



Administrative Council

January 16, 2020

Meeting No. 20-02

The Administrative Council met Thursday, January 16, 2020 at 3:30 p.m., in the J. S. Bridwell Board Room in the Hardin Administration Building. Present were: Dr. Suzanne Shipley, Dr. James Johnston, Dr. Keith Lamb, Mr. Fred Dietz, Mr. Tony Vidmar, Mr. Barry Macha, Mr. Matthew Park, Ms. Leigh Kidwell, Dr. David Carlston, Ms. Debbie Barrow, Ms. Reagan Foster, Mr. Kyle Owen, Ms. Julie Gaynor and Ms. Jennifer Smith

Policy UPP 1-235 Policy on Policies

General Counsel Macha presented information regarding this new policy. Following discussion it was agreed that a policy review committee would be formed. The committee will review this policy before it is reconsidered by the Administrative Council.


Policy UPP 1-225 Shared Governance

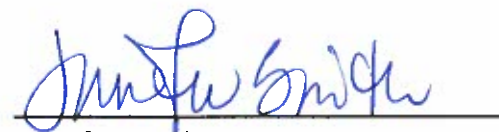
General Counsel Macha presented information regarding this new policy. It was agreed that this policy would also be presented to the policy review committee for consideration.

Policy UPP 4.161 Sexual Misconduct & Interpersonal Violence Handbook Governing Students & Employees (Attachment C)

Dr. Lamb presented information regarding this policy. The purpose of this policy is to update the current handbook to reflect the changes made as a result of the Title IX audit recommendations to consolidate and align the handbook to include students and employees. The update to this policy also includes the requirements regarding a "responsible employee" which was included in Senate Bill 212 passed by the Texas Legislature in 2019. The policy was approved by the Staff Senate and now, pending review by the Faculty Senate on January 23rd, will be placed on the agenda for the February meeting of the Board of Regents.

There being no further business, the meeting was adjourned at 4:06 p.m.


Suzanne Shipley, Chair


Jennifer Smith, Secretary



Midwestern State University

Policies and Procedures Manual

UPP 4.161: Sexual Misconduct and Interpersonal Violence Handbook Governing Students and Employees

Approval Authority:	Board of Regents
Policy Type:	University Policy
Policy Owner:	Vice President for Student Affairs Vice President for Administration and Finance
Responsible Office:	Title IX Coordinator Human Resources Director
Next Scheduled Review:	08/01/2020

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I. Policy Statement

It is the policy of Midwestern State University (“MSU” or “University”) to provide and maintain an educational and working environment for its students, faculty, and staff that is free from sex discrimination (including discrimination on the basis of sexual orientation, gender identity or gender expression), sexual harassment, sexual assault, indecent assault, sexual misconduct, interpersonal violence (including domestic violence and dating violence), and stalking. In accordance with federal and state law, the University prohibits discrimination on the basis of sex (including gender) and prohibits sexual harassment, sexual assault, sexual misconduct, interpersonal violence, and stalking.

The University will not tolerate sex discrimination, sexual harassment, sexual misconduct or physical abuse, threats of violence, physical assault, or any form of sexual violence, including but not limited to sexual assault, acquaintance rape, indecent assault, domestic violence, dating violence or stalking. These unacceptable behaviors are hereafter collectively referred to as "prohibited conduct." Individuals who alone, or in concert with others, participate or attempt to participate in prohibited conduct described in this policy are subject to disciplinary action by the University, notwithstanding any action that may or may not be taken by civil or criminal authorities.

Note: Alleged discriminatory behavior that is not on the basis of sex (including gender) is not covered by this policy; however, such discriminatory conduct is addressed by other University policies prohibiting discrimination on a variety of bases. See MSU Policy 4.131 (Equal Opportunity and Affirmative Action Policy Statement) and MSU Policy 4.171 (Racial Harassment Policy).

The University strongly urges students, faculty, staff, and third-parties to promptly report incidents of prohibited conduct as provided in this policy. Responsible Employees of the University (as defined below) are *required* to promptly report incidents of prohibited conduct as provided in this policy. The University will respond to all reports of prohibited conduct. As described in this policy, the University will conduct a prompt, fair, and impartial investigation and resolution for complaints and, where appropriate, issue remedial measures and/or sanctions. The standard of evidence that will be used in investigating and resolving complaints made under this policy is the "preponderance of the evidence" standard. This standard is met if the allegation is deemed more likely to have occurred than not.

II. Reason for Policy

This policy provides information regarding the University's prevention and education efforts related to sex discrimination, sexual harassment, sexual assault, sexual misconduct, interpersonal violence, and stalking. The policy also explains how the University will proceed once it is made aware of allegations of prohibited conduct in keeping with the University's values and in order to meet the legal obligations of Title VII and Title IX, and other applicable laws.

III. Application of Policy

This policy applies to all University students and employees, visitors, contractors, applicants for admission to or employment with the University, as well as University affiliates and others conducting business on campus.

In addition to incidents that occur on the University campus, the University may investigate and take disciplinary action in response to incidents that take place during official functions of the University, or incidents that have a substantial connection to the interests of the University regardless of the location in which the incident(s) occur.

IV. Definitions (specific to this policy)

In addition to the definitions provided below, key terms are defined in various provisions of the policy, including Section V.2.6.

Actual Knowledge:

Means notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator of any official who has the authority to institute corrective measures on behalf of the recipient.

Advisor:

Any person who accompanies a complainant or respondent in any meeting or grievance proceeding. The role of the advisor is limited to being present only; advisors are not allowed to actively participate in the process. See Section 3.2 (concerning employees) and Section 4.2 (concerning students) of this policy, *infra*.

Complaint / Formal Complaint:

A document signed by the complainant or Title IX Coordinator.

Complainant:

An individual who has reported being the victim of conduct that could constitute sexual harassment or a violation of this policy, or on whose behalf the Title IX Coordinator has filed a formal complaint. The words "victim" and "survivor" are used interchangeably throughout this policy. MSU respects the decision of those who have experienced violence to identify as a victim or a survivor. We recognize that choosing to identify as a survivor is an important part of the healing process for some who have experienced sexual misconduct. When we are referring to the "victim's" or "survivor's" role in the administrative process, we refer to them as the "Complainant."

Confidential Employees

The University has designated individuals who can have privileged communications as "Confidential Employees." When information is shared by an individual with a Confidential Employee or a community professional with the same legal protections, the Confidential Employee (and/or such community professional) cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information.

The following classifications of individuals are Confidential Employees under this University policy: (1) ***Licensed Professional Counselors*** who are licensed with the State of Texas whose official University responsibilities include providing mental health counseling to members of the campus community; (2) ***Registered Nurses/Doctors/Family Nurse Practitioners*** who are registered with the State of Texas and whose official University responsibilities include providing health services to members of the campus community; and (3) University employees who are also licensed or credentialed ***Pastors*** should take care to ensure students and others disclose to them while in their official church role, as disclosures outside of this would constitute notice to the institution (employees are not confidential). If the Pastor employee also advises a student organization, then that employee may have additional responsibilities to report non-identifying aggregate data to the MSU Police Department regarding numerous other types of misconduct, if such misconduct is reported to have occurred on campus owned or controlled by MSU.

An MSU employee designated by the University as a person with whom students may speak confidentially concerning sexual harassment, sexual assault, dating violence, or stalking or who

receives information regarding such an incident under circumstances that render the employee's communications confidential or privileged under other law shall, in making a report required under this policy, state only the type of incident reported and may not include any information that would violate a student's expectation of privacy. This does not affect the employee's duty to report an incident under any other law.

Coordinating Board:

Means the Texas Higher Education Coordinating Board.

Protection or Protective Order:

Means any order that prohibits the restrained person from contacting, harassing, injuring, intimidating, molesting, threatening, or touching any protected person or protected animal, or from entering or remaining on premises, or from coming within a specified distance of a protected person or protected animal or premises or any other provision to protect the protected person or protected animal from imminent danger to life or health, that is issued by a court of this state or a municipal court.

Respondent:

The person designated to respond to a complaint. Generally, the respondent is the person alleged to be responsible for the prohibited conduct alleged in a complaint.

Responsible Employee:

Pursuant to Title IX, a Responsible Employee is a University employee who has the authority to take action to redress an alleged violation of this policy; who has been given the duty of reporting such allegations to the University Title IX Coordinator or designee; or whom an individual could reasonably believe has this authority or duty.

Under Texas law, *all* employees of Midwestern State University, except students enrolled at the University and University employees designated as Confidential Employees, are considered Responsible Employees.

Responsible Employees have a *duty* to promptly report incidents of sex discrimination, sexual harassment, sexual assault, sexual misconduct, interpersonal violence, and stalking to the University Title IX Coordinator or Deputy Title IX Coordinators.

Retaliation:

Any action that adversely affects the academic, employment, or other institutional status of a student or employee of the University, visitor, applicant for admission to or employment with the University, because an individual has, in good faith, brought a complaint under this policy, opposed an unlawful practice, participated in an investigation, or requested accommodations. Examples of retaliation include, but are not limited to: denial of promotion, non-selection/refusal to hire, denial of job benefits, demotion; suspension, discharge, threats, reprimands, negative evaluations, harassment, or other adverse treatment that is likely to deter reasonable people from pursuing their rights. Retaliation is strictly prohibited and will not be tolerated.

Standard of Evidence:

The standard of evidence that will be used in investigating and resolving complaints made under this policy is the "preponderance of the evidence" standard. This standard is met if the allegation is deemed more likely to have occurred than not. Preponderance of the evidence is understood to

require more than 50 percent certainty to determine responsibility for a policy violation (51% or greater).

Title IX Coordinator:

The Title IX Coordinator is the University official with primary responsibility for coordinating the University's compliance with *Title IX of the Education Amendments of 1972* which prohibit discrimination on the basis of sex (gender) in educational programs and activities receiving federal financial assistance. The Title IX Coordinator oversees the University's response to reports and complaints that involve possible sex discrimination to monitor outcomes, identify and address any patterns, and assess effects of the campus climate so the University can address issues that affect the wider school community. This includes providing leadership for Title IX activities; providing consultation, education, and training; and helping to ensure the University responds appropriately, effectively, and equitably to Title IX issues.

Witnesses:

Any individual who has direct knowledge of an incident.

V. Procedures and Responsibilities

1.0 PREFACE AND OVERVIEW OF POLICY

Midwestern State University is committed to providing timely support and assistance to victims and/or survivors¹ of sexual misconduct, interpersonal violence and/or gender-based harassment. This policy provides detailed descriptions of how the institution identifies and responds to such complaints. This preface is intended to provide a snapshot of essential information for persons who need immediate assistance, so they do not have to navigate the entire document. Information included in the preface is included in greater detail within the policy that follows. Additionally, MSU's centralized website (<https://msutexas.edu/titleix/>) houses this policy and information regarding on- and off-campus resources.

"Sexual misconduct" is an umbrella term that refers collectively to the following offenses that are prohibited by Midwestern State University:

- Sexual Harassment
- Sexual Assault, which includes Non-Consensual Sexual Penetration and Sexual Touching
- Forms of Interpersonal Violence or Intimate Partner Violence which includes Dating Violence and Domestic Violence
- Sexual Exploitation
- Stalking, regardless of if it occurs in the context of an intimate relationship
- Non-sexual gender-based harassment and discrimination

¹ The words "victim" and "survivor" are used interchangeably throughout this policy. MSU respects the decision of those who have experienced violence to identify as a victim or a survivor. We recognize that choosing to identify as a survivor is an important part of the healing process for some who have experienced sexual misconduct. When we are referring to the "victim's" or "survivor's" role in the administrative process, we refer to them as the "Complainant."

Students or employees who experience an incident of sexual misconduct or one of the other prohibited offenses should consider the information and resources that follow. Complete definitions of the aforementioned offenses are found in this document.

1.1 FOR IMMEDIATE ASSISTANCE

1. Confidential Support: Any student in need of immediate emotional support should contact the campus Counseling Center and request to speak with a confidential counselor (after hours, contact the police department or housing staff to access the counselor on call). You may also access the Counseling Center's website at <https://msutexas.edu/student-life/counseling/index.php>. Survivors (employees or students) may also contact First Step (off-campus sexual and domestic violence resource center) to speak with a confidential advocate 24 hours a day, 7 days a week, by calling 800-658-2683. Access First Step's website at <http://firststep.org>.
2. Reporting: Students and employees are *strongly* encouraged to report sexual misconduct or other prohibited conduct to University authorities and to the police in order to protect themselves and others. Even if the survivor does not want to make a formal incident report with the University or cooperate with law enforcement, he or she still may have the right to other victims' services, including reasonable accommodations and interim protective measures in addition to support services. To file a report, any person can contact any of the following:
 - a. Title IX Coordinator: (available during regular business hours) Rachael Fornof, Director and Coordinator of Title IX, Midwestern State University, 3410 Taft Blvd, Vinson Health Center, Room H136, Rachael.fornof@msutexas.edu or titleix@msutexas.edu, Phone: (940) 397-4213 (Deputy Coordinators are also assigned to students and employees.) *Reporting to the Title IX Coordinator will not result in a criminal investigation; rather, it will result in an administrative investigation to determine if this policy was violated. If the incident occurred on campus, limited information will be shared with the MSU Police for purposes of determining if a Timely Warning Notice should be distributed to the campus community, and for purposes of capturing and counting crime data.*
 - b. The MSU Police Department: (available 24 hours a day, 7 days a week) Call **911 for emergencies or (940) 397-4239** <https://msutexas.edu/police/> *Reporting to the MSU Police may initiate a criminal investigation into the complaint. The MSU Police will determine if a Timely Warning Notice should be distributed to the campus community, and will capture and count crime data if the offense was reported to have occurred on campus or on a property owned or controlled by the institution. The MSU Police will report your complaint to the Title IX Coordinator. You can tell the police as much or as little as you would like.*
 - c. The Wichita Falls Police Department: (available 24 hours a day, 7 days a week) Call **911 for emergencies or (940) 720-5000**. Visit Wichita Falls Police Department's website (<http://www.wichitafallstx.gov/17/Police>) for more information or to obtain the address or contact information for a specific division within the Police Department. *Important: The Wichita Falls Police Department may not share the details of your report with MSU. If you report to the city police, you should also report to the Title IX Coordinator, so that*

on-campus accommodations, interim protective measures, and resources can be provided. Interim protective measures may include changes in class schedule, housing, work location, or transportation options if requested and reasonably available.

1.2 MEDICAL TREATMENT AND EVIDENCE PRESERVATION

Victims of sexual assault may have a sexual assault forensic exam conducted without reporting it to law enforcement. State law allows you to have the sexual assault forensic exam (SAFE) up to 120 hours (5 days) after a sexual assault. You can report to law enforcement if you choose to. In Texas, you have ten years (statute of limitations on sexual assault) to make the report. Having a sexual assault forensic exam conducted allows you to preserve evidence that will be lost over time while you decide how to proceed.

MSU police officers and City of Wichita Falls police officers encourage victims to report sexual assault even if it is past the statute of limitations. While the case cannot go forward with prosecution, it is important to document the assault and the perpetrator(s) committing the assault (in addition to allowing MSU to prevent recurrence of similar crimes, if applicable).

In circumstances of sexual assault, if a complainant does not opt for forensic evidence collection, health care providers can still treat injuries and take steps to address concerns of pregnancy and/or sexually-transmitted infection. It is important that a survivor of sexual assault not bathe, douche, smoke, change clothing or clean the bed/linen/area where she or he was assaulted within 120 hours after the incident occurred, so that evidence may be preserved.

Complainants of sexual assault, domestic violence, dating violence, or stalking also are encouraged to preserve evidence by saving text messages, instant messages, social networking pages, other communications, and keeping pictures, logs or other copies of documents, if any exist, that may be useful to University investigators, MSU Police, or Wichita Falls Police.

The following chart lists area hospitals where victims of sexual or intimate partner violence may go for medical services. The chart indicates if the facility has forensic evidence collection services available.

Hospital Name	Physical Address	Telephone Number and Website Information	Does this facility offer forensic evidence collection?
United Regional Health Care	1600 11th St, Wichita Falls, TX 76310	(940) 764-7000	Sexual Assault Nurse Examiner (SANE) Program
Kell West Regional Hospital	5420 Kell E Blvd, Wichita Falls, TX 76310	(940) 692-5888	
Texas Health Presbyterian Hospital	4400 Long Prairie Rd, Flower Mound, TX 75028	(469) 322-7000	

1.3 INVESTIGATIONS

Survivors who wish to pursue an investigation may choose to:

1. Contact the MSU Police Department to pursue a criminal investigation if the reported conduct occurred on property owned or controlled by MSU.
2. Contact the Wichita Falls Police Department to pursue a criminal investigation if the reported conduct occurred away from property owned or controlled by MSU.
3. File a civil complaint in a civil court. (This is equivalent to personally suing your attacker; this action may require you to obtain your own attorney.)
4. Report to the MSU Title IX Coordinator or your respective Deputy Title IX Coordinator (based on the status of the accused person). An investigation of a campus policy violation is independent from criminal investigations or civil court action; the Title IX Coordinator accepts complaints of all kinds of conduct (criminal and non-criminal), as well as conduct that occurred on and off campus.
5. Decide not to file charges or make a report for investigation. Survivors are strongly encouraged, but not required, to report the incident. Survivors have the right to be free from any suggestion that victims must report the crime to be assured of any other rights or resources. Campus personnel will not pressure survivors to report a crime if the survivor does not wish to report, but will assist any person in filing a report with law enforcement no matter where the misconduct occurred. Should you require assistance filing a police report, the Title IX Coordinator can provide assistance.
6. A victim/survivor may report to all of the above and have concurrent criminal and administrative investigations. MSU will not wait for the completion of a criminal investigation to begin or conduct an administrative investigation, but may temporarily yield to law enforcement for preliminary fact-finding into a complaint.

1.4 ACCOMMODATIONS

A survivor may make a request for accommodations to the Title IX Coordinator (or their respective Deputy Title IX Coordinator). The survivor does not need to participate in an investigation or file charges in order to request accommodations. The Title IX Coordinator will work in conjunction with relevant parties to determine which accommodations are appropriate to ensure the victim's safety and equal access to educational programs and activities.

Accommodations may include, but are not limited to, the following:

- Relocation of on-campus job if it will bring a victim and accused party into proximity with one another.
- Changes to class schedules, if a victim and accused party have a common class(es).
- Changes to housing accommodations, if a victim and accused party reside in the same on-campus facility.
- A "no-contact" order between the victim and the accused party. If the accused party is not a member of the MSU community, the institution may bar the individual(s) from entering campus property.

- Providing victims with financial aid-related information, such as how to apply for a leave of absence or addressing concerns about loan repayment. Additional information about resources and reporting is available at:
 - Office of Student Rights and Responsibilities: (940) 397-7500, <https://msutexas.edu/student-life/conduct/index.php>
 - Financial Aid: (940) 397-4214, <https://msutexas.edu/finaid/>

1.5 RISK REDUCTION

Experiencing Sexual Misconduct or other forms of prohibited conduct is never the victim's fault. Only abusers are responsible for the abuse they perpetrate. However, the following are some strategies to reduce risk of victimization. The Rape, Abuse, & Incest National Network (RAINN) encourage individuals to:

1. **Be aware** of your surroundings. Knowing where you are and who is around you may help you to find a way to get out of a bad situation.
2. **Avoid isolated areas.** It is more difficult to get help if no one is around.
3. **Walk with purpose.** Even if you don't know where you are going, act like you do.
4. **Try not to load yourself down** with packages or bags, as this can make you appear more vulnerable.
5. **Make sure your cell phone is with you**, is charged, and that you have money.
6. **Avoid putting music headphones in both ears**, so that you can be more aware of your surroundings, especially if you are walking alone.
7. **When you go to a social gathering, go with a group of friends.** Arrive together, check in with each other throughout the evening, and leave together. Knowing where you are and who is around you may help you to find a way out of a bad situation.
8. **Trust your instincts.** If you feel unsafe in any situation, go with your instincts. If you see something suspicious, contact law enforcement immediately (local authorities can be reached by calling 911 in most areas of the U.S.).
9. **Don't leave your drink unattended** while talking, dancing, using the restroom, or making a phone call. If you've left your drink alone, just get a new one.
10. **Don't accept drinks from people you don't know or trust.** If you choose to accept a drink, go with the person to the bar to order it, watch it being poured, and carry it yourself. At parties, don't drink from the punch bowls or other large, common open containers.
11. **Watch out for your friends, and vice versa.** If a friend seems out of it, is too intoxicated for the amount of alcohol they've had, or is acting out of character, get him or her to a safe place immediately.
12. **If you suspect you or a friend has been drugged, contact law enforcement immediately (local authorities can be reached by calling 911 in most areas of the U.S.).** Be explicit with doctors so they can give you the correct tests (you will need a urine test and possibly others).
13. If you need to get out of an uncomfortable or scary situation here are some things that you can try:

- a. **Remember that being in this situation is not your fault.** You did not do anything wrong, it is the person who is making you uncomfortable that is to blame.
 - b. **Be true to yourself.** Don't feel obligated to do anything you don't want to do. "I don't want to" is always a good enough reason. Do what feels right to you and what you are comfortable with.
 - c. **Have a code word with your friends or family** so that if you don't feel comfortable you can call them and communicate your discomfort without the person you are with knowing. Your friends or family can then come to get you or make up an excuse for you to leave.
 - d. **Lie.** If you don't want to hurt the person's feelings it is better to lie and make up a reason to leave than to stay and be uncomfortable, scared, or worse. Some excuses you could use are: needing to take care of a friend or family member, not feeling well, having somewhere else that you need to be, etc.
14. **Try to think of an escape route.** How would you try to get out of the room? Where are the doors? Windows? Are there people around who might be able to help you? Is there an emergency phone nearby?
15. **If you and/or the other person have been drinking,** you can say that you would rather wait until you both have your full judgment before doing anything you may regret later.

1.6 PREVENTION AND EDUCATION

The University engages in comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to reduce and eliminate sexual misconduct or other forms of prohibited conduct which:

- Are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, informed by research or assessed for value, effectiveness, or outcome; and
- Consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community and societal levels.

Educational programming consists of primary prevention and awareness programs for all incoming students and new employees and ongoing awareness and prevention campaigns for students and employees that:

1. Identifies domestic violence, dating violence, sexual assault and stalking as prohibited conduct;
2. Defines using definitions provided both by the U.S. Department of Education as well as state law what behavior constitutes domestic violence, dating violence, sexual assault, and stalking;
3. Defines what behavior and actions constitute consent to sexual activity in Texas and/or using the definition of consent found in this policy;
4. Provides a description of safe and positive options for bystander intervention. Bystander intervention means safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault or stalking. Bystander intervention includes recognizing situations of

potential harm, understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action to intervene;

5. Delivers information on risk reduction. Risk reduction means options designed to decrease perpetration and bystander inaction, and to increase empowerment for victims in order to promote safety and to help individuals and communities address conditions that facilitate violence; and
6. The procedures that the institution will follow when one of these crimes is reported and the procedural requirements for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, and stalking.

1.7 BEING AN ACTIVE BYSTANDER

Bystanders play a critical role in the prevention of sexual and relationship violence. Bystanders are “individuals who observe violence or witness the conditions that perpetuate violence. These individuals are not directly involved but have the choice to intervene, speak up, or do something about it.”² The University promotes a culture of community accountability where bystanders are actively engaged in the prevention of violence without causing further harm. Individuals may not always know what to do even if they want to help. Below is a list of some ways to be an active bystander. If you or someone else is in immediate danger, dial 911, if a person is yelling at or being physically abusive towards another and it is not safe for you to interrupt.

1. Watch out for your friends and fellow students/employees. If you see someone who looks like he or she could be in trouble or need help, ask if he or she is ok.
2. Confront people who seclude, hit on, attempt to make out with, or have sex with people who are incapacitated.
3. Speak up when someone discusses plans to take sexual advantage of another person.
4. Believe someone who discloses sexual assault, abusive behavior, or experience with stalking.
5. Refer people to on or off campus resources listed in this policy for support in health, counseling, or with legal assistance.

1.8 RESOURCE DIRECTORY

The University provides any complainant who reports an incident involving sexual misconduct or other prohibited conduct either on or off-campus with a copy of the Notice of Complainant’s Rights. The following information and resources are listed in this notice along with procedures, options and available assistance from this policy.

² Burn, S.M. A situational model of sexual assault prevention through bystander intervention. *Sex Roles*, 60, 779-792.

ON CAMPUS RESOURCES

Resource	Address/Location on Campus	Phone Number
Counseling Center (Mental Health/Counseling)	Corner of Hampstead and Louis J. Rodriguez Dr.	(940) 397-4618
Vinson Health Center (Physical Health)	3410 Taft Blvd. (South Side of Campus by Sikes Lake)	(940) 397-4231
Office of the Title IX Coordinator	Vinson Health Center, H136	(940) 397-4213
Human Resources	Hardin Administration Building, Room 210	(940) 397-4221
MSU Police	Southwest of Campus on Midwestern Parkway	(940) 397-4239
Student Leadership and Involvement/Student Activities	Clark Student Center	(940) 397-3033
Office of Equity, Inclusion, and Multicultural Affairs	Bea Wood Hall Room 131	(940) 397-4947
Financial Aid	Hardin Administration Building	(940) 397-4214

OFF CAMPUS RESOURCES

Resource	Address/Location on Campus	Phone Number
Wichita Falls Police Department	610 Holliday St	(940) 720-5000
Wichita County Sheriff Department	900 7 th St #100	(940) 766-8170
United Regional Hospital	1600 11 th St	(940) 764-7000
Helen Farabee Center	500 Broad St	(940) 397-3300
Red River Hospital	1505 8 th St	(940) 341-2464
Wichita County District Attorney	900 7 th St, Rm 351	(940) 766-8113
Wichita County Courthouse	900 7 th St	(940) 766-8100
First Step Inc.	624 Indiana Avenue, Suite 304	(940) 723-7799
Legal Aid of Northwest Texas	710 Lamar St #300	(800) 926-5542

2.0 SEXUAL MISCONDUCT AND INTERPERSONAL VIOLENCE POLICY

2.1 INTRODUCTION

Midwestern State University (“MSU” or “the University”) values a learning community in which all members feel secure, physically and intellectually. This includes having an environment free from sex-based harassment, to include sexual harassment, sexual assault, and the offenses of interpersonal or intimate partner violence (which include domestic and dating violence), stalking, sexual exploitation, complicity, and retaliation (these offenses are defined later in this policy). Gender-based harassment, as defined later in this policy, is also prohibited. Faculty, staff, and students of Midwestern State University are expected to commit themselves to be examples of the highest standards of personal and professional conduct. As an institution of higher education, MSU affirms that acts of sex and gender-based harassment are detrimental to the integrity of the institution and cannot be tolerated in our community. The University will take prompt and equitable action to eliminate sex and/or gender-based harassment, prevent its recurrence, and remedy its effects, regardless if the conduct occurred on or off campus. The propensity to create a hostile environment on campus will guide the University’s response to off campus behavior.

To foster a climate of respect and security on campus as it relates to preventing and responding to acts of sex and/or gender-based harassment, this policy and resolution procedure serve to demonstrate the University’s commitment to:

1. Identifying the forms of sexual misconduct or other forms of prohibited conduct that violate this policy.
2. Disseminating clear policies and procedures for responding to sexual misconduct or other forms of prohibited conduct reported or reasonably known to the University.
3. Developing a campaign for delivering primary prevention and awareness programs and ongoing training and education programs to students and employees, so they may identify behavior that constitutes sexual misconduct and the other misconduct described in the policy; understand how to report such misconduct; recognize warning signs of potentially abusive behavior and ways to reduce risks; and learn about safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of sexual misconduct or other forms of prohibited conduct against a person other than such individual.
4. Engaging in investigative inquiry and resolution of reports that are adequate, reliable, impartial, prompt, fair, and equitable that support the due process rights of both parties.
5. Supporting complainants and respondents and holding persons accountable for established violations of this policy.
6. Providing a written explanation of the rights and options available to every person who alleges that they have been the victim of sexual assault, dating violence, domestic violence and/or stalking, regardless of when or where the conduct occurred.

In addition, this policy:

1. Identifies the University's Title IX Coordinator, Deputy Title IX Coordinators, and Title IX Investigators, and describes their roles in compliance with Title IX and the Clery Act, to include the Violence Against Women Act (VAWA).
2. Identifies how students and employees can confidentially report sexual misconduct or other forms of prohibited conduct to the University and the resources to aid them, both on and off campus. This includes employees' and students' rights to notify campus and local law enforcement, be assisted in that notification, and their right also to decline to notify such authorities.
3. Provides information about how reports are assessed, investigated, and resolved.
4. Provides the University with a means to take all reasonable steps to identify sexual misconduct and other prohibited conduct as identified in this policy, prevent recurrence, and to correct its discriminatory effects on the complainant and others, if appropriate.

This policy supersedes any conflicting information contained in other University policies with respect to the definitions or procedures relating to conduct prohibited by this policy.

2.2 JURISDICTION

This policy applies to students, University employees, contractors, vendors, visitors, guests or other third parties regardless of their gender identity, gender expression and/or sexual orientation. This policy pertains to acts of sexual misconduct or other forms of prohibited conduct that may be based on sex or gender, committed by or against students, employees and third parties when:

1. the conduct occurs on University property or other property owned or controlled by the University;
2. the conduct occurs in the context of a University employment or education program or activity, including, but not limited to, University-sponsored study abroad, research, online, or internship programs; or
3. the conduct occurs outside the context of a University employment or education program or activity, but has continuing adverse effects on or has the propensity to create a hostile environment for students, employees or third parties while on University property or other property owned or controlled by the University, or in any University employment or education program or activity.

2.3 NOTICE OF NON-DISCRIMINATION & NOTICE OF COORDINATION WITH NON-DISCRIMINATION POLICY

Midwestern State University strives to create and actively promote a welcoming and supportive environment in order to recruit, hire, retain, and support a culturally diverse faculty, staff, and student body. Midwestern State University is committed to providing an environment of nondiscrimination and equal opportunity. In accordance with federal and state law, the University prohibits unlawful discrimination, including harassment, on the basis of race, age,

color, religion, sex, sexual orientation, gender identity, national or ethnic origin, veteran's status, disability, or citizenship. Retaliation against individuals who in good faith file a claim of discrimination or otherwise oppose discriminatory actions will not be tolerated.

Employees should seek further information regarding equal opportunity, disability, harassment, discrimination and retaliation that **is not based on sex or gender** from:

Dawn Fisher,
Director of Human Resources
Hardin Administration Building, Room 210
3410 Taft Blvd.
Wichita Falls, TX 76308
(940) 397-4221
dawn.fisher@msutexas.edu

2.4 TITLE IX COORDINATOR, DEPUTY TITLE IX COORDINATORS, AND INVESTIGATORS

The University has designated a Title IX Coordinator who is responsible for the oversight of this policy and any procedures related to it. The Title IX Coordinator is responsible for overseeing and resolving all Title IX complaints and identifying and addressing any patterns or systemic concerns that arise during the review of such reports. The Coordinator's responsibilities include oversight of a prompt, fair, equitable investigation and resolution process for reports of sexual misconduct or other forms of prohibited conduct at the University. The Title IX Coordinator also evaluates trends on campus by using information reported to them and makes recommendations for campus-wide training and education programs and other remedial actions designed to eliminate sex-based harassment, prevent its recurrence and address its effects.

The Deputy Title IX Coordinators serve as designees for the Title IX Coordinator in cases that fall under their respective areas of responsibility and/or any case where there is a conflict of interest that would prohibit the Title IX Coordinator from providing fair and impartial oversight. Deputy Title IX Coordinators, if not overseeing a complaint, may serve as the investigator or may select a qualified and annually trained investigator from the pool of investigators on staff. They shall not serve as the overseer and investigator on the same matter. The University reserves the right to outsource (i.e., hire an external investigator) an investigation into any complaint in which the University's interests (staffing, area of expertise, perceived bias) or the party's interests (complainant or respondent) would be best served. The decision regarding to whom an investigation will be assigned ultimately rests with the University's Title IX Coordinator.

The Title IX Investigator(s) conduct thorough and impartial investigations into the facts of a complaint including interviewing the complainant, respondent, witnesses or others who may have relevant information, and collecting any other evidence deemed relevant to a case.

Title IX Team

Title IX Coordinator

Rachael Fornof, J.D.
Director and Coordinator of Title IX
Midwestern State University
Vinson Health Center, H136
(940) 397-4213
rachael.fornof@msutexas.edu
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Deputy Title IX Coordinator for Students

Kristi Schulte
Director of Residence Life and Housing
Sunwatcher Village 121
3410 Taft Blvd.
Wichita Falls, TX 76308
(940) 397-4217
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Deputy Title IX Coordinator for Employees

Dawn Fisher
Director of Human Resources
Hardin Administration Building, Room 210
3410 Taft Blvd.
Wichita Falls, TX 76308
(940) 397-4221
dawn.fisher@msutexas.edu

The U.S. Department of Education's Office for Civil Rights (OCR) is responsible for overseeing institutional noncompliance with Title IX. To file a report directly with the U.S. Department of Education, use the contact information below.

The OCR office for Texas is located at:

Dallas Office
Office for Civil Rights
U.S. Department of Education
1999 Bryan Street, Suite 1620
Dallas, Texas 75201-6810
Telephone: 214-661-9600
FAX: 214-661-9587; TDD: 800-877-8339
Email: OCR.Dallas@ed.gov

The OCR National Headquarters is located at:

U.S. Department of Education
Office for Civil Rights
Lyndon Baines Johnson Department of Education Bldg
400 Maryland Avenue, SW
Washington, DC 20202-1100
Telephone: 800-421-3481
FAX: 202-453-6012; TDD: 800-877-8339
Email: OCR@ed.gov

2.5 PROHIBITED CONDUCT

Sexual Misconduct is a broad term used by the University to identify a number of forms of harassment based on sex. Sexual Misconduct includes the following specifically defined forms of behavior: Sexual Harassment, Sexual Assault, and Sexual Exploitation. Other forms of conduct prohibited by this policy include all forms of Interpersonal Violence to include Intimate Partner Violence (Domestic and Dating Violence) and Stalking (regardless of if the Stalking occurs in the context of an intimate relationship). All forms of Gender-Based Harassment,

Complicity, and Retaliation are also prohibited conduct under this policy and resolution procedure.³

A violation of this policy will be found when: (1) submission to such conduct is made as express or implicit term or condition of an individual's employment, performance, appraisal, or evaluation of academic performance; or (2) such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, humiliating, or offensive living, working, or learning environment.

A. Sex and Gender-Based Harassment

"Harassment" is conduct that creates an intimidating, offensive, or hostile working or learning environment; or, conduct that unreasonably interferes with work or academic performance based on a person's protected status, including sex, sexual orientation, gender identity, or gender expression. All such conduct is unlawful.

"Sexual Harassment" is any unwelcome sexual advance, request for sexual favors, or other unwelcome conduct of a sexual nature, whether verbal, physical, graphic, or otherwise.

Texas law provides that Sexual Harassment is sex-based verbal or physical conduct that:

- (A) In the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or
- (B) In the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from educational programs or activities. (See *Texas Education Code*, Section 51.251 (5).)

"Gender-Based Harassment" is harassment based on sex, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal, physical, graphic, or otherwise. To qualify as Gender-Based Harassment, the conduct need not involve conduct of a sexual nature.

Generally speaking, harassment can be divided into two types of conduct:

1. **Quid Pro Quo Harassment:** Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, academic standing, or participation in any aspect of a University program or activity, or is used as the basis for the University's decisions affecting the individual.
2. **Hostile Environment:** A hostile environment exists when the conduct is sufficiently severe, pervasive, or persistent that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the University's education or

³ NOTE: The definitions in this policy may differ from those used in the civil or criminal laws of the State of Texas. In some cases, the definitions include behaviors that, while not torts or crimes under Texas law, still violate MSU's standards of conduct for faculty, staff, and students. In addition, certain conduct may be punishable under Texas or Federal criminal statutes, civil law, and University policy and these processes may work concurrently and independently, but are separate and distinct from one another.

employment programs and/or activities. Whether conduct is sufficiently severe, pervasive, or persistent is determined both from a subjective and objective perspective.

Harassing conduct can take many forms. The determination of whether an environment is hostile is based on the totality of the circumstances, including but not limited to: (1) the frequency of the conduct; (2) the nature and severity of the conduct; (3) whether the conduct was physically threatening; (4) the effect of the conduct on the Complainant's mental or emotional state, with consideration of whether the conduct unreasonably interfered with the Complainant's educational or work performance and/or University programs or activities; (5) whether the conduct was directed at more than one person; (6) whether the conduct arose in the context of other discriminatory conduct; and (7) whether the conduct implicates concerns related to academic freedom or protected speech.

A single isolated incident may create a hostile environment if the incident is sufficiently severe, particularly if the conduct is physical. A single incident of Sexual Assault, for example, may be sufficiently severe to constitute a hostile environment. In contrast, the perceived offensiveness of a single verbal or written expression is typically not sufficient to constitute a hostile environment. It is also important to note that the University need not determine a hostile environment was created to call behavior harassment, to initiate an investigation, or to resolve the complaint. The creation of a hostile environment triggers a duty to respond, but a single act of conduct that is harassing is taken seriously and is sufficient to trigger a response from MSU.

Sexual or Gender-Based Harassment:

- May be blatant and intentional and involve an overt action, a threat or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated.
- May be committed by anyone, regardless of gender, age, position or authority. While there is often a power differential between two persons, perhaps due to differences in age, social, educational or employment relationships, harassment can occur in any context.
- May be committed by a stranger, an acquaintance, or someone with whom the Complainant has an intimate or sexual relationship.
- May be committed by or against an individual or may be a result of the actions of an organization or group.
- May occur by or against an individual of any sex, sexual orientation, gender identity, or gender expression.
- May occur in the classroom, in the workplace, in residential settings, or in any other setting.
- May be a one-time event or can be part of a pattern of behavior.
- May be committed in the presence of others or when the Parties are alone.
- May affect the Complainant and/or third Parties who witness or observe harassment and are affected by it.

Examples of conduct that constitute Sexual Harassment as defined above may include one or more of the following:

- **Physical conduct**, including unwelcome touching (e.g., indecent assault (groping) – *Texas Penal Code*, Chapter 22, Section 22.011), sexual/physical assault, impeding, restraining or blocking movements, or unwanted sexual advances.
- **Verbal conduct**, including making or using derogatory comments, epithets, slurs or humor; verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes, or invitations; or objectively offensive comments of a sexual nature, including persistent or pervasive sexually explicit statements, questions, jokes, or anecdotes.
- **Visual conduct**, including leering, making sexual gestures, displaying of suggestive objects or pictures, cartoons, or posters in a public space or forum; or severe, persistent, or pervasive visual displays of suggestive, erotic, or degrading sexually oriented images that are not pedagogically appropriate.
- **Written conduct**, including letters, notes or electronic communications containing comments, words, or images as previously described in this policy.
- **Quid pro quo conduct**, including direct propositions of a sexual nature between those for whom a power imbalance or supervisory or other authority relationship exists; offering educational or employment benefits in exchange for sexual favors; making submission to sexual advances an actual or implied condition of employment, work status, promotion, grades, or letters of recommendation, including subtle pressure for sexual activity, an element of which may be repeated requests for private meetings with no academic or work purpose; or making or threatening reprisals after a negative response to sexual advances.

This Policy is consistent with the University's commitment to academic freedom and free speech, as outlined in MSU Policy 3.118 and this commitment requires that the University protect community members' expression of ideas in their teaching and learning including topics that may be controversial, provocative, or unpopular. This protection extends to the expression of ideas, however controversial, in the classroom, and other campus-related activities.

It must be recognized, however, that this protection has its limits. This Policy defines those limits, and conduct which is found to be "harassing" is not consistent with the University's commitment to academic freedom and free speech. No member of the University community may escape responsibility for engaging in harassing conduct merely by labeling the conduct as "speech" or other expressive activity.

B. Sexual Assault: Two Forms

1. Non-Consensual Sexual Penetration

“Non-Consensual Sexual Penetration” is having or attempting to sexually penetrate another individual:

- By force or threat of force;
- Without consent; or
- Where that individual is incapacitated and could not have provided consent.

Sexual penetration includes vaginal or anal penetration, however slight, with a body part (e.g., penis, tongue, finger, hand) or object, or oral penetration involving mouth to genital contact.

2. Non-Consensual Sexual Touching/Contact

“Non-Consensual Sexual Touching/Contact” is having sexual contact with another individual:

- By force or threat of force;
- Without consent; or
- Where that individual is incapacitated and could not have provided consent.

Sexual Contact includes intentional contact with the intimate parts of another, causing an individual to touch their own intimate body parts, or disrobing or exposure of another’s private parts without permission. Intimate body parts may include the breasts, genitals, buttocks, groin, mouth or any other part of the body that is touched in a sexual manner.

Examples of behavior that would constitute non-consensual sexual penetration or contact include the following:

- Engaging in sexual activity with an unconscious or semi-conscious person.
- Engaging in sexual activity with someone who is asleep or passed out.
- Engaging in sexual activity with someone who has said “no.”
- Engaging in sexual activity with someone who is not reciprocating by body movement.
- Engaging in sexual activity with someone who is vomiting, unable to stand without assistance, or has to be carried to bed.
- Allowing another person to engage in sexual activity with your partner without her or his consent.
- Requiring any person to perform any sexual activity as a condition of acceptance into any organization affiliated with the University.
- Telling someone you will “out” them if they do not engage in sexual activity (e.g., threatening to disclose the person’s sexual orientation without their consent).
- Having sexual contact with someone under the statutory age of consent (statutory rape) or with a family member that is situated within proximity in your family tree to violate state statute (incest).

- Telling someone you will fail them or give them a grade different from what they deserve if they do not agree to engage in sexual activity.
- Facilitating or assisting in a sexual assault including purchasing or providing alcohol or drugs to further a sexual assault.

C. Sexual Exploitation

“Sexual Exploitation” occurs when an individual takes non-consensual or abusive sexual advantage of another individual for one’s own advantage or benefit, or to benefit or advantage anyone other than the individual being exploited. Examples of Sexual Exploitation include, but are not limited to:

- Prostituting another individual.
- Surreptitiously observing another individual’s nudity or sexual activity, or allowing another to observe consensual sexual activity without the knowledge and consent of all Parties involved.
- Non-consensual sharing or streaming of images, photography, video, or audio recording of sexual activity or nudity of the person being exploited, or distribution of such without the knowledge and consent of all Parties involved; or possession or distribution of any of the aforementioned when they depict a person under the age of 18 regardless of the Parties’ consent (possession or distribution of child pornography).
- Exposing one’s genitals or inducing another to expose their own genitals in nonconsensual circumstances.
- Knowingly exposing another individual to a sexually transmitted infection or virus without their knowledge.
- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

D. Stalking

“Stalking” occurs when a person engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

A *course of conduct* consists of two or more acts, including, but not limited to, acts in which a person directly, indirectly, or through third Parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person’s property.

Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.

Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Cyber-stalking is a particular form of stalking in which electronic media such as the Internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used.

Examples of stalking include, but are not limited to:

- Non-consensual communication including in-person communication, telephone calls, voice messages, text messages, email messages, social networking site postings, instant messages, postings of pictures or information on web sites, written letters, gifts, or any other communications that are undesired and/or place another person in fear.
- Following, pursuing, waiting, or showing up uninvited at a workplace, place of residence, classroom, or other locations frequented by a person.
- Surveillance and other types of observation, whether by physical proximity or electronic means.
- Gathering of information about a person from family, friends, co-workers, and/or classmates.

To qualify as stalking, the conduct is not required to be sexual in nature.

E. Intimate Partner Violence: Two Forms

“Intimate Partner Violence” includes any act of violence or threatened act of violence against a person who is, or has been involved in, a sexual, dating, spousal, domestic, or other intimate relationship with the Respondent. The University will not tolerate Intimate Partner Violence of any form.

Intimate Partner Violence is often referred to as dating violence, domestic violence, interpersonal violence or relationship violence. Intimate Partner Violence can encompass a broad range of behavior including, but not limited to, physical violence, sexual violence, psychological and/or emotional violence, and economic abuse. It may involve one act or an ongoing pattern of behavior. Intimate Partner Violence may take the form of threats, assault, property damage, violence or threat of violence to one’s self, one’s sexual or romantic partner, one’s pets, or to the family members or friends of the sexual or romantic partner. Intimate Partner Violence affects individuals of all sexes, sexual orientations, gender identities, gender expressions, races, and social and economic backgrounds.

1. Dating Violence

“Dating Violence” is a physical act of assault or threat of assault, detainment, or unwanted touching committed by a person who is or has been in a social relationship of a romantic or intimate nature with the person subjected to such violence. Whether there was such a relationship will be determined based on, among other factors, the Complainant’s and Respondent’s statements, and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the Parties involved in the relationship.

2. Domestic Violence

“Domestic Violence” is a physical act of assault or threat of assault, detainment, or unwanted touching committed by: (1) a current or former spouse or intimate partner of the victim; (2) a person with whom the victim shares a child in common; (3) a person who is cohabiting with, or has cohabitated with, the victim as a spouse or intimate partner; (4) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of Texas; or (5) any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws in the State of Texas.

2.6 DEFINITIONS OF ADDITIONAL KEY TERMS

To provide clarity to all individuals as to the kinds of behavior which constitute Sexual Misconduct or other Prohibited Conduct, the University further defines key terms which the University will use in evaluating whether Prohibited Conduct has occurred.

A. Affirmative Consent

“Affirmative Consent” means affirmative, conscious, and voluntary agreement to engage in sexual activity. Affirmative Consent is required for any sexual activity to occur between two or more individuals. It is the responsibility of each person involved in the sexual activity to ensure that the person has the Affirmative Consent of the other(s) to engage in the sexual activity.

It shall not be a valid excuse to alleged lack of Affirmative Consent that the Respondent believed that the Complainant consented to the sexual activity under either of the following circumstances: (a) The Respondent’s belief in Affirmative Consent arose from the intoxication or recklessness of the Respondent, or (b) the Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented.

The following are essential elements of affirmative consent:

- *Informed and reciprocal*: All Parties must demonstrate a clear and mutual understanding of the nature and scope of the act to which they are consenting and a willingness to do the same thing, at the same time, in the same way.
- *Freely and actively given*: Consent cannot be obtained through the use of force, coercion, threats, intimidation or pressuring, or by taking advantage of the incapacitation of another individual.
- *Mutually understandable*: Communication regarding consent consists of mutually understandable words and/or actions that indicate a mutually unambiguous willingness to engage in sexual activity. Consent may not be inferred from silence, passivity, lack of resistance, or lack of active response. An individual who does not physically resist or verbally refuse sexual activity is not necessarily giving consent. **Relying solely upon non-verbal communication can lead to a false conclusion as to whether consent was sought or given.**

- **Not indefinite:** Affirmative consent must be ongoing throughout the activity. **Consent may be withdrawn by any Party at any time.** Recognizing the dynamic nature of sexual activity, individuals choosing to engage in sexual activity must evaluate consent in an ongoing manner and communicate clearly throughout all stages of sexual activity. Withdrawal of consent can be an expressed “no” or can be based on an outward demonstration that conveys that an individual is hesitant, confused, uncertain, or is no longer a mutual participant. Once consent is withdrawn, the sexual activity must cease immediately, which means they must separate their bodies, and all Parties must obtain mutually expressed or clearly stated consent before continuing further sexual activity.
- **Not unlimited:** Consent to one form of sexual contact does not constitute consent to all forms of sexual contact, nor does consent to sexual activity with one person constitute consent to activity with any other person. Each participant in a sexual encounter must consent to each form of sexual contact with each participant. Even in the context of a current or previous intimate relationship, each Party must consent to each instance of sexual contact each time. The consent must be based on mutually understandable communication that clearly indicates a willingness to engage in sexual activity. The mere fact that there has been prior intimacy or sexual activity does not, by itself, imply consent to future acts.
- **Age:** The State of Texas considers sexual intercourse with a person under the age of 17 to be unlawful. A person who engages in sexual contact with a minor, as described in the Texas Penal Code, does so without effective consent as defined by the University’s Sexual Misconduct Policy. Specifically, there is no consent under the University’s Sexual Misconduct Policy where one Party (the “minor”) is under the age of seventeen, and the other Party is more than three years older than the minor. Reports received that allege sexual contact with a person under the age of 17 will be reported to Midwestern State University Police, the City of Wichita Falls Police Department (or appropriate law enforcement agency if the act occurred outside of Wichita Falls), or both, as this conduct could constitute sexual abuse of children.

B. Force

“Force” is the use or threat of physical violence to overcome an individual’s freedom of will to choose whether or not to participate in sexual activity or provide consent. Consent obtained by force is not valid.

For the use of force to be demonstrated, there is no requirement that a Complainant resist the sexual advance or request. However, evidence of resistance by the Complainant will be viewed as a clear demonstration of a lack of consent.

C. Intimidation

“Intimidation” is the use of implied threats to overcome an individual’s freedom of will to choose whether or not to participate in sexual activity or provide consent. Consent obtained by intimidation is not valid.

D. Coercion

“Coercion” is the use of pressure to compel another individual to initiate or continue sexual activity against that individual’s will. Consent obtained through coercion is not valid.

Coercion can include a wide range of behaviors, including unwanted pressure, intimidation, manipulation, threats, and blackmail. A person’s words or conduct are sufficient to constitute coercion if they wrongfully impair another individual’s freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include continuously pressuring someone (“wearing them down” to engage in sexual activity), threatening to “out” someone based on sexual orientation, gender identity, or gender expression (whether true or not) and threatening to harm oneself if the other Party does not engage in the sexual activity. When someone indicates verbally or physically that they do not want to engage in a particular sexual activity, that they want to stop a particular activity, or that they do not want to go past a certain point of sexual interaction, continued activity or pressure beyond that point can be coercive. The University will evaluate the following in determining whether coercion was used: (a) the frequency of the application of pressure, (b) the intensity of the pressure, (c) the degree of isolation of the person being pressured, and (4) the duration of the pressure.

E. Incapacitation

“Incapacitation” is a state where an individual cannot make an informed and rational decision to engage in sexual activity because of a lack of conscious understanding of the fact, nature, or extent of the act (e.g., to understand the who, what, when, where, why, or how of the sexual interaction) and/or is physically helpless. For example, an individual is incapacitated, and therefore unable to give consent, if the individual is asleep, unconscious, or otherwise unaware that sexual activity is occurring. An individual will also be considered incapacitated if the person cannot understand the nature of the activity or communicate due to a mental or physical condition.

Incapacitation may result from the use of alcohol, drugs, or other medication. Consumption of alcohol or other drugs alone is insufficient to establish incapacitation.

The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs impacts an individual’s: (1) decision-making ability; (2) awareness of consequences; (3) ability to make informed judgments; and/or (4) capacity to appreciate the nature and the quality of the act.

It shall not be a valid excuse that the Respondent believed that the Complainant affirmatively consented to the sexual activity if the Respondent knew or reasonably should have known that the Complainant was unable to consent to the sexual activity under any of the following circumstances: (a) the Complainant was asleep or unconscious; (b) the Complainant was incapacitated due to the influence of drugs, alcohol, or medication, so that the Complainant could not understand the fact, nature, or extent of the sexual activity; or (c) the Complainant was unable to communicate due to a mental or physical condition.

Whether the Respondent reasonably should have known that the Complainant was incapacitated will be evaluated using an objective reasonable person standard. The fact that the Respondent was actually unaware of the Complainant's incapacity is irrelevant to this analysis, particularly where the Respondent's failure to appreciate the Complainant's incapacitation resulted from the Respondent's failure to take reasonable steps to determine the Complainant's incapacitation or where the Respondent's own incapacitation (from alcohol or drugs) caused the Respondent to misjudge the Complainant's incapacity.

It is the responsibility of each Party to be aware of the intoxication level of the other Party before engaging in sexual activity. In general, sexual activity while under the influence of alcohol or other drugs poses a risk to all Parties. If there is any doubt as to the level or extent of the other individual's intoxication, it is safest to forgo or cease any sexual contact or activity.

Being intoxicated by drugs or alcohol is no defense to any violation of this Policy and does not diminish one's responsibility to obtain consent.

F. Retaliation

Retaliation means any adverse action taken against a person for making a good faith report of sexual misconduct or other forms of prohibited conduct or participating in any proceeding under this policy. Retaliation includes threatening, intimidating, harassing, coercing or any other conduct that would discourage a reasonable person from engaging in activity protected under this policy. Retaliation may be present even where there is a finding of "no responsibility" on the allegations of Sexual Misconduct or other prohibited behavior. Retaliation does not include good faith complaints filed with the University.

G. Complicity

Complicity is any act taken with the purpose of aiding, facilitating, promoting or encouraging the commission of an act of sexual misconduct or other forms of prohibited conduct by another person. The University reserves the right to investigate organizations affiliated with the University if the University knows or reasonably discovers that an organization facilitated the sexual abuse, harassment or physical violence against an individual based on their sex or gender.

H. Complainant

The person reporting prohibited conduct, who can be either the victim or a third party.

I. Employee

Categories of individuals employed at Midwestern State University include:

- Faculty
- Staff
- Full-Time and Part-Time
- Adjunct
- Student Employees

- Graduate Assistants
- Teachers
- Any other vendor or employee designated by the University to be an employee per contract or other designation

J. FERPA

The Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232g; 34 C.F.R. Part 99.

K. Gender and Sex

Often used synonymously, however, the terms have different meanings. “Sex” refers to whether a person anatomically is male or female, e.g., “he’s a boy” or “she’s a girl” whereas “gender” refers to either someone’s innate sense of being male or female or their presentation as male or female.

L. Gender Bias

A preformed negative opinion or attitude toward a person or group of persons based on their actual or perceived gender, e.g., male or female.

M. Gender Identity

A person’s internal sense of being male, female, or a combination of both; that internal sense of a person’s gender may be different from the person’s gender at birth. *Note: A transgender person may express their gender identity through gender characteristics, such as clothing, hair, voice, mannerisms, or behaviors that do not conform to the gender-based expectations of society.*

N. Gender Identity Bias

A preformed negative opinion or attitude toward a person or group of persons based on their actual or perceived gender identity, e.g., bias against transgender or gender non-conforming individuals.

O. Gender Non-Conforming

A person who does not conform to the gender-based expectations of society, e.g., a woman dressed in traditionally male clothing, or a man wearing makeup.

P. Preponderance of the Evidence

A standard of proof in which the totality of the evidence offered in support of a fact is greater or more convincing than the evidence which is offered in opposition to it; given the totality of information the version of events that is more likely than not. Preponderance of the evidence is understood to require more than 50 percent certainty to determine responsibility for a policy violation (51% or greater).

Q. Respondent

The person reported to have engaged in Sexual Misconduct or other forms of prohibited conduct is the “respondent”.

R. Sexual Misconduct

A broad term that includes sex-based harassment, to include sexual harassment, sexual assault, and sexual exploitation. Other forms of prohibited conduct included with sexual misconduct include the offenses of intimate partner violence, stalking, complicity, retaliation, and gender-based harassment, intimidation, bullying and assault.

S. Student

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.

2.7 CONSENSUAL RELATIONSHIPS

It is the policy of Midwestern State University ("University") that employees with direct teaching, supervisory, advisory, or evaluative responsibility over other employees, students and/or student employees recognize and respect the ethical and professional boundaries that must exist in such situations. Consensual relationships, as defined in this policy, create conflicts of interest and/or appearances of impropriety that impair the integrity of academic and employment decisions. Such relationships also contain the potential for exploitation of the subordinate employee, student or student employee and the possible professional or academic disadvantage of third parties, and can subject both the University and individuals to the risk of liability. Therefore, the University strongly discourages consensual relationships between supervisors and subordinates, teachers and students and advisors and students. Should such a relationship develop, the teacher, supervisor or advisor has the obligation to disclose its existence to an immediate supervisor and cooperate in making alternative arrangements for the supervision, evaluation, teaching, grading, or advising of the employee, student and/or student employee. See Policy 4.118 in the MSU Policy Manual for additional information.

2.8 PRIVACY AND CONFIDENTIALITY

The University is committed to protecting the privacy of all individuals involved in the investigation and resolution of a report under this policy. The University also is committed to providing assistance to help students, employees and third parties make informed choices. With respect to any report under this policy, the University will make reasonable efforts to protect the privacy of participants, in accordance with applicable state and federal law, while balancing the need to gather information to assess the report and to take steps to eliminate Sexual Misconduct and associated prohibited misconduct, prevent its recurrence, and remedy its effects.

Privacy and confidentiality have distinct meanings under this policy.

Privacy: Privacy means that information related to a report of sexual misconduct or other forms of prohibited conduct will be shared with a limited circle of University employees who “need to know” to assist in the assessment, investigation, and resolution of the report. All Employees who are involved in the University’s response to reports of sexual misconduct or other forms of prohibited conduct receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law.

Further, the University will maintain as private any accommodations or protective measures provided to the complainant to the extent that maintaining such confidentiality would not impair the University’s ability to provide the accommodations or protective measures.

The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (“FERPA”). All documentation related to a student’s report, investigation, and resolution are protected by FERPA and will not be released, except as required by law. Non-identifying information about a report may be shared with the MSU Police Department to comply with the Clery Act. A complainant’s name will never be published in connection with the University’s obligations under the Clery Act. In addition, the University does not publish identifiable information regarding victims in the University’s Daily Crime Log or online. Any person, including a victim of sexual misconduct, may request that her or his directory information on file be removed from public sources. Complainants may request that directory information on file be removed from public sources by contacting the Title IX Coordinator at (940) 397-4213 or via email at titleix@msutexas.edu.

The privacy of an individual’s medical and related records generally is protected by the Health Insurance Portability and Accountability Act (“HIPAA”), excepting health records protected by FERPA and by Texas Penal Code. Access to an employee’s personnel records may be restricted in accordance with the applicable Texas law.

Confidentiality: Confidentiality exists in the context of laws that protect certain relationships, including with medical and clinical care providers (and those who provide administrative services related to the provision of medical and clinical care), mental health providers, counselors, and licensed and/or credentialed pastors acting in that capacity, all of whom may engage in confidential communications under Texas law. The University has designated individuals who can have privileged communications as “Confidential Employees.” When information is shared by an individual with a Confidential Employee or a community professional with the same legal protections, the Confidential Employee (and/or such community professional) cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18; and/or (iv) the employee is identified as a Campus Security Authority under the Clery Act, in which case they would need to report non-identifying aggregate data about the incident to the reporting structure of the institution. (The U.S. Department of Education does not consider the reporting of statistical data to be a breach of confidentiality. In these circumstances, the information will be captured and counted for inclusion in the University’s crime statistics and will also be assessed

for purposes of assessing the incident for potential distribution of a Timely Warning Notice as required by the Clery Act.)

Texas Education Code, Section 51.256 provides that unless waived in writing by the alleged victim, the identity of an alleged victim of an incident reported under Section 51.252:

- (1) is confidential and not subject to disclosure under Chapter 552, *Texas Government Code*; (Public Information Act) and
- (2) may be disclosed only to:
 - (A) persons employed by or under contract with the postsecondary educational institution to which the report is made who are necessary to conduct an investigation of the report or any related hearings;
 - (B) a law enforcement officer as necessary to conduct a criminal investigation of the report;
 - (C) the person or persons alleged to have perpetrated the incident, to the extent required by other law; or
 - (D) potential witnesses to the incident as necessary to conduct an investigation of the report.

A disclosure under Section 51.256 referenced above is not a voluntary disclosure for purposes of Section 552.007, *Texas Government Code* (Public Information Act). And nothing in Section 51.256 may be construed as prohibiting a victim from making a report to a law enforcement agency using the pseudonym form described by Article 57.02, *Texas Code of Criminal Procedure*.

The following classifications of individuals are Confidential Employees under University policy:

Licensed Professional Counselors who are licensed with the State of Texas whose official University responsibilities include providing mental health counseling to members of the campus community are not required by Title IX to report any information regarding an incident of sexual misconduct or other forms of prohibited conduct to the Title IX Coordinator or other University officials.

Registered Nurses/Doctors/Family Nurse Practitioners who are registered with the State of Texas and whose official University responsibilities include providing health services to members of the campus community are not required by Title IX to report any information regarding an incident of Sexual Misconduct or other forms of prohibited conduct to the Title IX Coordinator or other University officials.

Pastors University employees who are also licensed or credentialed pastors should take care to ensure students and others disclose to them while in their official church role, as disclosures outside of this would constitute notice to the institution (employees are not confidential). If the Pastor employee also advises a student organization, then that employee may have additional responsibilities to report non-identifying aggregate data to the MSU Police Department regarding numerous other types of misconduct, if such misconduct is reported to have occurred on campus owned or controlled by MSU.

Title IX uses the concept of notice, and imposes obligations for a “prompt and effective remedy” on universities when notice of a sex and/or gender harassment complaint is given to a “responsible employee.” A school has notice if a reasonable employee knew, or in the exercise of reasonable care should have known, about the harassment. Every faculty, staff, and volunteer on campus who has been identified as a responsible employee must immediately report to the Title IX Coordinator any sexual misconduct or other forms of prohibited conduct reported to them or observed by them, including the name of the complainant and respondent, if known, and all known details as a “Responsible Employee”. The University requires everyone in the campus community, including Confidential Employees, to report the suspected abuse of children (those under the age of 18). See MSU Policy 4.160 (Reporting Abuse and Neglect of Child, Elder, or Disabled Person), and MSU Policy 4.129 (Protection of Minor Children on Campus).

Texas law (*Education Code*, Chapter 51, Subchapter E-2) requires all MSU employees (except students enrolled at MSU) who, in the course and scope of employment, witness or receive information regarding the occurrence of an incident that the employee reasonably believes constitutes sexual harassment, sexual assault, dating violence, or stalking and is alleged to have been committed by or against a person who was a student enrolled at or an employee of MSU at the time of the incident shall promptly report the incident to MSU’s Title IX Coordinator or a MSU Deputy Title IX Coordinator:

- (1) Reporting Exception. A person is not required to make a report concerning:
 - (a) An incident in which the person was a victim of sexual harassment, sexual assault, dating violence, or stalking; or
 - (b) An incident of which the person received information due to a disclosure made at a sexual harassment, sexual assault, dating violence, or stalking public awareness event sponsored by a student organization affiliated with MSU.
- (2) Report Form. The report must include all information concerning the incident known to the reporting person that is relevant to the investigation and, if applicable, redress of the incident, including whether an alleged victim has expressed a desire for confidentiality in reporting the incident. Except that, an MSU employee designated by the University as a person with whom students may speak confidentially (see Section V.2.8 of this policy, *supra*) concerning sexual harassment, sexual assault, dating violence, or stalking or who receives information regarding such an incident under circumstances that render the employee’s communications confidential or privileged under other law shall, in making a report, state only the type of incident reported and may not include any information that would violate a student’s expectation of privacy. However, this does not affect the employee’s duty to report an incident under any other law.
- (3) Failure to Report or False Report
 - (a) Under *Texas Education Code*, Subchapter E-2, Section 51.255(a)(effective Jan. 1, 2019), a person commits an offense if the person:
 - i. is required to make a report under *Texas Education Code*, Section 51.252 of (see Section V.A.1 of this policy) and knowingly fails to make the report; or
 - ii. with the intent to harm or deceive, knowingly makes a report under Section 51.252 (see Section V.A.1 of this policy) that is false.

An offense under Subsection (a) is a Class B misdemeanor, except that if the offense is a Class A misdemeanor if the actor intended to conceal the incident that the actor was required to report under *Texas Education Code*, Section 51.252.

- (b) *Texas Education Code*, Section 51.255(c) requires MSU to terminate the employment of an employee whom the University determines in accordance with the University's disciplinary procedure to have committed an offense under Subsection (a).

The University shall provide an option for a student enrolled at or an employee of the institution to electronically report to the institution an allegation of sexual harassment, sexual assault, dating violence, or stalking committed against or witnessed by the student or employee, regardless of the location at which the alleged offense occurred. The electronic reporting option must: (1) enable a student or employee to report the alleged offense anonymously; and (2) be easily accessible through a clearly identifiable link on the University's Internet website home page. See *Texas Education Code*, Section 51.9365 (Electronic Reporting Option for Certain Offenses).

Incidents of sexual misconduct, or other forms of prohibited conduct under this policy, disclosed at public awareness events (see subsection (1)(b) above) such as Take Back the Night, the Clothesline Project, candlelight vigils, protests, survivor speak-outs, or other forums, are not considered reports for purposes of triggering the University's obligation to investigate any particular incident(s). Such events may, however, inform the need for campus-wide education and prevention efforts, and the University will provide information about Title IX and Clery (VAWA) rights at these events. Similarly, information disclosed during a student's participation as a subject in an Institutional Review Board approved human subjects research protocol ("IRB Research") is not considered a report of sexual misconduct or other forms of prohibited conduct for purposes of triggering the University's obligation to investigate any particular incident(s). Institutional Review Boards may, in appropriate cases, require researchers to provide such information to all Student subjects of IRB Research.

Request for Anonymity by a Complainant

Complainant requests that their identity not be shared with the respondent, or that the University not pursue an investigation, must be balanced with the University's responsibility to provide a safe and non-discriminatory environment for all University community members. The University, through the Title IX Coordinator, will take all reasonable steps to investigate and respond to the complaint consistent with the request not to share identifying information or pursue an investigation, but its ability to do so may be limited. Under these circumstances, the complainant's request will be balanced against the following factors:

- The seriousness of the conduct;
- The respective ages and roles of the complainant and respondent;
- Whether there have been other reports of sexual misconduct or other forms of prohibited conduct under this policy involving the respondent;
- Whether the circumstances suggest there is a risk of the respondent committing additional acts of sexual misconduct;

- Whether the respondent has a history of arrests or records indicating a history of violence;
- Whether the report indicates the respondent threatened further sexual violence or other violence against the complainant and/or other individuals involved;
- Whether the reported conduct was committed by multiple individuals;
- Whether the reported conduct was perpetrated with a weapon; and/or
- Whether the University possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence).

Where the University is unable to act consistent with the request of the complainant, the Title IX Coordinator will inform the complainant about the chosen course of action, which may include the University seeking disciplinary action against a respondent. Alternatively, the course of action may also include steps to eliminate the effects of the sexual misconduct or other forms of prohibited conduct and prevent its recurrence that do not involve formal disciplinary action against a respondent or revealing the identity of the complainant.

Where the University determines that it must move forward with an investigation despite a complainant's request for anonymity, the University will notify the complainant and will make reasonable efforts to protect the privacy of the complainant to the extent possible. However, certain actions that may be required as part of the University's response, including an investigation and disciplinary resolution, will involve speaking with the respondent and others who may have relevant information, in which case the complainant's identity may be disclosed. In such cases, the University will notify the complainant that it intends to move forward with an investigation, but in no event will the complainant be required to participate in any such actions undertaken by the University. The University reserves the right to act as the complainant when pursuing complaints in which the complainant is not participating.

2.9 REPORTING

Any person who experiences sexual misconduct or other forms of prohibited conduct or who is aware of a member of the University community who has been subject to sexual misconduct or other forms of prohibited conduct is strongly encouraged to contact the Title IX Coordinator and the MSU Police Department. An individual does not have to be a member of the University community to file a report under this policy. The University will take action to respond to allegations of sexual misconduct or other forms of prohibited conduct *when the University knows or reasonably should know*, based on any available information that sexual misconduct or other forms of prohibited conduct has occurred.

Complainants may simultaneously pursue criminal and University disciplinary action. The University will support complainants in understanding and assessing their reporting options. Upon receipt of a report, the University will inform individuals of their right to file (or decline to file) a criminal report as well as the availability of medical, counseling and support services, and additional interim measures to prevent contact between a complainant and a respondent (see Interim Measures). Making a report to the University does not require participation in subsequent

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University proceedings, nor is a report required for a complainant to receive support or remedial measures.

Although the University strongly encourages all members of its community to report violations of this policy to law enforcement, it is the complainant's choice whether to make such a report and victims have the right to decline involvement with the police.⁴ The University's Title IX Coordinator will assist any victim with notifying local police if they so desire.

The University shall provide an option for a student enrolled at or an employee of the institution to electronically report to the institution an allegation of sexual harassment, sexual assault, dating violence, or stalking committed against or witnessed by the student or employee, regardless of the location at which the alleged offense occurred. The electronic reporting option must: (1) enable a student or employee to report the alleged offense anonymously; and (2) be easily accessible through a clearly identifiable link on the University's Internet website home page. See *Texas Education Code*, Section 51.9365 (Electronic Reporting Option for Certain Offenses).

If the complainant would like to contact local law enforcement authorities, either of the following processes may be used:

- A complainant may choose NOT to have law enforcement contacted and no report filed BUT still may have a rape kit collected. (Note: The complainant later may file a report and may pursue criminal charges.) (Important: Police will be called to the hospital when a sexual assault is reported. You do not have to speak to them and you may still have evidence collected from your body.)
- A complainant may file a police report and ask that the investigation and charges be pursued immediately. While the prosecuting attorney is still the decision-maker in whether the perpetrator is charged criminally, the complainant can cooperate and provide as much timely cooperation and information as may be possible.

To the extent of the complainant's cooperation and consent, University offices will work cooperatively to ensure that the complainant's health, physical safety, work and academic status are protected, including taking interim measures before the final outcome of an investigation.

The University will provide resources to any person who has been a victim of sexual misconduct no matter where that conduct is reported to have occurred, and will apply disciplinary procedures to those who violate this policy, if it has jurisdiction to do so. The procedures set forth in the Investigation and Resolution section of this document afford a prompt and equitable response to reports of sexual misconduct, maintain privacy and fairness consistent with applicable legal requirements, and impose appropriate sanctions on violators of this policy.

The University provides due process to both parties involved; however, the University must ensure that steps taken to accord due process rights to the respondent do not restrict or

⁴ The Title IX Coordinator is a "Responsible Employee" under Title IX and also a "Campus Security Authority" under the Clery Act. Statistical information not including the victim's identifying information will be provided to the University official responsible for compiling the University's crime statistics for the annual security report, even if the victim chooses not to report the incident to campus police.

unnecessarily delay the Title IX protections of the complainant. The University will complete an adequate, reliable and impartial investigation of reports that are made in good faith and will provide both parties their equitable rights during this process.

Anonymous reports also are accepted and should be directed to the Title IX Coordinator. The University will respond promptly and equitably to anonymous reports, but the response may be limited if the report does not include identifying information and/or a description of the facts and circumstances. Anonymous reports that provide enough information to constitute certain criminal offenses will be reported to MSU Police for purposes of inclusion in the University's Annual Security Report and to assess whether the University should send a Timely Warning Notice as required by the Clery Act.

2.10 REPORTING TIMEFRAMES

The University encourages prompt reporting of sexual misconduct or other forms of prohibited conduct so that the University can respond promptly and equitably; however, the University does not limit the timeframe for reporting. If the respondent is no longer affiliated with the University at the time the report is made, the University will provide reasonably appropriate remedial measures, assist the complainant in identifying external reporting options, and take other reasonable steps to respond under Title IX. The University may continue to investigate for purposes of complying with Title IX and take steps to prevent the recurrence of such conduct and remedy the effects, if appropriate.

2.11 PRESERVATION OF EVIDENCE & MEDICAL ATTENTION

After an incident of sexual assault or intimate partner violence involving physical force, the victim should consider seeking medical attention as soon as possible. Victims who agree to have forensic evidence collection conducted as part of their care can locate hospitals with such emergency rooms in the *Resources* section of this policy or by calling the MSU Police Department. United Regional Healthcare Systems in Wichita Falls can complete forensic evidence recovery and preserve evidence in case the complainant decides to file a police report.

It is important that a victim of sexual assault not bathe, douche, smoke, change clothes or clean the bed/linen/area where the victim was assaulted if the offense occurred within the past 120 hours, so that evidence may be preserved. In circumstances of sexual assault, if victims do not opt for forensic evidence collection, health care providers still can treat injuries and take steps to address concerns of pregnancy and/or sexually transmitted disease. Victims of all forms of sexual misconduct are also encouraged to preserve evidence including saving text messages, instant messages, social networking pages, other communications, and keeping pictures, logs or other copies of documents, if they have any that may be useful to University investigators or campus or local police.

As time passes, evidence may dissipate or become lost or unavailable, thereby making investigation, possible prosecution, disciplinary proceedings, or obtaining protection from abuse orders related to the incident more difficult. If a victim chooses not to make a report regarding an

incident, he or she nevertheless should consider speaking with the Title IX Coordinator or local law enforcement to preserve evidence if she or he changes her/his mind later.

2.12 RETALIATION, AMNESTY & IMMUNITY

- A. **Retaliation.** Retaliation against a person who reports a potential violation under this policy, assists someone with a report of a violation, or participates in any manner in an investigation or in the resolution of a complaint made under this policy is strictly prohibited and will not be tolerated. Retaliation includes, but is not limited to threats, intimidation, reprisals and/or adverse actions related to an individual's employment or education. The University will take appropriate steps to assure that a person who in good faith reports, complains about, or participates in an investigation pursuant to this policy will not be subjected to retaliation. Individuals who believe they are experiencing retaliation are strongly encouraged to lodge a complaint with the University using the same procedure outlined in this policy.

Section 51.257 of the *Texas Education Code* provides that MSU may not discipline or otherwise discriminate against an employee who in good faith:

- (1) makes a report as required by Section 51.252; or
- (2) cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to a report made by the employee as required by Section 51.252, *Texas Education Code* (see Section V.A. 1 of this policy, supra).

Section 51.257 referenced above does not apply to an employee who:

- (1) reports an incident described by Section 51.252(a) perpetrated by the employee; or
- (2) cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to an allegation that the employee perpetrated an incident described by Section 51.252(a).

- B. **Amnesty.** Per Texas Senate Bill 969 (effective June 12, 2017), 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. Accordingly, MSU will take no disciplinary action against an enrolled student for a violation of the MSU Student Code of Conduct, occurring at or near the time of an incident, 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. 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.

This policy does not necessarily grant amnesty for criminal, civil or legal consequences for violations of federal, state or local laws. The MSU Police Department consists of sworn police officers with full arrest authority and, in some circumstances, they have discretion to exercise that authority as circumstances dictate per their training and professional experience.

- C. **Immunity.** Under *Texas Education Code*, Section 51.254, a person acting in good faith who reports or assists in the investigation of a report of an incident described by Section 51.252(a)

or who testifies or otherwise participates in a disciplinary process or judicial proceeding arising from a report of such an incident:

- (1) is immune from civil liability, and from criminal liability for offenses punishable by fine only, that might otherwise be incurred or imposed as a result of those actions; and
- (2) may not be subjected to any disciplinary action by the University at which the person is enrolled or employed for any violation by the person of the University's code of conduct reasonably related to the incident for which suspension or expulsion from the University is not a possible punishment.

This subsection (d. Immunities.) does not apply to a person who perpetrates or assists in the perpetration of the incident reported under Section 51.252.

2.13 PROTECTION ORDERS & NO CONTACT ORDERS

The following information is available through the Office of the Attorney General, State of Texas. See the off-campus resource section for contact information.

What is a Protective Order?

In Texas, a protective order is a civil court order issued to prevent continuing acts of family violence, sexual assault, human trafficking or stalking.

Family violence (sometimes called Domestic Violence) is defined as (1) any act by one member of a family or household intended to physically harm another member, (2) a serious threat of physical harm, or (3) the abuse of a child.

Family includes blood relatives or relatives by marriage, former spouses, parents (married or not) of the same child, foster parents and foster children, or any member or former member of a household (people living in the same house, related or not).

How Can a Protective Order Help?

A protective order may prohibit the offender from:

- committing further acts of family violence, sexual assault, human trafficking or stalking
- harassing or threatening the victim, either directly or indirectly by communicating the threat through another person
- going to or near a school or day care center that a child protected under the order attends

In some situations, a protective order may also include orders to: prohibit transfer or disposal of property, establish possession and visitation of a child, pay child or spousal support for a period not to exceed one year, attend mandatory counseling, vacate the residence or other specified property, if certain conditions are met. These additional provisions are not criminally enforceable. A person who violates them is not immediately arrested, but may be taken to civil court, found in contempt, fined and jailed.

Who is Eligible for a Protective Order?

If the court finds that family violence, sexual assault, human trafficking or stalking has occurred and is likely to occur again, a court may render a protective order.

Ultimately, a court must determine on a case-by-case basis whether a protective order is warranted.

How Can I Get a Protective Order?

You can apply for a protective order through the district or county attorney, a private attorney, or through a legal aid service program. The application must be filed in the county in which you or the offender lives. There are no minimum time limits to establish residency, and protective orders are available in every county in Texas.

Who May File for a Protective Order?

1. An adult member of a family or household; or
2. any adult for the protection of a child; or
3. a prosecuting attorney; or
4. the Department of Human and Regulatory Services.

The person who is the alleged victim of family violence, sexual assault, human trafficking or stalking is considered to be the "applicant."

What Information Do I Need to Provide?

When you apply for a protective order, you must supply the following information:

1. The name of each applicant (victim) and the county where each applicant (victim) resides;
2. the name, address, and county of residence of each individual who has committed family violence;
3. the offense against which protection is sought;
4. the relationship between the victim(s) and the offender;
5. a request for one or more protective orders.

The victim should file for the order as soon after the incident has occurred as possible. Additionally, if other incidents of family violence, sexual assault, human trafficking or stalking have occurred, the victim needs to provide this information to the attorney who files the protective order application.

What Does it Cost?

The applicant (victim) or an attorney representing the applicant may not be assessed a fee, cost, charge, or expense by a district or county clerk or by a sheriff, constable or other public official or employee in connection with the filing, serving, entering or for any other service including any fees for dismissing, modifying, or withdrawing a protective order, certifying copies, comparing copies to originals, court reporter fees, judicial fund fees, transferring a protective order or for any other service related to a protective order.

The court may require the offender to pay the fees incurred in connection with the protective order unless the offender shows good cause or is indigent.

How Long Does it Take to Receive and How Long Does it Remain in Effect?

Unless a later date is requested by the applicant, the court shall set a hearing date no later than 14 days after the application is filed. If, however, the court finds from the information contained in the application that there is a clear and present danger of family violence, the court may immediately issue a temporary ex parte order. The temporary order is valid for up to 20 days. Final protective orders are effective for 2 years, unless another length of time is specified.

What Happens if the Protective Order is Violated?

Call the police immediately! Remember, protective orders do not offer complete protection. No piece of paper can protect you from all instances of violence.

Law enforcement agencies are notified of all protective orders issued in their area and they are required to maintain a list of those orders. If an offender violates the order and law enforcement is notified, officials will act to arrest the offender and seek to have charges filed. If a person violates the protective order in the presence of law enforcement, the offender must be arrested immediately. In cases involving the violation of a protective order, including an ex parte order, the offender may be punished for contempt of court by a fine of as much as \$500 or up to six months in jail or both. In cases of violation, excluding ex parte orders, the offender may be punished by a fine of as much as \$4,000 or jail for up to one year or both.

How can the MSU assist me?

The Title IX Coordinator and/or members of the MSU Police Department are available to assist individuals seeking a protective order and will coordinate safety plans in collaboration with Student Affairs or Human Resources, when appropriate. The University complies with Texas law in recognizing orders of protection and encourages any person who obtains an order of protection from Texas or any other state to provide a copy to MSU Police and the Title IX Coordinator. A complainant may then meet with MSU Police, Human Resources, or the Title IX Coordinator to develop a Safety Action Plan, which is a plan for the University and the victim to reduce risk of harm while on campus or coming and going from campus. This plan may include, but is not limited to: escorts, special parking arrangements, changing classroom location, etc.

What is a No Contact from the University?

No Contact directives from the University can serve as an interim measure from the University's Title IX Coordinator or designee. This prohibition of contact is between a respondent and a complainant including, but not limited to, in person and/or via third party, phone, text, or any form of social media.

Regardless of whether a complainant elects to pursue a criminal report, the University will assist a complainant and will provide each complainant with a written explanation of his/her rights. If a No Contact order is placed, the Title IX Coordinator will also assess any other interim measures with both parties that may include, but is not limited to: escorts, special parking arrangements, changing classroom location, etc.

2.14 INTERIM MEASURES

The University may take interim measures at any point during an investigation. These measures may be both remedial (designed to address a complainant's safety and well-being and continued access to educational opportunities) or protective (involving action against a respondent). Interim measures are designed to eliminate the hostile environment, prevent its recurrence and remedy its effects. These measures may include, but are not limited to, no contact orders, changes in housing assignment for the respondent and/or complainant, academic accommodations, changes in supervisor or work location, removal from campus housing or grounds, social restrictions, changes in parking locations, increased security, and/or emotional and other support. An interim suspension, i.e. suspension from classes, work and other privileges or activities, or from the University, may also be instituted until resolution of a case.

Remedial measures are available regardless of whether a complainant pursues a complaint or investigation under this policy. The University will maintain the privacy of any remedial and protective measures provided under this policy to the extent practicable and will promptly address any violation of the protective measures. The Title IX Coordinator has the discretion to impose and/or modify any interim measure based on all available information, and is available to meet with a complainant or respondent to address any concerns about the provision of interim measures.

2.15 ADMINISTRATIVE REPORTING

- A. Not less than once every three months, MSU's Title IX Coordinator shall submit to the President of the University a written report on the reports received under Section V.2.8 (Employee Reporting Responsibilities) of this policy, including information regarding:
 - (1) the investigation of those reports;
 - (2) the disposition, if any, of any disciplinary processes arising from those reports; and
 - (3) the reports for which the University determined not to initiate a disciplinary process, if any.
- B. The Title IX Coordinator or Deputy Title IX Coordinator shall immediately report to the President of the University an incident reported to the coordinator under Section V.2.8 if the coordinator has cause to believe that the safety of any person is in imminent danger as a result of the incident.
- C. Subject to Subsection (d), at least once during each fall or spring semester, the President of the University shall submit to the MSU Board of Regents and post on the institution's Internet website a report concerning the reports received under Section V.2.8 of this policy. The report:
 - (1) may not identify any person; and
 - (2) must include:
 - (a) the number of reports received under Section V.2.8;
 - (b) the number of investigations conducted as a result of those reports;
 - (c) the disposition, if any, of any disciplinary processes arising from those reports;
 - (d) the number of those reports for which the University determined not to initiate a disciplinary process, if any; and

(e) any disciplinary actions taken under Section V.2.8.

2.16 COMPLIANCE

In accordance with Section 51.258, *Texas Education Code*, the President of the University shall annually certify in writing to the Texas Higher Education Coordinating Board that the University is in substantial compliance with Subchapter E-2 (Reporting Incidents of Sexual Harassment, Sexual Assault, Dating Violence, and Stalking).

2.17 ANNUAL REVIEW

The University will review and update this policy, as appropriate, by August 1 of each year. The University will evaluate, among other things, any changes in legal requirements, existing University resources, and the resolution of cases from the preceding year (including, but not limited to, timeframes for completion and sanctions and remedies imposed).

3.0 INVESTIGATION & RESOLUTION OF ALLEGED VIOLATIONS GOVERNING EMPLOYEES

All persons involved in the intake through the resolution of complaints are trained annually on the issues related to domestic violence, dating violence, sexual assault, and stalking and instructed on how to conduct effective investigations and administer a conduct process that protects the safety of victims, promotes accountability and respects the rights of all parties to a complaint. In proceedings under this policy, the standard of proof used to determine whether a violation of this policy has occurred is a preponderance of evidence, which means it is more likely than not the sexual misconduct or other form(s) of prohibited conduct occurred.

The University reserves the right to act as the complainant and bring reports forward against an employee, consistent with the jurisdiction detailed in the *Sexual Misconduct and Interpersonal Violence* policy.

3.1 PROCESS

Initial Assessment

- Upon receiving a report (either verbally or in writing), the Title IX Coordinator will conduct an initial assessment of the available information, the complainant's immediate and ongoing safety and well-being; the incident of conduct at issue; any risk of harm to the parties, any other individuals, or the broader campus community; the existence of severe and persistent or pervasive conduct, including evidence of a pattern, use of a weapon or other predatory conduct; and the necessity for any interim measures or accommodations.
- The Title IX Coordinator (or designee) will provide the complainant with a Notice of Complainant's Rights and Options and initiate remedial actions, interim measures or accommodations on behalf of the complainant, as necessary.
- The Title IX Coordinator will consider the interest of the complainant and the complainant's expressed preference for matter of resolution or the initiation of an investigation to determine if disciplinary action is warranted.

- If the complainant is reluctant to pursue the complaint, the Title IX coordinator will document the complainant's reluctance and determine whether the complaint should still be pursued and whether sufficient independent evidence could support the complaint without the participation of the complainant. A reluctant complainant will be notified if a complaint is investigated without the complainant's participation. If a reluctant complainant initially does not wish to pursue or participate in an investigation, the complainant may later change his/her mind and contact the Title IX Coordinator to request an investigation be initiated under the policy at the time of initial complaint.
- Upon initial assessment by the Title IX Coordinator, if the report and/or intake do not support a possible violation of policy, the report will be closed with no further action. The Title IX Coordinator (or designee) will notify the complainant when this occurs.

Mediation as an Option

- In consideration of the interest of the complainant and the complainant's expressed preference for manner of resolution, a case may be addressed through mediation.
- Mediation may only be utilized for lower level cases that are neither criminally or civilly actionable and do not involve non-consensual sexual intercourse or non-consensual sexual contact.
- Mediation is a process where an impartial third party facilitates communication and negotiation between the parties to the complaint and promotes voluntary decision making. The goals include providing the opportunity for the complainant and respondent to define and clarify issues, understand different perspectives, identify interests, explore and assess possible solutions and reach mutually satisfactory agreements, when desired.
- If both parties explicitly agree to the outcome(s) of mediation, the process, ends. A written copy (e.g. email or mail) of the mediation outcome(s) will be provided by the mediator to the complainant, respondent and Title IX Coordinator.
- If the complainant and/or respondent do not fully agree to the outcome(s) of a mediation and there appears to be possible violation of policy, the Title IX coordinator will initiate an investigation.

Informal Resolution by Respondent's Acceptance of Responsibility

- At the onset or during the process of an investigation, it is possible a respondent may accept responsibility for a violation of University policy. Should this occur, the Title IX Coordinator will present the Deputy Title IX Coordinator for Employees with the respondent's acceptance of responsibility. Together, they will determine any appropriate sanction(s).
- The respondent's acceptance of responsibility and any sanction(s) determined shall be simultaneously conveyed to the complainant and respondent in writing (e.g. email or mail). (Private information may also be disclosed to appropriate University personnel if deemed necessary by the Title IX Coordinator including, but not limited to, a Department Chair, College Dean, Provost, direct supervisor, unit director, appropriate Vice President, etc.)

Investigation

- Upon initial assessment, if the report and/or intake appear to be a possible violation of policy and is not otherwise resolved through mediation or informal resolution, the Title IX Coordinator

(or designee) will assign the case for investigation. Said investigation's goal is to determine if there is reasonable cause to charge the accused individual with a violation of University policy.

(Private information may also be disclosed to appropriate University personnel if deemed necessary by the Title IX Coordinator or designee including, but not limited to, a Deputy Title IX Coordinator, a Department Chair, College Dean, Provost, direct supervisor, unit director, appropriate Vice President, etc.)

- The University will notify the complainant and respondent in writing (e.g. email or mail) when an investigation is opened.
- The University, through a trained investigator(s), will conduct an adequate, reliable, and impartial investigation into the facts of the case, and will interview the complainant, respondent, witnesses and/or others who may have relevant information; collect any other evidence deemed relevant to the case including electronic or other records, or communications between the parties or witnesses (via voice-mail, text message, email and social media sites), photographs or video (including those stored on computers and smartphones), medical records (subject to the consent of the applicable party); and any other relevant evidence or witnesses.
- Absent consent of the applicable party, medical and/or counseling records are privileged and confidential documents that will never be required to be disclosed during the investigation of a report under this policy. However, a party may choose to share medical and/or counseling records as part of an investigation.
- The sexual history of a complainant or respondent will never be used to prove character or reputation. Evidence related to the prior sexual history of either of the parties is generally not relevant to the determination of a policy violation and will be considered only in limited circumstances. For example, if the existence of consent is at issue, the sexual history between the parties may be relevant to help understand the manner and nature of communications between the parties and the context of the relationship, which may have bearing on whether consent was sought and given during the incident in question. However, even in the context of a relationship, consent to one sexual act does not, by itself, constitute consent on a subsequent occasion. In addition, prior sexual history may be relevant to explain the presence of a physical injury or to help resolve another question raised by the report. The investigator(s) will determine the relevance of such information.
- Prior or subsequent conduct of a respondent may be considered in determining pattern, knowledge, intent, motive, or absence of mistake. For example, evidence of a pattern of sexual misconduct or other forms of prohibited conduct by a respondent may be deemed relevant to the determination of responsibility for the sexual misconduct or other forms of prohibited conduct under investigation. The determination of relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially like the conduct under investigation or indicates a pattern of similar misconduct. The investigator(s) will determine the relevance of such information. The University will provide the complainant and respondent timely and equal access to information that will be used during any informal and formal investigation process.
- The University will provide the complainant and respondent equal opportunity to participate in an investigation process and present evidence and /or witnesses.
- No party (i.e. the complainant and respondent) will be given the opportunity to cross-examine or directly question the other party. A complainant or respondent may submit written questions to the Title IX Coordinator for consideration in an investigation. Upon review, those questions deemed appropriate will be forwarded to the assigned Title IX Investigator(s) for inclusion in the investigation.

- At the initial conclusion of the investigation, the investigator(s) will deliver a report to the Title IX Coordinator, including a recommendation as to whether, using the preponderance of the evidence standard, sexual misconduct or other forms of prohibited conduct occurred.
- The Title IX Coordinator will review the investigator's report and, if necessary, direct the investigator(s) to conduct further investigation.
- At the conclusion of the investigation, the Title IX Coordinator will provide written notification to both parties that the investigation is complete and a summary of the fact-finding information related to the case.
- The complainant and respondent may offer any additional comment or evidence to the Title IX Coordinator at this time. The complainant and respondent will have at least three business days from when the notification the investigation is complete was sent to provide additional comment or evidence to the Title IX Coordinator.

Findings

- Upon receipt of the investigation report and any additional information from the complainant and/or respondent, or no comments, the Title IX Coordinator will review the investigation report and all related documents and additional comments from the parties and make a determination, using the preponderance of the evidence, whether or not the respondent is responsible for a violation of University policy. This review and determination of responsibility by the Title IX Coordinator is not open to the public and neither the complainant, respondent nor witnesses are permitted to be present.
- If a respondent is found responsible for a violation of University policy, the Title IX Coordinator will present the Deputy Title IX Coordinator for Employees with the determination. Together, they will determine any appropriate sanction(s).
- The Title IX Coordinator, together with the Deputy Title IX Coordinator for Employees, will communicate decisions regarding responsibility and any sanction(s) to employees.
- The outcome of the investigation, the rationale for the findings, and any sanction(s) determined shall be simultaneously conveyed to the complainant and respondent in writing (e.g. email or mail). (Private information may also be disclosed to appropriate University personnel if deemed necessary by the Title IX Coordinator including, but not limited to, a Department Chair, College Dean, Provost, direct supervisor, unit director, appropriate Vice President, etc.)

Appeals

- The complainant and the respondent have the right to appeal determinations regarding responsibility and/or sanctions to the appropriate Vice President or Provost. The Vice President (or Provost) receiving the appeal will consult with the Vice President for Student Affairs throughout the process, who in their Title IX oversight role will be able to provide consistent guidance on the appeals process. Appeals must be submitted in writing to the appropriate Vice President or Provost within five (5) business days from when the notice of outcome was sent. Appellate opportunity is equitable, that is both parties have the right to appeal. Appeals are considered only on the basis of extraordinary need or circumstance due to one or more of the following considerations:
 1. The discovery of new information/evidence that was unavailable at the time of the investigation and could substantially change the outcome of the investigation (evidence that

was not discovered during the investigation, rather than evidence that was not shared and the party now wants shared).

2. Procedural error that resulted in an unfair outcome of the investigation.
 3. Bias on the part of the investigator(s) or Title IX Coordinator, which deprived the process of impartiality.
 4. Sanction(s) inconsistent with the finding(s).
- The written appeal must contain the specific consideration(s) which form the basis of the appeal and include any supporting information and/or evidence deemed relevant by the appealing party.
 - When an appeal is received the Vice President, or Provost, will inform the Title IX Coordinator. The Title IX Coordinator will notify the complainant and respondent in writing (e.g. email or mail) that an appeal was received.
 - The decision to modify determinations regarding responsibility and/or sanctions rests solely with the Vice President or Provost. As part of the decision-making process for an appeal, the Vice President may utilize the services of external investigators and/or consultants, or other methods deemed appropriate to ensure a fair, reliable, and impartial decision. (Private Information may be disclosed to appropriate personnel as deemed necessary by the Vice President for Student Affairs.)
 - The outcome of the appeal shall be simultaneously conveyed to the complainant and respondent in writing (e.g. email or mail) by the Vice President or Provost, or their designee.

3.2 ADVISORS

A complainant and respondent each have the right to be advised by one advisor of their choice, at their own expense, at any stage of the process, and to be accompanied by that advisor at any meeting or hearing.

An advisor may only consult and advise his or her advisee. An advisor may not speak for the advisee at any meeting nor may the advisor direct questions to any investigator, party, or witness in the process. Should the advisor become disruptive during any meeting, the Coordinator or investigator may ask the advisor to leave.

No advisor will be given the opportunity to cross-examine or to directly question the other party to a complaint. The advisor, on behalf of the complainant or respondent, may submit written questions to the Title IX Coordinator for consideration in the investigation. Upon review, those questions deemed appropriate will be forwarded to the Title IX investigator for inclusion in the investigation.

An advisor can be anyone of the party's choosing; the University will not limit or restrict the party's selection. An attorney can fill this role of advisor; however, the sexual misconduct investigation process is not comparable to a criminal or civil court proceeding; therefore, the role of an attorney as an advisor is different in the University's process than it is in a court of law. The University's process is strictly administrative in nature and is not a legal proceeding. An attorney advisor may lend support to the party in preparing their case and attend meetings. An attorney advisor may attend all meetings in which their party is present. An attorney advisor may advise and assist their party throughout the process of providing evidence to the investigators.

The complainant and respondent are the University's primary points of contact for communication during the investigation and resolution of sexual misconduct complaints; in a legal proceeding,

communications often occur only between attorneys and without a client's participation. The University's communication during a sexual misconduct investigation process is focused on, and directed to, the complainant and respondent, regardless of legal representation. MSU will not unnecessarily delay a meeting due to the availability of an advisor.

3.3 TIMELINE

The investigation, resolution, and any appeal under this policy will be conducted in a thorough and timely manner designed to provide all parties with resolution. A typical investigation will not exceed 60 days, although this timeframe may be extended if additional time is necessary to ensure the integrity and completeness of the investigation; to comply with a request for delay by external law enforcement while they gather evidence for a criminal investigation; to accommodate the availability of witnesses and/or investigators; to account for complexities of a case, including the number of witnesses, volume of information provided by the parties, timeliness of communication between the parties/witnesses and investigators; or for other legitimate reasons. The Title IX Coordinator will notify the parties in writing of timeframe extensions and their reason(s).

The complainant and respondent will be notified throughout the process by the Title IX Coordinator (or designee) in regards to major timeframes of the process, which include the start of an investigation, any delay in the investigation, the conclusion of an investigation, summary of fact-finding information, the outcome of an investigation with any determination of responsibility and assigned sanctions, and the outcome of any related appeals.

3.4 COORDINATION WITH LAW ENFORCEMENT

The Title IX Coordinator (or designee) will contact any law enforcement agency that is conducting its own investigation into the same report/complaint to inform that agency that a University investigation is also in progress; to ascertain the status of the criminal investigation; and to determine the extent to which any evidence collected by law enforcement may be available to the University in its investigation. At the request of law enforcement, the Coordinator may temporarily delay the University investigation while an external law enforcement agency is gathering evidence. When notified that law enforcement has completed the evidence-gathering stage of its criminal investigation, the Coordinator will advise the parties of the resuming University investigation.

3.5 OBLIGATION TO PROVIDE TRUTHFUL INFORMATION

Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in connection with an incident of sexual misconduct or other form of prohibited conduct is prohibited and subject to disciplinary action under University policies. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are not later substantiated.

Under *Texas Education Code*, Subchapter E-2, Section 51.255(a), a person commits an offense if the person:

- (1) is required to make a report under *Texas Education Code*, Section 51.252 and knowingly fails to make the report (see the subsection concerning Employees Reporting

- Responsibilities under Section 2.8 of this policy); or
- (2) with the intent to harm or deceive, knowingly makes a report under Section 51.252 that is false (see the subsection concerning Employees Reporting Responsibilities under Section 2.8 of this policy).

An offense is a Class B misdemeanor, except that if the offense is a Class A misdemeanor if the actor intended to conceal the incident that the actor was required to report under *Texas Education Code*, Section 51.252.

Texas Education Code, Section 51.255(c) requires MSU to terminate the employment of an employee whom the University determines in accordance with the University's disciplinary procedure to have committed an offense under Subsection (a) above.

3.6 DISCIPLINARY ACTION

Sexual misconduct is a serious offense and such violations are subject to any combination sanctions, up to termination of employment. Refer to the following university policies governing faculty and staff disciplinary procedures:

FACULTY: University Policy 3.125, Faculty Due Process

STAFF: University Policy 3.228, Staff Employee Disciplinary Procedures

3.7 RECORDKEEPING

The University will retain all records related to reports of sexual misconduct or other forms of prohibited conduct under this policy in a locked storage area in the office of the Title IX Coordinator for a period of seven years, regardless of case outcome. The University will destroy all case records after the applicable record retention period.

3.8 NON-RETALIATION

It is unlawful under Title IX and a violation of University policy to retaliate against any individual who has brought a good-faith report of sexual misconduct or other form of prohibited conduct, or who has assisted in the investigation of a report of sexual misconduct. Retaliation, whether actual or threatened, destroys the sense of community and trust that is critical to a learning and working environment. The University considers acts or threats of retaliation in response to such disclosures or participation, a serious violation of University policy which may result in disciplinary action, up to and including dismissal.

Retaliation includes threatening, intimidating, harassing, coercing or any other conduct that would discourage a reasonable person from engaging in activity protected under this policy. Retaliation may be present even where there is a finding of "no responsibility" on the allegations of prohibited conduct. Retaliation does not include good faith actions lawfully pursued in response to a report of prohibited conduct.

NOTE: Adverse actions do not include petty slights and annoyances, such as stray negative comments in an otherwise positive or neutral evaluation, "snubbing" a colleague, not talking

to a student, or negative comments that are justified by a student or employee's poor academic or work performance or history.

If you believe that you are the subject of retaliation, you should promptly report your concerns to the Title IX Coordinator.

4.0 INVESTIGATION & RESOLUTION OF ALLEGED VIOLATIONS GOVERNING STUDENTS

[Note: this section was approved by the Board of Regents at the August 2018 meeting, and is outlined in the current edition of the Student Handbook.]

All persons involved in the intake through the resolution of complaints are trained annually on the issues related to domestic violence, dating violence, sexual assault, and stalking and instructed on how to conduct effective investigations and administer a conduct process that protects the safety of victims, promotes accountability and respects the rights of all parties to a complaint. In proceedings under this policy, the standard of proof used to determine whether a violation of this policy has occurred is a preponderance of evidence, which means it is more likely than not the sexual misconduct or other form(s) of prohibited conduct occurred.

The University reserves the right to act as the complainant and bring reports forward against a student consistent with the jurisdiction detailed in the Code of Student Conduct.

4.1 PROCESS

Initial Assessment

- Upon receiving a report (either verbally or in writing), the Title IX Coordinator will conduct an initial assessment of the available information, the complainant's immediate and ongoing safety and well-being; the incident of conduct at issue; any risk of harm to the parties, any other individuals, or the broader campus community; the existence of severe and persistent or pervasive conduct, including evidence of a pattern, use of a weapon or other predatory conduct; and the necessity for any interim measures or accommodations.
- The Title IX Coordinator (or designee) will provide the complainant with a Notice of Complainant's Rights and Options and initiate remedial actions, interim measures or accommodations on behalf of the complainant, as necessary.
- The Title IX Coordinator will consider the interest of the complainant and the complainant's expressed preference for matter of resolution or the initiation of an investigation to determine if disciplinary action is warranted.
- If the complainant is reluctant to pursue the complaint, the Title IX coordinator will document the complaint's reluctance and determine whether the complaint should still be pursued and whether sufficient independent evidence could support the complaint without the participation of the complainant. A reluctant complainant will be notified if a complaint is investigated without the complainant's participation. If a reluctant complainant initially does not wish to pursue or participate in an investigation, the complainant may later change his/her mind and contact the Title IX Coordinator to request an investigation be initiated under the policy at the time of initial complaint.

- Upon initial assessment by the Title IX Coordinator, if the report and/or intake do not support a possible violation of policy, the report will be closed with no further action. The Title IX Coordinator (or designee) will notify the complainant when this occurs.

Mediation as an Option

- In consideration of the interest of the complainant and the complainant's expressed preference for manner of resolution, a case may be addressed through mediation.
- Mediation may only be utilized for lower level cases that are neither criminally or civilly actionable and do not involve non-consensual sexual intercourse or non-consensual sexual contact.
- Mediation is a process where an impartial third party facilitates communication and negotiation between the parties to the complaint and promotes voluntary decision making. The goals include providing the opportunity for the complainant and respondent to define and clarify issues, understand different perspectives, identify interests, explore and assess possible solutions and reach mutually satisfactory agreements, when desired.
- If both parties explicitly agree to the outcome(s) of mediation, the process, ends. A written copy (e.g. email or mail) of the mediation outcome(s) will be provided by the mediator to the complainant, respondent and Title IX Coordinator.
- If the complainant and or respondent do not fully agree to the outcome(s) of a mediation and there appears to be possible violation of policy, the Title IX coordinator will initiate an investigation to determine if disciplinary action is warranted.

Informal Resolution by Respondent's Acceptance of Responsibility

- At the onset or during the process of an investigation, it is possible a respondent may accept responsibility for a violation of University policy. Should this occur, the Title IX Coordinator will present the Deputy Title IX Coordinator for Students with the respondent's acceptance of responsibility. Together, they will determine any appropriate sanction(s).
- The respondent's acceptance of responsibility and any sanction(s) determined shall be simultaneously conveyed to the complainant and respondent in writing (e.g. email or mail). (Private information may also be disclosed to appropriate University personnel if deemed necessary by the Title IX Coordinator including, but not limited to, a Department Chair, Athletics, Housing, Registrar, Student Affairs, etc.)

Investigation

- If the report and/or intake appear upon initial assessment to be possible violation of policy and is not otherwise resolved through mediation or informal resolution (above), the Title IX Coordinator (or designee) will assign the case for investigation to determine if there is reasonable cause to charge the accused individual with a violation of University policy, and to determine what specific policy violation(s) should be alleged as part of the complaint. (Private information may also be disclosed to appropriate University personnel if deemed necessary by the Title IX Coordinator or designee including, but no limited to, a Deputy Title IX Coordinator, a Department Chair, Athletics, Student Affairs, etc.)

- The University will notify the complainant and respondent in writing (e.g. email or mail) when an investigation is opened.
- The University, through a trained investigator(s), will conduct an adequate, reliable and impartial investigation into the facts of the case and will interview the complainant, respondent, witnesses and/or others who may have relevant information, and collect any other evidence deemed relevant to the case including electronic or other records or communications between the parties or witnesses (via voice-mail, text message, email and social media sites), photographs or video (including those stored on computers and smartphones), medical records (subject to the consent of the applicable party) and any other relevant evidence or witnesses.
- Absent consent of the applicable party, medical and/or counseling records are privileged and confidential documents that will never be required to be disclosed during the investigation of a report under this policy. However, a party may choose to share medical and/or counseling records as part of an investigation.
- The sexual history of a complainant or respondent will never be used to prove character or reputation. Evidence related to the prior sexual history of either of the parties is generally not relevant to the determination of a policy violation and will be considered only in limited circumstances. For example, if the existence of consent is at issue, the sexual history between the parties may be relevant to help understand the manner and nature of communications between the parties and the context of the relationship, which may have bearing on whether consent was sought and given during the incident in question. However, even in the context of a relationship, consent to one sexual act does not, by itself, constitute consent on a subsequent occasion. In addition, prior sexual history may be relevant to explain the presence of a physical injury or to help resolve another question raised by the report. The investigator(s) will determine the relevance of such information.
- Prior or subsequent conduct of a respondent may be considered in determining pattern, knowledge, intent, motive, or absence of mistake. For example, evidence of a pattern of sexual misconduct or other forms of prohibited conduct by a respondent may be deemed relevant to the determination of responsibility for the sexual misconduct or other forms of prohibited conduct under investigation. The determination of relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially like the conduct under investigation or indicates a pattern of similar misconduct. The investigator(s) will determine the relevance of such information.
- The University will provide the complainant and respondent timely and equal access to information that will be used during any informal and formal investigation process.
- The University will provide the complainant and respondent equal opportunity to participate in an investigation process and present evidence and /or witnesses.
- No party (i.e. the complainant and respondent) will be given the opportunity to cross-examine or directly question the other party. A complainant or respondent may submit written questions to the Title IX Coordinator for consideration in an investigation. Upon review, those questions deemed appropriate will be forwarded to the assigned Title IX Investigator(s) for inclusion in the investigation.
- At the initial conclusion of the investigation, the investigator(s) will deliver a report to the Title IX Coordinator, including a recommendation as to whether, using the preponderance of the evidence standard, sexual misconduct or other forms of prohibited conduct occurred.

- The Title IX Coordinator will review the investigator's report and, if necessary, direct the investigator(s) to conduct further investigation.
- At the conclusion of the investigation, the Title IX Coordinator will provide written notification to both parties that the investigation is complete and a summary of the fact-finding information related to the case.
- The complainant and respondent may offer any additional comment or evidence to the Title IX Coordinator at this time. The complainant and respondent will have at least three business days from when the notification the Investigation is complete was sent in order to provide additional comment or evidence to the Title IX Coordinator.

Findings

- Upon receipt of the investigation report and any additional information from the complainant and/or respondent, or no comments, the Title IX Coordinator will review the investigation report and all related documents and additional comments from the parties and make a determination using the preponderance of the evidence of whether or not the respondent is responsible for a violation of University policy. This review and determination of responsibility by the Title IX Coordinator is not open to the public and neither the complainant, respondent nor witnesses are permitted to be present.
- If a respondent is found responsible for a violation of University policy, the Title IX Coordinator will present the Deputy Title IX Coordinator for Students with the determination. Together, they will determine any appropriate sanction(s).
- The Title IX Coordinator, together with the Deputy Title IX Coordinator for Students, will communicate decisions regarding responsibility and any sanction(s) to students.
- The outcome of the investigation, the rationale for the findings, and any sanction(s) determined shall be simultaneously conveyed to the complainant and respondent in writing (e.g. email or mail). (Private information may also be disclosed to appropriate University personnel if deemed necessary by the Title IX Coordinator including, but not limited to, a Department Chair, Athletics, Housing, Registrar, Student Affairs, etc.)

Appeals

- The complainant and the respondent have the right to appeal determinations regarding responsibility and/or sanctions to the Vice President for Student Affairs. Appeals must be submitted in writing to the Vice President for Student Affairs within five (5) business days from when the notice of outcome was sent. Appellate opportunity is equitable, that is both parties have the right to appeal. Appeals are considered only on the basis of extraordinary need or circumstance due to one or more of the following considerations:
 1. The discovery of new information/evidence that was unavailable at the time of the investigation and could substantially change the outcome of the investigation (evidence that was not discovered during the investigation, rather than evidence that was not shared and the party now wants shared).
 2. Procedural error that resulted in an unfair outcome of the investigation.
 3. Bias on the part of the investigator(s) or Title IX Coordinator, which deprived the process of impartiality.

4. Sanction(s) inconsistent with the finding(s).
- The written appeal must contain the specific consideration(s) which form the basis of the appeal and include any supporting information and/or evidence deemed relevant by the appealing party.
 - When an appeal is received, the Vice President for Student Affairs will inform the Title IX Coordinator. The Title IX Coordinator will notify the complainant and respondent in writing (e.g. email or mail) that an appeal was received.
 - The decision to modify determinations regarding responsibility and/or sanctions rests solely with the Vice President for Student Affairs. As part of the decision-making process for an appeal, the Vice President may utilize the services of external investigators and/or consultants, or other methods deemed appropriate to ensure a fair, reliable, and impartial decision. (Private Information may be disclosed to appropriate personnel as deemed necessary by the Vice President for Student Affairs.)
 - The outcome of the appeal shall be simultaneously conveyed to the complainant and respondent in writing (e.g. email or mail) by the Vice President for Student Affairs, or their designee.

4.2 ADVISORS

A complainant and respondent each have the right to be advised by one advisor of their choice, at their own expense, at any stage of the process and to be accompanied by that advisor at any meeting or hearing in which the complainant or the respondent is required to be present.

An advisor may only consult and advise his or her advisee. An advisor may not speak for the advisee at any meeting nor may the advisor direct questions to any investigator, party, or witness in the process. Should the advisor become disruptive during any meeting, the Coordinator or investigator may ask the advisor to leave.

No advisor will be given the opportunity to cross-examine or to directly question the other party to a complaint. The advisor, on behalf of the complainant or respondent, may submit written questions to the Title IX Coordinator for consideration in the investigation. Upon review, those questions deemed appropriate will be forwarded to the Title IX investigator for inclusion in the investigation.

An advisor can be anyone of the party's choosing and the University will not limit or restrict who that person can be. An attorney can fill this role of advisor; however, the sexual misconduct investigation process is not comparable to a criminal or civil court proceeding, and therefore, the role of an attorney as an advisor is different in the University's process than it is in a court of law. The University's process is strictly administrative in nature and is not a legal proceeding. An attorney advisor may lend support to the party in preparing their case and attend meetings. An attorney advisor may lend support to the party in preparing their case and attend meetings. An attorney advisor may attend all meetings in which their party is present. An attorney advisor may advise and assist their party throughout the process of providing evidence to the investigators.

The complainant and respondent are the University's primary points of contact for communication during the Investigation and resolution of sexual misconduct complaints; in a legal proceeding, communications often occur only between attorneys and without a client's participation. The University's

communication during a sexual misconduct investigation process is focused on, and directed to, the complainant and respondent, regardless of legal representation.

MSU will not unnecessarily delay a meeting due to the availability of an advisor.

4.3 TIMELINE

The investigation, resolution, and any appeal under this policy will be conducted in a thorough and timely manner designed to provide all parties with resolution. A typical investigation will not exceed 60 days, although this timeframe may be extended if additional time is necessary to ensure the integrity and completeness of the investigation, to comply with a request by external law enforcement for delay to gather evidence for a criminal investigation, to accommodate the availability of witnesses and/or investigators, to account for complexities of a case, including the number of witnesses, volume of Information provided by the parties, timeliness of communication between the parties/witnesses and investigators, or for other legitimate reasons. The Title IX Coordinator will notify the parties in writing of timeframe extensions and their reason(s). The complainant and respondent will be notified throughout the process by the Title IX Coordinator (or designee) in regards to major timeframes of the process, which include the start of an investigation and alleged policy violation, any delay in the investigation, the conclusion of an investigation and summary of fact-finding Information, the outcome of an investigation with any determination of responsibility and assigned sanctions, and the outcome of any related appeals.

4.4 COORDINATION WITH LAW ENFORCEMENT

The Title IX Coordinator (or designee) will contact any law enforcement agency that is conducting its own investigation into the same report/complaint to inform that agency that a University investigation is also in progress; to ascertain the status of the criminal investigation; and to determine the extent to which any evidence collected by law enforcement may be available to the University in its investigation. At the request of law enforcement, the Coordinator may delay the University investigation temporarily while an external law enforcement agency is gathering evidence. The Coordinator will advise the resuming of the University investigation when notified that law enforcement has completed the evidence-gathering stage of its criminal investigation.

4.5 OBLIGATION TO PROVIDE TRUTHFUL INFORMATION

Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in connection with an Incident of sexual misconduct or other forms of prohibited conduct is prohibited and subject to disciplinary action under University policies. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are not later substantiated.

Under *Texas Education Code*, Subchapter E-2, Section 51.255(a), a person commits an offense (Class B misdemeanor) if the person with the intent to harm or deceive, knowingly makes a report under Section 51.252 that is false.

4.6 SANCTIONS

Sexual misconduct is a serious offense and such violations are subject to any combination of conduct sanctions. Students found responsible for non-consensual sexual intercourse 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.

4.7 RECORDKEEPING

The University will retain all student records related to reports of sexual misconduct or other forms of prohibited conduct in the Office of Student Rights and Responsibilities for a period of seven years, regardless of case outcome. The University will destroy all case records after the applicable record retention period.

4.8 NON-RETALIATION

It is unlawful under Title IX and a violation of University policy to retaliate against any individual who has brought a good-faith report of sexual misconduct or other form of prohibited conduct, or who has assisted in the investigation of a report of sexual misconduct. Retaliation, whether actual or threatened, destroys the sense of community and trust that is critical to a learning and working environment. The University considers acts or threats of retaliation in response to such disclosures or participation, a serious violation of University policy which may result in disciplinary action, up to and including dismissal.

Retaliation includes threatening, intimidating, harassing, coercing or any other conduct that would discourage a reasonable person from engaging in activity protected under this policy. Retaliation may be present even where there is a finding of “no responsibility” on the allegations of prohibited conduct. Retaliation does not include good faith actions lawfully pursued in response to a report of prohibited conduct.

If you believe that you are the subject of retaliation, you should promptly report your concerns to the Title IX Coordinator.

VI. Related Statutes, Rules, Policies, Forms, and Websites

Related Statutes/Rules:

Federal:

- *Title IX of the Education Amendments of 1972*, 20 U.S.C. §§ 1681–1688 and its implementing regulations, 34 C.F.R. Part 106.
- *Title VII of the Civil Rights Act of 1964*, 42 U.S.C. §§2000e–2000e-17 and its implementing regulations, 29 C.F.R. §1604 11.
- *Clery Act*, 20 U.S.C Section 1092(f) and its implementing regulations, 34 C.F.R. Part 668.
- *Family Educational Rights and Privacy Act (FERPA) Regulations*, 34 C.F.R. Part 99.

State:

- *Texas Education Code*, Title 3, Subtitle A, Subchapter Z, Section 51.9363 (Sexual Assault Policy).

- *Texas Education Code*, Title 3, Subtitle A, Subchapter Z, Section 51.9365 (Electronic Reporting Option for Certain Offenses).
- *Texas Education Code*, Title 3, Subtitle A, Subchapter Z, Section 51.971 (Compliance Program).
- *Texas Government Code*, Title 4, Subtitle B, Chapter 420, Subchapter A, Section 420.001 et seq. (Sexual Assault Prevention and Crisis Services Act).
- *Texas Penal Code*, Title 5, Chapter 22, Section 22.01 (Assault).
- *Texas Penal Code*, Title 5, Chapter 22, Section 22.011 (Sexual Assault).
- *Texas Penal Code*, Title 9, Chapter 42, Section 42.072 (Stalking).
- *Texas Code of Criminal Procedure*, Title 1, Chapter 56 (Rights of Crime Victims), Subchapter A (Crime Victims' Rights), Section 56.06 (Forensic Medical Examination for Sexual Assault Victim Who Has Reported Assault; Costs); Section 56.065 (Medical Examination for Sexual Assault Victim Who Has Not Reported Assault; Costs); Chapter 7A (Protective Order for Victims of Sexual Assault or Abuse, Stalking, of Trafficking).
- *Texas Family Code*, Title 4, Subtitle A, Chapter 71, Section 71.004 (Family Violence).
- *Texas Family Code*, Title 4, Subtitle A, Chapter 71, Section 71.0021 (Dating Violence).
- *Texas Family Code*, Title 4, Chapter 85 (Issuance of Protective Order)

State Law Definitions

If a person would like to press criminal charges for an alleged violation of any of the below criminal laws, or would like to seek an order of protection, the definitions contained in the *Texas Penal Code* would apply; not the internal definitions used in this policy.

Dating Violence: “an act, other than a defensive measure to protect oneself, by an individual that is committed against a victim with whom the actor has or has had a dating relationship; or because of the victim’s marriage to or dating relationship with an individual with whom the actor is or has been in a dating relationship or marriage; and is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the victim in fear of imminent physical harm, bodily injury, assault, or sexual assault. ‘Dating relationship’ means a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on consideration of the length of the relationship; the nature of the relationship; and the frequency and type of interaction between the persons involved in the relationship. A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a ‘dating relationship.’” *Texas Family Code*, Chapter 71, [Section 71.0021](#).

Domestic (Family) Violence: “an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself, or abuse by a member of a family or household toward a child of the family or household, or dating violence.” *Texas Family Code*, Chapter 71, [Section 71.004](#).

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Indecent Assault (Groping): “A person commits an offense if, without the other person’s consent and with the intent to arouse or gratify the sexual desire of any person, the person: (1) touches the anus, breast, or any part of the genitals of another person; (2) touches another person with the anus, breast, or any part of the genitals of any person; (3) exposes or attempts to expose another person’s genitals, pubic area, anus, buttocks, or female areola; or (4) causes another person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, or feces of any person.” *Texas Penal Code*, Chapter 22, [Section 22.012](#).

Sexual Assault: “a person commits an offense if the person (1) intentionally or knowingly causes the penetration of the anus or sexual organ of another person by any means, without that person’s consent; causes the penetration of the mouth of another person by the sexual organ of the actor, without that person’s consent; or causes the sexual organ of another person, without that person’s consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or (2) intentionally or knowingly causes the penetration of the anus or sexual organ of a child by any means; causes the penetration of the mouth of a child by the sexual organ of the actor; causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or causes the mouth of a child to contact the anus or sexual organ of another person, including the actor.

A sexual assault is without the consent of the other person if: the actor compels the other person to submit or participate by the use of physical force, violence or coercion; the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat; the other person has not consented and the actor knows the other person is unconscious or physically unable to resist; the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it; the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring; the actor has intentionally impaired the other person’s power to appraise or control the other person’s conduct by administering any substance without the other person’s knowledge; the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat; the actor is a public servant who coerces the other person to submit or participate; or the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person’s emotional dependency on the actor. ‘Child’ means a person younger than 17 years of age. ‘Spouse’ means a person who is legally married to another.” *Texas Penal Code*, Chapter 22, [Section 22.011](#).

Stalking: “a person who, on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct that: (1) the person knows or reasonably believes the other person will regard as threatening including bodily injury or death for the other person, bodily injury or death for a member of the other person’s family or household or for an individual with whom the other person has a dating relationship, or fear that an offense will be committed against the other person’s property, and

(2) causes the other person, a member of the other person's family or household, or an individual with whom the other person has a dating relationship to be placed in fear of bodily injury or death or fear that an offense will be committed against the other person's property, and (3) would cause a reasonable person to fear bodily injury or death for himself or herself, or bodily injury or death for a member of the person's family or household or for an individual with whom the person has a dating relationship, or fear that an offense will be committed against the person's property. A fact finder may find that different types of conduct described above, if engaged in on more than one occasion, constitute conduct that is engaged in pursuant to the same scheme or course of conduct." *Texas Penal Code*, Chapter 42, Section 42.072.

Related MSU Resources and Policies:

- 4.118: Consensual Relationships
- 3.124: Dismissal of Tenured Faculty for Cause
- 3.125: Faculty Due Process
- 3.126: Dismissal of Non-Tenured Faculty Without Notice
- 3.114: Faculty Performance Review
- 3.214: Staff Performance Rating
- 3.216: Termination/Discharge (Staff)
- 3.228: Staff Employee Disciplinary Procedures
- MSU Code of Student Conduct – Sexual Misconduct Policy
- 2019-2020 Midwestern State University Student Handbook

Related Forms:

For a complete list of University and community resources, visit the Title IX website:
titleix@msutexas.edu

VII. Responsible Office(s)

Contact: Title IX Coordinator
Phone: 940-397-4213
E-mail: titleix@msutexas.edu

Contact: Human Resources Director
Phone: 940-397-4221
E-mail: human.resources@msutexas.edu

To send a comment to the policy owner click here

VIII. Revision History

- 05/12/1989: MSU Policy 3.347A (Sexual Harassment) is adopted by the Board of Regents.
- 11/10/1989: MSU Policy 3.347A (Sexual Harassment) is renumbered by the Board of

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Regents following a comprehensive review of the Policies and Procedures Manual; it is now Policy 4.161.

11/10/2000: Necessary changes are made only in wording according to the transition from divisions to colleges (division director changed to dean or chair, division changed to college or program, coordinator to chair, etc.).

08/04/2006: The policy is revised and renamed: MSU Policy 4.161 (Sex Discrimination and Sexual Harassment)

- Edited for clarity
- Added paragraph 1 to definition: 1. Sex discrimination is defined as conduct directed at a specific individual or group of identifiable individuals that subjects the individual or group to treatment that adversely affects their employment or education on account of sex
- Added “Sexual harassment is a form of sex discrimination”
- Paragraph D renamed paragraph C
- Paragraph D renamed Informal Disposition of Complaint
-added more paragraphs to this section labeled 2-7
- added paragraph E. Formal Disposition of Complaint
- added paragraph F. Right of Appeal
- added paragraph G. Disposition of Hearing Committee’s Decision
- deleted previous paragraphs F. Acceptance of Hearing Committee’s report and G. Right of Appeal
- Added to beginning of paragraph on monitoring, “A copy of a sexual harassment/discrimination complaint and a report on the final disposition to remedy the complaint will be filed with the EEO coordinator”

4.161 Human Resources

SEX DISCRIMINATION AND SEXUAL HARASSMENT

Date Adopted/Most Recent Revision: 08/04/2006

A. Policy Statement It is the policy of Midwestern State University to prohibit discrimination on the basis of sex, including sexual harassment. Sex discrimination and harassment on the basis of sex constitute violations of Title IX of the Education Amendments Act of 1972 and of Title VII of the Civil Rights Act of 1964. Any faculty, staff, or student will be subject to disciplinary action for violation of this policy.

B. Definition

1. Sex discrimination is defined as conduct directed at a specific individual or group of identifiable individuals that subjects the individual or group to treatment that adversely affects their employment or education on account of sex.
2. Sexual harassment is a form of sex discrimination. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:
 - a. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or education, or
 - b. submission to or rejection of such conduct by an individual is used as a basis for academic or employment decisions affecting that individual, or
 - c. such conduct has the purpose or effect of substantially interfering with an individual's academic or professional performance or creating an intimidating, hostile or offensive employment, educational or living environment.

C. Confidentiality

Cases involving sexual harassment will be considered sensitive, and special attention to issues of confidentiality will be given. Dissemination of information relating to the complaint will be limited, in order that the privacy of all individuals involved is safeguarded as fully as possible. Every effort will be made to protect the complainant from retaliatory action by the respondent or other individuals.

D. Informal Disposition of Complaint

A person who believes he/she is the victim of sex discrimination or sexual harassment is encouraged to seek an informal resolution. All complaints will be considered informal until they are filed in writing through the prescribed formal process.

1. Any member of the MSU community (faculty, staff, or student) having a complaint of sex discrimination or sexual harassment should notify his/her immediate supervisor within ten (10) calendar days of knowledge of the alleged conduct. If the complaint is against the immediate supervisor, the complainant should contact the next higher administrative level. The immediate supervisor for an employee is the university official to whom the employee reports. The immediate supervisor for a student is the chairperson of the academic department where the alleged incident

occurred, for incidents that occur within an academic setting, and the dean of students for incidents that occur in a non-academic setting.

2. The complainant's supervisor, dean of students, or department chairperson, receiving the complaint, hereinafter referred to as the administrator, will counsel with the complainant to determine the extent of the alleged sex discrimination or sexual harassment.
3. The administrator will verbally inform the EEO coordinator (director of human resources) that an informal complaint of sex discrimination or sexual harassment has been filed.
4. The administrator will review the evidence presented by the complainant and will determine if there is cause to believe that a sex discrimination or sexual harassment violation occurred.
5. If in the judgment of the administrator a violation did not occur, the complainant will be so advised and given a verbal explanation of the reason for the determination.
6. If it is determined by the administrator that there is sufficient justification to believe that sex discrimination or sexual harassment did occur, the administrator will notify the respondent that an informal complaint has been filed against him/her and that the complainant wishes to seek an informal resolution. The administrator will inform the respondent that retaliation against the complainant is prohibited and offer the respondent an opportunity to confirm or rebut the charge. Both parties will meet with the administrator, together or separately, and try to reach a mutually agreeable resolution. No formal investigation is involved in the informal resolution process.
7. The administrator shall document the informal process and any informal resolution. Such documentation shall be kept confidential to the extent permitted by law, and shall be retained by the administrator and the EEO coordinator.

E. Formal Disposition of Complaint

A complaint may be taken through the formal process. An informal resolution meeting shall not be considered a precondition for the filing of a formal written complaint. A formal complaint must be submitted in writing within ninety (90) calendar days of the occurrence of the alleged violation. A complainant shall send a formal written complaint to the appropriate person, hereinafter designated as the investigator.

1. The designated investigator will be:
 - a. the Vice President for Student Affairs and Enrollment Management for a student's complaint arising from incidents which occurred in a non-academic setting,
 - b. the relevant dean of the college for a student's complaint arising from incidents which occurred in an academic setting, or
 - c. the relevant dean of the college or department director (equivalent budgetary unit head), as appropriate, for an employee other than a student.

2. The written complaint must contain the following information:
 - a. complainant's name, address, telephone number, e-mail address,
 - b. name of respondent,
 - c. date(s), place(s), and time(s) of alleged violation,
 - d. detailed description of specific conduct in violation of policy,
 - e. copies of any documents pertaining to the incident(s),
 - f. names of any witnesses to the violation,
 - g. resolution action requested by complainant,
 - h. other relevant information, and
 - i. signature of complainant and date of filing.
3. The investigator will inform the EEO coordinator (director of human resources) that a formal complaint has been filed and provide the EEO coordinator with a copy of the complaint.
4. Within five (5) working days of receipt of a formal written complaint, the appropriate investigator receiving the complaint will send the complainant a written acknowledgement of receipt of the complaint.
5. An investigation will be initiated if it is determined that the formal complaint is complete, timely, and within the scope of the policy. If it is determined that the complaint does not meet the requirements of this policy and the university will not proceed with an investigation, the complainant will be notified in writing by the investigator. The complainant may appeal the determination to not proceed with the investigation to the complainant's senior administrator, in writing, within ten (10) working days of the notification. If the decision to dismiss is upheld, the decision is final. If the decision is overturned, the investigation will continue.
6. If it is determined that the university will proceed to investigate the complaint, the investigator will give the respondent written notification of the investigation. The investigator will inform the respondent that retaliation against the complainant is prohibited and offer the respondent an opportunity to file a written response within ten (10) working days.
7. The investigator will interview both the complainant and the respondent and persons who are considered to have pertinent factual information relevant to the complaint. Findings will be based on the totality of circumstances related to the incident or conduct and will be considered on the basis of severity, frequency, and nature of the offense. The investigation will be kept confidential and on a need-to-know basis.

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8. The investigator will provide a written statement of findings with supporting documentation and a decision for disposition of the complaint to the EEO coordinator and to the senior administrator representing the department of the complainant.
9. The investigator will provide written notification of the decision to the complainant and to the respondent within fifteen (15) working days after the conclusion of the investigation.
10. Decisions involving disciplinary action will be administered in accordance with university disciplinary policies. The supervisor of the respondent will be notified by the EEO coordinator if disciplinary sanctions are imposed upon an employee of the university.

F. Right of Appeal

If the complainant or respondent is not satisfied with the disposition of the formal complaint, either party may appeal to the president for a grievance hearing.

1. The grievant must send a formal written request for a hearing to the president within ten (10) working days of receipt of the written notification of the disposition of the formal complaint. The request for a hearing must be signed by the grievant. Within ten (10) working days of the date filed, a hearing date shall be set.
2. The president shall appoint an ad hoc committee to review the formal complaint, hear the appeal, and render a decision. The hearing committee shall consist of five (5) persons who are employees of the university, two (2) persons from each classification (faculty, staff, or student) of the principals involved and a chairperson designated by the president. Each principal involved shall have one (1) preemptive challenge.
3. The complainant, respondent, administrator, investigator, and EEO coordinator shall, in advance of the hearing, receive a copy of the written appeal filed with the president. All affected parties shall receive a written notice of the date, time, and place of the hearing. A copy of the written complaint and the appeal will be furnished to the hearing committee.
4. All formal hearings shall be closed to the public except as otherwise required by law. The president's designee shall preside and conduct the business of the hearing. The principals shall have the opportunity to present their cases through testimony, relevant evidence, and witnesses.
5. The chair of the grievance committee shall within five (5) working days of the conclusion of the hearing submit a written report of the committee's decision to the complainant, the respondent, the EEO coordinator, and to the president of the university.

G. Disposition of Hearing Committee's Decision

The president of the university will receive the committee's report and may review the matter on the record only. Unless the president acts within ten (10) working days following receipt of the committee's written report, the grievance committee's decision is upheld. The decision of the president is final.

H. Retaliation

Retaliation in any form against individuals who report cases of sexual harassment or sex discrimination,

whether those individuals are directly or indirectly involved, is strictly prohibited and will result in appropriate disciplinary action up to and including possible suspensions or termination.

I. False Charges

False charges of sexual harassment/discrimination, if proven, may result in disciplinary action against the complainant by the university or civil action against the complainant by the respondent if the charges were known to have been false at the time they were made.

J. Sexual Harassment/Discrimination Awareness Training

Within thirty (30) calendar days of their respective dates of employment, all new employees must receive appropriate training in sexual harassment/discrimination awareness and be given a copy of the university's sexual harassment policy. Such training, which will be conducted by the Human Resources Department, must include the definitions of sexual harassment/discrimination, instruction in how to recognize and report instances of sexual harassment/discrimination, and the penalties for violating the university's sexual harassment/discrimination policies. All university employees must receive this training at least once every two (2) years and there must be a statement signed by the employee acknowledging completion in his or her personnel file.

Monitoring

A copy of a sexual harassment/discrimination complaint and a report on the final disposition to remedy the complaint will be filed with the EEO coordinator. It will be the responsibility of the EEO coordinator to conduct appropriate follow-up and monitoring of all sex discrimination and sexual harassment complaints to ensure that recommended corrective actions have been taken and that the offensive behavior has not been repeated.