oversee and manage the student conduct process. The chief conduct officer, Dean

of Students, and Director of Student Conduct may appoint administrative hearing and appeals officers as deemed necessary to efficiently and effectively supervise the student conduct process.

The Director of Student Conduct or designee will assume responsibility for the investigation of an allegation of misconduct to determine if the complaint has merit. No complaint will be forwarded for a hearing unless there is reasonable cause to believe a policy has been violated. Reasonable cause is defined as some credible information to support each element of the offense, even if that information is merely a credible witness or a victim's statement. A complaint wholly unsupported by any information will not be forwarded for a hearing.

If a minor allegation can be addressed by mutual consent of the parties involved, on a basis acceptable to the parties involved and the Director of Student Conduct or designated administrative hearing officer, such disposition will be final and there will be no subsequent proceedings.

The Director of Student Conduct has discretion to refer a complaint for mediation. Any unsuccessful mediation can be forwarded for formal processing and hearing; however, at no time will complaints of physical sexual misconduct or violence be mediated as the sole institutional response. The Director of Student Conduct may also suggest that complaints that do not involve a violation of the *Student Code of Conduct* be referred for mediation.

If the complaint cannot be addressed in a manner mutually acceptable, or for incidents that are not minor, the Director of Student Conduct will refer the complaint to the Administrative Hearing Officer or the Student Conduct Committee (SCC). The decision of where to refer the complaint is at the sole discretion of the Director of Student Conduct, who may take into consideration the preferences of the parties to the complaint.

Assembly of the Student Conduct Committee (SCC)

The Director of Student Conduct will be responsible for assembling the SCC according to the following guidelines:

The membership of the Student Conduct Committee is comprised of a pool of at least 6 students, 6 faculty, and 6 staff/administrative members appointed and trained annually by the Director of Student Conduct.

To serve in the SCC pool, students must:

1. Be in academic good standing at the university and have completed 15 hours of academic credit with a cumulative GPA of at least 2.0.
 2. Be in conduct good standing throughout the term in which they serve. Conduct good standing is defined as having no record of misconduct during the semester(s) in which a student wishes to serve on the SCC. A history of misconduct could disqualify a student for service.
- a) The Director of Student Conduct will have final authority to approve all those serving on the SCC.

- b) The non-voting advisor to the SCC is the Director of Student Conduct with responsibility for training the SCC, conducting preliminary investigations, and ensuring a fair process for the complainant and accused student/respondent.
- c) In the event of a resignation from the SCC, the Director of Student Conduct will solicit a replacement from the group from which the representative came.
- d) Decisions made, and sanctions imposed, by the SCC or an Administrative Hearing Officer will be final and implemented, pending the normal review process. At the discretion of the Director of Student Conduct, implementation of sanctions may be stayed pending review.

For each complaint, a hearing panel will be chosen from the available pool, and is usually comprised of one student, one faculty member, and one staff member or administrator. Availability may determine a different composition for the hearing panel, and in complaints involving discrimination, sexual misconduct, or other sensitive issues, the Director of Student Conduct will usually use three administrative/staff members for the hearing panel. One of the staff members or administrators trained as an investigator serves as the non-voting chair of the panel and assures university procedures are followed throughout the hearing.

Administrative Hearing Officers

Administrative Hearing Officers are chosen from a pool of annual trained administrators or staff members selected by the Director of Student Conduct.

Appeals Panels

Three-member appeals panels are drawn from the SCC pool, with the only requirement being that they did not serve on the hearing panel for the initial hearing. Appeals Panels review appeals submitted by the Director of Student Conduct.

Interpretation and Revision

The Director of Student Conduct will develop procedural rules for the administration of hearings that are consistent with provisions of the *Student Code of Conduct*. Material deviation from these rules will, generally, only be made as necessary and will include notice to the parties involved. The Director of Student Conduct may vary procedures with notice upon determining that changes to law or regulation require policy or procedural alterations not reflected in this *Code*.

The Director of Student Conduct may make minor modifications to procedure that do not materially jeopardize the fairness owed to any party.

Any question of interpretation of the *Student Code of Conduct* will be referred to the Director of Student Conduct whose interpretation is final.

The *Student Code of Conduct* will be reviewed and updated annually under the direction of the Dean of Students.

Section 7: Special Conduct Procedures for Sexual Misconduct, Sexual Harassment and Other Forms of Discrimination

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 an investigator for any complaint that falls under Title IX or involves 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 on behalf of the victim;
- Determine the identity and contact information of the complainant, 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;
 - 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 between one to three weeks;
- Meet with the complainant 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 (whether a policy violation is more likely than not);
- 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 complainant on the status of the investigation and the outcome.

B. Findings

Where the accused individual is found not responsible for the alleged violation(s), the investigation will be closed. The complainant 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 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. Findings are provided to the Director of Student Conduct. SCC procedures are detailed in Section 8 below.

E. Special Hearing Provisions for Sexual Misconduct/Discrimination Complaints

All hearings under this section will be conducted by a three member staff/administrative 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 complainant or as a witness, alternative testimony options will be given, 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), a closed circuit television 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/respondent.

The past sexual history or sexual 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/respondent 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/respondent 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.

Section 8: Conduct Procedures

Part of the education process is learning how to live in harmony with community members and within a system of standards established for and by the community. Students are accountable to students and others in the community for these standards through the procedures outlined below. This system is not a legal process but, rather, an administrative hearing system. Principles of fairness govern all such bodies. All students who violate these standards will be held accountable for their behavior through a process that assures the rights of both the complainant and the accused student/respondent.

A. Complaints

Any member of the university community, visitor or guest may file a complaint against any student for misconduct through the Office of Student Conduct.

Complaints will be presented to the Director of Student Conduct (or designee) and/or to the Title IX Coordinator, when appropriate. Additionally, these administrators may act on notice of a potential violation whether a formal complaint is made or not. All complaints can be submitted by a victim or a third party, and should be submitted as soon as possible after the offending event occurs. The university has the right to pursue a complaint or notice of misconduct on its own behalf and to serve as complainant in the subsequent campus conduct process.

The Director of Student Conduct (or designee) will assume responsibility for the investigation of the alleged violation as described below in the section on Investigations.

B. Notice of Hearing

Once a determination is made that reasonable cause exists for the Director of Student Conduct (or designee) to refer a complaint for a hearing, notice will be given to the accused student/respondent. Notice will be in writing and may be delivered by one or more of the following methods: in person by the Director of Student Conduct (or designee); mailed to the local or permanent address of the student as indicated in official university records; or emailed to the student's university-issued email account. Once mailed, emailed and/or received in-person, such notice will be presumptively delivered. The letter of notice, or summons letter will:

- a) Include the alleged violation and notification of where to locate the *Student Code of Conduct* and university procedures for resolution of the complaint; and
- b) Direct the accused student/respondent to contact the Director of Student Conduct (or designated administrative hearing officer) within a specified period of time to respond to the complaint. This time period will, generally, be no less than two business days from the date of delivery of the summons letter.

A meeting with the Director of Student Conduct (or designated administrative hearing officer) may be arranged to explain the nature of the complaint and the conduct process. At this meeting, the accused student/respondent may indicate, either verbally or in writing, to the Director of Student Conduct (or designated administrative hearing officer), whether s/he admits or denies the allegations of the complaint.

C. Interim Suspension

Interim suspension, under the *Student Code of Conduct*, may be imposed by the Vice President for Student Affairs and Enrollment Management or designee when necessary to protect the health and safety of a student or of the community; preserve university property; pursue an investigation and/or hearing; prevent disruption of, or interference with, the normal operations of the university. Interim suspension will be used for short periods of time, pending a hearing for a *Student Code of Conduct* violation by either the Director of Student Conduct or Student Conduct Committee.

During an interim suspension, a student will be denied access to university housing and/or the university campus/facilities/events. As determined appropriate by the Director of Student Conduct, this restriction includes classes and/or all other university activities or privileges for which the student might otherwise be eligible. At the discretion of the Director of Student Conduct and with the approval of, and in collaboration with, the appropriate Dean(s), alternative coursework options may be pursued to ensure as minimal an impact as possible on the accused student/respondent.

D. Hearing Options & Preparation

The following sections describe Midwestern State University's conduct hearing processes. Except in a complaint involving failure to comply with the summons of the Director of Student Conduct (or designee), no student may be found to have violated the *Student Code of Conduct* solely as a result of the student's failure to appear for a hearing. In all such instances, conduct hearings will proceed as scheduled and the information in support of the complaint will be presented to, and considered by, the Director of Student Conduct, Administrative Hearing Officer or SCC presiding over the hearing.

Where the accused student/respondent admits to violating the *Student Code of Conduct*, or in instances where the accused student/respondent is facing a complaint for which the consequences do not include suspension or expulsion from the university, the Director of Student Conduct (or designated administrative hearing officer) may invoke informal resolution procedures to determine and administer appropriate sanctions without a formal hearing. This process is also known as an *administrative hearing*. In administrative hearings, complaints will be heard and final determinations will be made by the Director of Student Conduct or Administrative Hearing Officer.

Where the accused student/respondent denies violating the *Student Code of Conduct*, or in instances where the accused student/respondent is facing a complaint for which the consequences may include suspension or expulsion from the university, a *formal hearing* will be conducted as befits the gravity of the alleged offense and the serious nature of the consequences. This process is known as a *Student Conduct Committee* (SCC) hearing. At the discretion of the Director of Student Conduct (or designee), a request by one or more of the parties to the complaint for an administrative hearing may be considered. Students who deny a violation for which an SCC hearing will be held will be given a minimum of seven (7) days to prepare for a formal hearing. Preparation for a formal hearing is summarized in the following guidelines:

- a) Notice of the time, date and location of the hearing will be in writing and may be delivered by one or more of the following methods: in person by the Director of Student Conduct (or designee); mailed to the local or permanent address of the student as indicated in official university records; or emailed to the student's university-issued email account. Once mailed, emailed and/or received in-person, such notice will be presumptively delivered.
- b) If there is an alleged victim of the conduct in question, the alleged victim may serve as the complainant or may elect to have the university administration serve as complainant. Where there is no alleged victim, the university administration will serve as complainant.
- c) If an accused student/respondent fails to respond to notice from the Director of Student Conduct (or designated administrative hearing officer), the Director of Student Conduct (or designated administrative hearing officer) may initiate a complaint against the student for failure to comply with the directives of a university official and give notice of this offense. Unless the student responds to this notice within two days by answering the original notice, an administrative hearing may be scheduled and held on the student's behalf and the student may be administratively withdrawn from attending classes or a disciplinary hold placed on the student's university account, deeming them ineligible to register for courses until such time as the student responds to the initial complaint.
- d) At least three (3) business days before any scheduled formal hearing, the following will occur:
 1. The accused student/respondent will deliver to the Director of Student Conduct (or designee) a written response to the complaint;
 2. The accused student/respondent and complainant will deliver to the Director of Student Conduct (or designee) a written list of all witnesses he/she wants the university to call at the hearing;
 3. The accused student/respondent and complainant will deliver to the Director of Student Conduct (or designee) all physical evidence he/she intends to use or needs to have present at the hearing and will indicate who has possession or custody of such evidence, if known;
 4. The complainant and the accused student/respondent will notify the Director of Student Conduct (or designee) of the names of any advisors who may be accompanying the parties at the hearing.
- e) The Director of Student Conduct (or designee) will ensure that the hearing information and any other available written documentation is shared with the complainant and the accused student/respondent at least two (2) business days before any scheduled hearing. In addition, the parties will be given a list of the names of all the members of SCC or hearing officers for the complaint in advance. Should either party object to any SCC or hearing officer, he/she must raise all objections, in writing, to the Director of Student Conduct immediately. Hearing officers will only be unseated if the Director of Student Conduct concludes their bias precludes an impartial hearing of the complaint. Additionally, any SCC or hearing officer

who feels he/she cannot make an objective determination must recuse him/herself from the proceedings.

E. SCC Hearing Procedures

When a student faces potential suspension or expulsion from housing or from the university or at the discretion of the Director of Student Conduct, the process (i.e. the conducting of an SCC hearing) afforded is more rigorous and formal as befits the gravity of the alleged offense and the serious nature of the consequences.

The complainant and the accused student/respondent have the right to be present at the hearing; however, they do not have the right to be present during deliberations. If a student cannot attend the hearing, it is that student's responsibility to notify the Director of Student Conduct no later than three (3) days prior to the scheduled hearing to arrange for another date, time and location.

- a) Except in cases of grave or unforeseen circumstances, if the accused student/respondent fails to give the requisite minimum three (3) day notice, or if the accused student/respondent fails to appear, the hearing will proceed as scheduled. If the complainant fails to appear, the complaint may be dropped unless the university chooses to pursue the allegation on its own behalf, as determined by the Director of Student Conduct.

The Student Conduct Committee will conduct SCC hearings according to the following guidelines:

- a) Hearings will be closed to the public.
- b) Admission to the hearing of persons other than the parties involved will be at the discretion of the Student Conduct Committee (SCC) and the Director of Student Conduct.
- c) In hearings involving more than one accused student/respondent, the standard procedure will be to hear the complaints jointly; however, the Director of Student Conduct may permit the hearing pertinent to each respondent to be conducted separately. In joint hearings, separate determinations of responsibility will be made for each respondent.
- d) The complainant and respondent have the right to an advisor of his/her own choosing. Advisors may be chosen *only* from within the current Midwestern State University community, unless leave is granted by the Director of Student Conduct for an advisor from outside the community. In the rare instance where civil or criminal court proceedings are currently involving a student party to the complaint or at the discretion of the Director of Student Conduct, legal counsel may be permitted to serve as an advisor. The advisor may not make a presentation or represent the complainant or respondent during the hearing.
- e) The complainant, the accused student/respondent, the SCC and the Director of Student Conduct (or designee) will have the privilege of presenting witnesses and questioning all parties (directly or through the Chair, at the discretion of the Chair). Unduly repetitive witnesses can be limited at the discretion of the SCC Chairperson.
- f) Pertinent records, exhibits and written statements may be accepted as information for consideration by the SCC. Formal rules of evidence are not observed. The SCC Chairperson

or Director of Student Conduct may limit the number of character witnesses presented or may accept written affidavits of character instead.

- g) All procedural questions are subject to the final decision of the Director of Student Conduct.
- h) After an SCC hearing, the hearing panel will deliberate and determine, by majority vote, whether it is more likely than not that the accused student/respondent has violated the *Student Code of Conduct*. Once a finding is determined, if the finding is that of a policy violation, the SCC will determine an appropriate sanction(s). The Director of Student Conduct (or designee) is responsible for informing the SCC of applicable precedent and any previous conduct violations or other relevant pattern information about the accused student/respondent. The SCC Chairperson will prepare a written deliberation report and deliver it to the Director of Student Conduct, detailing the finding. This report should conclude with any assigned sanctions. Notification will be made to the student/respondent in writing and may be delivered by one or more of the following methods: in person by the Director of Student Conduct (or designee); mailed to the local or permanent address of the student as indicated in official university records; or emailed to the student's university-issued email account. Once mailed, emailed and/or received in-person, such notice will be presumptively delivered.
- i) There will be a single verbatim record, such as an audio recording, for all SCC hearings. Deliberations will not be recorded. The record will be the property of the university and maintained according to the university's record retention policy.

F. Conduct Sanctions

One or more of following sanctions may be imposed upon any student for any single violation of the *Student Code of Conduct*:

- a) *Warning*: A written notice will be sent to the student(s) who violated university policies and/or rules. It specifies that inappropriate and unacceptable actions have occurred and that more severe conduct action will result should the student be involved in other violations while the student is enrolled at the university.
- b) *Restitution*: Compensation for damage caused to the university or any person's property or injuries to a person as a result of the conduct. This is not a fine but, rather, a repayment for property destroyed, damaged, consumed, or stolen, or personal medical expenses.
- c) *Fines*: Reasonable fines may be imposed.
- d) *Community/University Service Requirements*: For a student or organization to complete a specific supervised university service.
- e) *Loss of Privileges*: The student will be denied specified privileges for a designated period of time.
- f) *Confiscation of Prohibited Property*: Items whose presence is in violation of university policy will be confiscated and will become the property of the university. Prohibited items may be returned to the owner at the discretion of the Director of Student Conduct and/or Campus Police.

- g) *Behavioral Requirement*: This includes required activities such as, but not limited to, seeking academic counseling or substance abuse screening, writing a letter of apology, etc.
- h) *Educational Program*: Requirement to attend, present and/or participate in a program related to the violation. It may also be a requirement to sponsor or assist with a program for others on campus to aid them in learning about a specific topic or issue related to the violation for which the student or organization was found responsible. Audience may be restricted.
- i) *Restriction of Visitation Privileges*: May be levied on residential or non-resident student. The parameters of the restriction will be specified.
- j) *University Housing Probation*: The student is put on official notice that, should further violations of housing or university policies occur during a specified probationary period, the student may immediately be removed from university housing.
- k) *University Housing Reassignment*: The student is reassigned to another university housing facility. Housing personnel will decide on the reassignment details.
- l) *University Housing Suspension*: The student is removed from university housing for a specified period of time after which the student is eligible to return. Conditions for re-admission to university housing may be specified. Under this sanction, a student is required to vacate university housing within 24 hours of notification of the action, though this deadline may be extended upon application to, and at the discretion of, the Director of Housing. This sanction may be enforced with a trespass action if deemed necessary. Prior to reapplication for university housing, the student must gain permission from the Director of Housing (or designee).
- m) *University Housing Expulsion*: The student's privilege to live in, or visit, any university housing structure is revoked indefinitely. This sanction may be enforced with a trespass action if deemed necessary.
- n) *Eligibility Restriction*: The student is deemed "not in disciplinary good standing" with the university for a specified period of time. Specific limitations or exceptions may be granted by the Director of Student Conduct and terms of this conduct sanction may include, but are not limited to, the following:
 - 1. Ineligibility to hold any office in any student organization recognized by the university or hold an elected or appointed office at the university; or
 - 2. Ineligibility to represent the university to anyone outside the university community in any way including: participating in the study abroad program, attending conferences, or representing the university at an official function, event or intercollegiate competition as a player, manager or student coach, etc.
- o) *University Suspension*: The student is separated from the university for a specified period of time, and upon the satisfaction of specific conditions, after which the student is eligible to return. The student is required to vacate university housing and/or campus within 24 hours of notification of the action, though this deadline may be extended upon application to, and at

the discretion of, the Director of Student Conduct. This sanction may be enforced with a trespass action as necessary. This sanction may be noted as Conduct Suspension on the student's official academic transcript.

- p) *University Expulsion*: The student is permanently separated from the university. The student is barred from being on campus and the student's presence at any university-sponsored activity or event is prohibited. This action may be enforced with a trespass action as necessary. This sanction may be noted as Conduct Expulsion on the student's official academic transcript.
- q) *Other Sanctions*: Additional or alternate sanctions may be created and designed as deemed appropriate to the offense with the approval of the Director of Student Conduct or designee.

The following sanctions may be imposed upon groups or organizations found to have violated the *Student Code of Conduct*:

- a) One or more of the sanctions listed above, specifically a) through i) and o) through q); and/or
- b) Deactivation, de-recognition, loss of all privileges (including university registration), for a specified period of time.

G. Final Review (Appeal Procedures)

Accused students/respondents and/or complainants may petition for a review of a decision within three (3) business days of issuance of an Administrative Hearing Officer's or SCC's written decision. All requests for review must be in writing and delivered to the appropriate administrator as indicated in the written decision letter. For administrative hearings, petitions will generally be reviewed by the Director of Student Conduct. For SCC hearings, petitions will generally be reviewed by the Dean of Students. Any student who misses his/her initial hearing may not request a review of the initial decision.

If the indicated administrator determines that a complaint may be reviewed, every opportunity will be taken, where possible, to return the complaint to the original administrative hearing officer or hearing panel for reconsideration; however, if this is not possible, the complaint will be reviewed by the Appeals Panel. The original administrative hearing officer or hearing panel may support or change a decision. The review body will be deferential to the original decision-maker, making changes to the finding only where there is clear error. Reviews will only be considered for one or more of the following purposes:

- a) To consider new information which was unavailable at the time of the original hearing that could be outcome determinative;
- b) To assess whether a material deviation from written procedures resulted in an unfair outcome of the hearing;
- c) To decide if an assigned sanction(s) is substantially disproportionate to the offense committed;

- d) To determine that the finding does not accord with the information provided in the hearing;
or
- e) To assess whether bias on the part of an Administrative Hearing Officer or hearing panel member(s) deprived the process of impartiality.

Except as required to explain the basis of new information unavailable at the time of a hearing, review of a SCC hearing will be limited to the verbatim record of the initial hearing and all supporting documents. Review of an administrative hearing will be limited to the written record of the hearing and all supporting documents. The Dean of Students will serve as the Appeals Panel's non-voting advisor.

H. Failure to Complete Conduct Sanctions

All students, as members of the university community, are expected to comply with conduct sanctions within the time frame specified by the Director of Student Conduct or Administrative Hearing Officer. Failure to follow through on conduct sanctions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions and/or suspension from the university. In such situations, resident students will be required to vacate university housing within 24 hours of notification by the Director of Student Conduct, though this deadline may be extended upon application to, and at the discretion of, the Director of Student Conduct. A suspension will only be lifted when compliance with conduct sanctions is satisfactorily achieved. This determination will be made by the Director of Student Conduct.

I. Disciplinary Records

All conduct records are maintained by the university for seven (7) years from the time of their creation. Other than university suspension and expulsion, conduct sanctions will not be made a part of the student's permanent academic record, but will become a part of the student's private conduct record. Upon application to, and approval of the Director of Student Conduct, private conduct records may be expunged seven (7) years after final disposition of complaints for which sanctions imposed did not include university housing suspension, university housing expulsion, university suspension, or university expulsion.

Section 9: Student Right to Know and Campus Security Act of 1990

The Student Right to Know and Campus Security Act of 1990 is a federal mandate which requires all current students and employees be provided with information on policies and procedures involving campus security, the reporting of criminal action or other emergencies, and the enforcement authority of security personnel. This information must also include descriptions of programs for students and employees about campus security and crime prevention, as well as statistics on the occurrence of specific crimes. Notification of the annual report is made by the Midwestern State Chief of Police and the full report is posted on the university website each October. Hardcopies are available from the Campus Police Department on request.

Section 10: Alcohol and Drug Policy

To comply with the Drug Free Schools and Communities Act of 1989 and subsequent amendments, students and employees of Midwestern State are informed that strictly enforced policies are in place which prohibits the unlawful possession, use or distribution of any illicit drugs, including alcohol, on university property or as part of any university-sponsored activity. Students and employees are also subject to all applicable legal sanctions under local, state and federal law for any offenses involving illicit drugs on University property or at University-sponsored activities.

The university affirms that illegal drug use is unlawful and harmful. The use of illegal drugs and alcohol abuse by students and employees could result in cognitive deficits, loss of productivity and other health risks. These risks include an increased risk of accidents which may result in death or permanent injury. Free, confidential counseling for alcohol and other drug abuse issues is available to students and employees through the Midwestern State University Counseling Center and Vinson Health Center. Other referral resources may include assessment, individual counseling, educational programs, materials, and referral and case management through community agencies, all which might include a fee.

Students exhibiting signs of excessive alcohol consumption will, at a Midwestern State University Campus Police officer's discretion, be transported via Emergency Medical Services (EMS) at the student's expense for medical attention. Refusal to cooperate with EMS personnel may result in arrest for Emergency Detention in order to ensure the student's health and safety and/or a conduct charge for failure to comply.

A. Policy on Parental Notification

Midwestern State University is concerned about students who improperly use alcohol and other drugs and the effects such use may have on their health, academic success, interpersonal relationships and, ultimately, their future.

The Midwestern State University alcohol policy expressly forbids possession and/or consumption of alcohol by students, employees or guests who are under the minimum legal drinking age of 21 years. Possession of drug paraphernalia and the use, manufacture, sale, or distribution of illegal drugs, whether on or off campus, by any student is also prohibited. In accordance with the Family Educational Rights and Privacy Act (FERPA), the Director of Student Conduct (or designee) reserves the right to notify the parents/guardians of students under 21 years of age, and the parents/guardians of dependent students, regardless of age, of any incident in which the student is found responsible for violating the Midwestern State University alcohol and drug policy.

B. Alcohol Policy

Alcoholic beverages are not allowed on campus except under the following conditions:

1. In private residences in Bridwell Courts, Sunwatcher Village, and Sundance Court. Consumption is limited to areas inside the residences. (Those residing in university housing should consult the current edition of the *University Housing and Residence Life*

Handbook for specific regulations regarding the use of alcoholic beverages in university housing.)

2. During social functions hosted by the President or the President's spouse.
3. During social functions registered and approved through the Clark Student Center office.
 - a. How to Register
Persons seeking permission to bring alcohol on campus must file an application in writing to the Clark Student Center office at least ten (10) days prior to the event.
 - b. Criteria for Approval
Approval will be based upon the following criteria: organization planning, frequency of the event, groups served by the activity, activity focus, and the use and distribution of alcohol.

Guidelines for the Use of Alcohol on Campus

1. State Law regarding the use of alcoholic beverages must be observed. Violations of State law include the following:
 - a. Consumption of alcohol by an under-aged drinker.
 - b. Distribution of alcoholic beverages free of charge at an event in which a cover charge has been assessed.
 - c. Public intoxication.
 - d. Consumption of alcoholic beverages in a public place on Sunday between the hours of 2:15 A.M. and 12:00 noon and Monday through Saturday between the hours of 2:15 A.M. and 7:00 A.M.
2. Beverages at approved student organization events must be distributed by a TABC licensed third party vendor. A copy of the vendor's current license must be on-file with the Clark Student Center office prior to event approval.
3. Open containers of alcohol are not allowed in public areas of the campus, including the parking lots, walking path, and all other open-air spaces on the campus.
4. Selling, distributing, possessing, or consuming alcohol or alcoholic beverages at Midwestern State University athletic events held on property owned or leased by Midwestern State University is prohibited, whether the events are sponsored by

Midwestern State or another educational institution or an organization or association outside the university.

5. Inappropriate and imprudent behavior related to the use of alcohol will result in disciplinary action.
6. Officers and advisors/sponsors of university organizations shall be held responsible for (1) possessing full knowledge of university policies related to the use of alcohol on campus and (2) ensuring that university policies are followed.

Code of Conduct Guidelines

Students who are 21 years of age or older are permitted to possess and consume alcohol in designated university housing rooms. Students who are of legal drinking age may not share or provide alcohol to any students, employees or guests who are under 21 years of age. Those under the minimum legal drinking age of 21 years are not permitted to possess or consume alcohol anywhere on university property or at university-sponsored events. Drinking games, and simulated drinking games (e.g. water pong) are prohibited on campus.

Examples of Violations of the University Alcohol Policy

- Purchasing alcohol by a person under the age of 21.
- Selling or providing alcohol to a person under the age of 21.
- Possessing either full or empty alcohol containers by a person under the age of 21.
- Consuming or appearing to have consumed alcohol by a person under the age of 21.
- Showing physical or mental impairment following or resulting from alcohol use.
- Possessing empty alcohol containers for decorative purposes.
- Using or possessing common sources of alcohol including, but not limited to kegs, party balls, wine boxes, etc.
- Participating in or being present during the occurrence of any drinking game.
- Possessing an open container of alcohol in a common area including, but not limited to bathrooms, hallways, lounges, elevators, lobbies or outdoor spaces.

“Failure to comply with the directives of University officials or law enforcement officers during the performance of their duties and/or failure to identify oneself to these persons when requested to do so” is considered unacceptable behavior for a Midwestern State student and a violation of the Midwestern State University *Student Code of Conduct*, which may result in conduct sanctions. An example of such inappropriate behavior includes refusing to submit to a breath test when requested by a police officer, whether on or off-campus.

A partial list of Midwestern State University alcohol policy violations and their subsequent sanctions is listed below.

a) Minor in Possession/Consumption of Alcohol or Housing Alcohol Policy Violations:

1. First Offense—Possible sanctions include, but are not limited to:

- Participation in an alcohol education activity and/or a Minor in Possession course, at the student's expense and as determined by the Director of Student Conduct (or designee);
- Authorship of a research/reflection essay;
- Fine of \$50;
- Notification of parents/guardians of students under the minimum legal drinking age of 21 years; and/or
- Other sanctions as determined by the Director of Student Conduct (or designee).

2. Second Offense— Possible sanctions include, but are not limited to:

- Mandated substance abuse assessment by an approved agency and required compliance with the assessing counselor's evaluation;
- Observation of one or more sessions of the County Misdemeanor or Felony Drug Court as determined by the Director of Student Conduct (or designee);
- Authorship of a research/reflection essay;
- Fine of \$100;
- Notification of parents/guardians of students under the minimum legal drinking age of 21 years; and/or
- Other sanctions as determined by the Director of Student Conduct (or designee).

3. Third and Subsequent Offenses— Possible sanctions include, but are not limited to:

- Suspension or expulsion from university housing and/or the university;
- Notification of parents/guardians of students under the minimum legal drinking age of 21 years; and/or
- Other sanctions as determined by the Director of Student Conduct (or designee).

b) *Purchasing, Selling or Providing Alcohol to Minors:*

1. First Offense— Possible sanctions include, but are not limited to:

- Participation in an alcohol education activity at the student's expense and as determined by the Director of Student Conduct (or designee);
- Mandated substance abuse assessment by an approved agency and required compliance with the assessing counselor's evaluation;
- Observation of one or more sessions of the County Misdemeanor or Felony Drug Court as determined by the Director of Student Conduct (or designee);
- Authorship of a research/reflection essay;
- Fine of \$100;
- Notification of parents/guardians of students under the minimum legal drinking age of 21 years;
- Eligibility restrictions;
- Suspension from university housing and/or the university;
- Community service hours to be performed at a specific location as determined by the Director of Student Conduct (or designee); and/or
- Other sanctions as determined by the Director of Student Conduct (or designee).

2. Second and Subsequent Offenses— Possible sanctions include, but are not limited to:

- Expulsion from the university;
- Notification of law enforcement authorities;
- Fine of \$200;
- Notification of parents/guardians of students under the minimum legal drinking age of 21 years; and/or
- Other sanctions as determined by the Director of Student Conduct (or designee).

c) *Driving Under the Influence/Driving While Intoxicated*: Midwestern State University is concerned about students who violate state and local laws regarding consumption of alcohol and the operation of motor vehicles. In accordance with state law, the university abides by the legal definition of *intoxicated* as “not having the normal use of mental or physical faculties by reason of introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body” or 0.08 Breath or Blood Alcohol Concentration. In addition, students under the legal minimum

drinking age of 21 years who are found to have any detectable amount of alcohol in their systems will be considered driving under the influence of alcohol and subject to penalties under that offense.

1. First Offense— Possible sanctions include, but are not limited to:

- Loss of driving and/or parking privileges on campus for a specified period of time;
- Participation in an alcohol education activity and/or a Minor in Possession course, at the student's expense and as determined by the Director of Student Conduct (designee);
- Observation of one or more sessions of the County Misdemeanor or Felony Drug Court as determined by the Director of Student Conduct (or designee);
- Community services hours to be performed at a specific location as determined by the Director of Student Conduct (or designee);
- Authorship of a research/reflection essay;
- Fine of \$100;
- Notification of parents/guardians of students under the minimum legal drinking age of 21 years;
- Eligibility restrictions; and/or
- Other sanctions as determined by the Director of Student Conduct (or designee).

2. Second and Subsequent Offenses— Possible sanctions include, but are not limited to:

- Suspension or expulsion from the university;
- Notification of law enforcement authorities;
- Fine of \$200
- Notification of parents/guardians of students under the minimum legal drinking age of 21 years; and/or
- Other sanctions as determined by the Director of Student Conduct (or designee).

C. Illegal Drug Policy

The following sections describe MSU's policy regarding the sale, manufacture, distribution, possession and use of illegal drugs on or off university property or at university-sponsored events in accordance with federal, state and local laws. Examples of violations include:

- Misusing over-the-counter drugs.
- Misusing or sharing prescription drugs.
- Possessing, using, being under the influence of, distributing, or manufacturing any form of illegal drug.
- Possessing paraphernalia (i.e., rolling papers, pipes, bongs, etc.) for intended or implied use of any form of illegal drug.
- Possessing paraphernalia that contains or appears to contain illegal drug residue.
- Purchasing or passing illegal drugs from one person to another.
- Using mail services to purchase, pass, or distribute illegal drugs.

This policy provides flexibility for the university in addressing drug-related offenses which occur on or off-campus. Moreover, it permits the university to address its fundamental mission of holistic education and the development of human potential. While recognizing that there is a need to address violations related to the use or possession of controlled substances, the university must address the education and well-being of all its students and employees. In addition to university imposed sanctions, students and employees are subject to all legal sanctions under federal, state and local law for any offenses involving illegal drugs on university property or at university activities.

Safe Harbor

The university has a Safe Harbor rule for students. The university believes that students who have a drug and/or addiction problem deserve help. 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 program by the student. Failure to follow the action plan will nullify the Safe Harbor protection and campus conduct processes will be initiated.

Violations of the University Illegal Drug Policy

A partial list of Midwestern State University drug policy violations and their subsequent sanctions is listed below.

- a) *Manufacture, Sale or Distribution of Illegal Drugs:*