



Minnesota State Colleges and Universities
Board Policies
Chapter 1 - System Organization and Administration
Section B - Equal Education and Employment
Opportunity

1B.3 Sexual Violence Policy

Part 1. Policy statement. Sexual violence is an intolerable intrusion into the most personal and private rights of an individual, and is prohibited at Minnesota State Colleges and Universities. Minnesota State Colleges and Universities is committed to eliminating sexual violence in all forms and will take appropriate remedial action against any individual found responsible for acts in violation of this policy. Acts of sexual violence may also constitute violations of criminal or civil law, or other Board Policies that may require separate proceedings. To further its commitment against sexual violence, Minnesota State Colleges and Universities provides reporting options, an investigative and disciplinary process, and prevention training or other related services as appropriate.

Subpart A. Application of policy to students, employees, and others. This policy applies to all Minnesota State Colleges and Universities students and employees and to others, as appropriate, where incidents of sexual violence on system property have been reported. Reports of sexual violence committed by a student at a location other than on system property are covered by this policy pursuant to the factors listed in Board Policy 3.6, Part 2. Reports of sexual violence committed by a system employee at a location other than system property are covered by this policy.

Reports of sexual violence committed on system property by individuals who are not students or employees are subject to appropriate actions by Minnesota State Colleges and Universities, including, but not limited to, pursuing criminal or civil action against them.

Allegations of discrimination or harassment are governed by Board Policy 1B.1.

Subpart B. College and university policies. Each Minnesota State Colleges and Universities college and university shall adopt a clear, understandable written policy on sexual violence that applies to its campus community, including, but not limited to, its students and employees. The policy content and implementation shall be consistent with the standards in this Policy and Procedure 1B.3.1.

Part 2. Definitions. The following definitions apply to this Policy and Procedure 1B.3.1.

Subpart A. Sexual violence. Sexual violence includes a continuum of conduct that includes sexual assault, and non-forcible sex acts, as well as aiding acts of sexual violence.

Subpart B. Sexual assault. “Sexual assault” means an actual, attempted, or threatened sexual act with another person without that person’s consent. Sexual assault is often a

criminal act that can be prosecuted under Minnesota law, as well as form the basis for discipline under Minnesota State Colleges and Universities student conduct codes and employee disciplinary standards. Sexual assault includes but is not limited to:

1. Involvement without consent in any sexual act in which there is force, expressed or implied, or use of duress or deception upon the victim. Forced sexual intercourse is included in this definition, as are the acts commonly referred to as “date rape” or “acquaintance rape.” This definition also includes the coercing, forcing, or attempting to coerce or force sexual intercourse or a sexual act on another.
2. Involvement in any sexual act when the victim is unable to give consent.
3. Intentional and unwelcome touching, or coercing, forcing, or attempting to coerce or force another to touch a person’s intimate parts (defined as primary genital area, groin, inner thigh, buttocks, or breast).
4. Offensive sexual behavior that is directed at another such as indecent exposure or voyeurism.

Subpart C. Consent. Consent is informed, freely given and mutually understood. If coercion, intimidation, threats, and/or physical force are used, there is no consent. If the complainant is mentally or physically incapacitated or impaired so that the complainant cannot understand the fact, nature, or extent of the sexual situation, there is no consent; this includes conditions due to alcohol or drug consumption, or being asleep or unconscious. Silence does not necessarily constitute consent, and past consent of sexual activities does not imply ongoing future consent. Whether the respondent has taken advantage of a position of influence over the complainant may be a factor in determining consent.

Subpart D. Non-forcible sex acts. Non-forcible acts include unlawful sexual acts where consent is not relevant, such as sexual contact with an individual under the statutory age of consent, as defined by Minnesota law, or between persons who are related to each other within degrees wherein marriage is prohibited by law.

Subpart E. System property. “System property” means the facilities and land owned, leased, or under the primary control of Minnesota State Colleges and Universities, its Board of Trustees, system office, colleges and universities.

Subpart F. Employee. “Employee” means any individual employed by Minnesota State Colleges and Universities, its colleges and universities and system office, including student workers.

Subpart G. Student. The term “student” includes all persons who:

1. Are enrolled in one or more courses, either credit or non-credit, through a college or university;
2. Withdraw, transfer or graduate, after an alleged violation of the student conduct code;
3. Are not officially enrolled for a particular term but who have a continuing relationship with the college or university; or
4. Have been notified of their acceptance for admission or have initiated the process of application for admission or financial aid; or
5. Are not college or university employees and are not enrolled in the institution but live in a college or university residence hall.



Minnesota State Colleges and Universities System Procedures Chapter 1B – Equal Education and Employment Opportunity

Procedure 1B.3.1 Sexual Violence Procedure

Part 1. Procedure objective. This procedure is designed to further implement Minnesota State Colleges and Universities Board Policy 1B.3 prohibiting sexual violence. This procedure provides a process through which individuals alleging sexual violence may pursue a complaint.

This procedure is intended to protect the rights and privacy of both the complainant and respondent and other involved individuals, as well as to prevent retaliation and reprisal.

Part 2. Definitions.

Subpart A. Policy definitions. The definitions in Policy 1B.3 also apply to this procedure.

Subpart B. Campus security authority. Campus security authority includes the following categories of individuals at a college or university:

1. A college or university security department;
2. Other individuals who have campus security responsibilities in addition to a college or university security department;
3. Any individual or organization identified in a college or university security policy as an individual or organization to which students and employees should report criminal offenses;
4. An official of a college or university who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings; advisors to recognized student organizations, and athletic coaches. Professional counselors, whose official responsibilities include providing mental health counseling, and who are functioning within the scope of their license or certification are not included in this definition.

Part 3. Reporting incidents of sexual violence.

Subpart A. Prompt reporting encouraged. Complainants of sexual violence may report incidents at any time, but are strongly encouraged to make reports promptly in order to best preserve evidence for a potential legal or disciplinary proceeding.

Complainants are strongly encouraged to report incidents of sexual violence to law enforcement for the location where the incident occurred. Complainants are also encouraged to contact the local victim/survivor services office, counseling and health care providers, and Minnesota State Colleges and Universities campus security authorities for appropriate action.

Subpart B. Assistance in reporting. When informed of an alleged incident of sexual violence, all Minnesota State Colleges and Universities students and employees are urged to encourage and assist complainants, as needed, to report the incident to local law enforcement, local victim/survivor services and campus security authorities.

Minnesota State Colleges and Universities campus security authorities, when informed of an alleged incident of sexual violence, shall promptly assist the complainant, including providing guidance in filing complaints with outside agencies including law enforcement; obtaining appropriate assistance from victim/survivor services or medical treatment professionals; and filing a complaint with campus officials responsible for enforcing the student conduct code or employee conduct standards.

When appropriate, Minnesota State Colleges and Universities may pursue legal action against a respondent, including, but not limited to, trespass or restraining orders, in addition to disciplinary action under the applicable student or employee conduct standard.

Part 4. Confidentiality of reporting.

Subpart A. Confidential reports. Because of laws concerning government data contained in Minnesota Statutes §13, the Minnesota Government Data Practices Act, colleges and universities cannot guarantee confidentiality to those who report incidents of sexual violence except where those reports are privileged communications with licensed health care professionals. Some off-campus reports also may be legally privileged by law, such as reports to clergy, private legal counsel, or health care professionals.

Subpart B. Reports to campus security authorities. Complainants of sexual violence may contact any campus security authority for appropriate assistance or to report incidents. Absolute confidentiality of reports made to campus security authorities cannot be promised. However, campus security authorities shall not disclose personally identifiable information about a complainant of sexual violence without the complainant's consent except as may be required or permitted by law. There may be instances in which Minnesota State Colleges and Universities determines it needs to act regardless of whether the parties have reached a personal resolution or if the complainant requests that no action be taken. In such instances, Minnesota State Colleges and Universities will investigate and take appropriate action, taking care to protect the identity of the complainant and any other reporter in accordance with this procedure.

Subpart C. Required Reports. Any campus security authority or any college or university employee with supervisory or student-advising responsibility who has been informed of an alleged incident of sexual violence must follow college or university procedures for making a report for the annual crime statistics report. In addition, the campus security authority shall report to other school officials, as appropriate, such as the campus affirmative action office, the campus office responsible for administering the student conduct code, and/or the designated Title IX compliance coordinator, in order to initiate any applicable investigative or other resolution procedures.

Campus security authorities may be obligated to report to law enforcement the fact that a sexual assault has occurred, but the name or other personally identifiable information about

the complainant will be provided only with the consent of the complainant, except as may be required or permitted by law.

Part 5. Policy notices.

Subpart A. Distribution of policy to students. Each college or university shall, at a minimum, at the time of registration make available to each student information about its sexual violence policy and procedure, and shall additionally post a copy of its policy and procedure at appropriate locations on campus at all times. A college or university may distribute its policy and procedure by posting on an Internet or Intranet Web site, provided all students are directly notified of how to access the policy by an exact address, and that they may request a paper copy.

Subpart B. Distribution of policy to employees. All colleges, universities and the system office shall make available to all employees a copy of its sexual violence policy and procedure. Distribution may be accomplished by posting on an Internet or Intranet Web site, provided all employees are directly notified of the exact address of the policy and procedure and that they may receive a paper copy upon request.

Subpart C. Required Notice. Each college or university shall have a sexual violence policy, which shall include the notice provisions in this part.

1. **Notice of complainant options.** Following a report of sexual violence the complainant shall be promptly notified of:
 - a. Where and how to obtain immediate medical assistance; complainants should be informed that timely reporting and a medical examination within 72 hours are critical in preserving evidence of sexual assault and proving a criminal or civil case against a perpetrator. Complainants should be told, however, that they may report incidents of sexual violence at any time.
 - b. Where and how to report incidents of sexual violence to local law enforcement officials, and/or appropriate Minnesota State Colleges and Universities system contacts for employees, students and others. Such contacts should be identified by name, location and phone number for 24-hour availability, as applicable.
 - c. Resources for where and how complainants may obtain on- or off-campus counseling, mental health or other support services.

2. **Notice of complainant rights.** Complainants shall be notified of the following:
 - a. Their right to file criminal charges with local law enforcement officials in sexual assault cases;
 - b. Rights under the crime victims bill of rights, Minnesota Statutes §611A.01 – 611A.06, including the right to assistance from the Crime Victims Reparations Board and the commissioner of public safety;
 - c. Availability of prompt assistance from campus officials, upon request, in notifying the appropriate campus investigating authorities and law enforcement officials, and, at the direction of law enforcement authorities, assistance in obtaining, securing and maintaining evidence in connection with a sexual violence incident;
 - d. Assistance available from campus authorities in preserving for a sexual violence complainant materials relating to a campus disciplinary proceeding;

- e. That complaints of incidents of sexual violence made to campus security authorities shall be promptly and appropriately investigated and resolved;
- f. That, at a sexual assault complainant's request, the college, university or system office may take action to prevent unwanted contact with the alleged assailant, including, but not limited to, transfer of the complainant and/or the respondent to alternative classes, or a work site or to alternative college-owned housing, if such alternatives are available and feasible.

Subpart D. Complaint procedure. Each college and university shall notify students of the process used to investigate and resolve allegations of sexual violence, as provided in part 6, subpart H.

Part 6. Investigation and disciplinary procedures.

Subpart A. Immediate action. A college or university may, at any time during the report/complaint process, reassign or place on administrative leave an employee alleged to have violated this policy, in accordance with the procedures in System Procedure 1B.1.1. Such action must be consistent with the applicable collective bargaining agreement or personnel plan.

A college or university may summarily suspend or take other temporary measures against a student alleged to have committed a violation of this policy, in accordance with System Procedure 1B.1.1 or Board Policy 3.6.

Subpart B. General principles. Procedures used in response to a complaint of sexual violence should avoid requiring complainants to follow any plan of action, to prevent the possibility of re-victimization. Mediation or other negotiated dispute resolution processes between the complainant and the respondent concerning allegations of sexual violence shall be used only if both parties voluntarily consent. No party shall be required to participate in mediation.

College and university investigation and disciplinary procedures concerning allegations of sexual violence against employees or students shall:

1. Be respectful of the needs and rights of individuals involved;
2. Proceed as promptly as possible;
3. Permit a student complainant and a student respondent to have the same opportunity to have an appropriate support person or advisor present at any interview or hearing, in a manner consistent with the governing procedures and applicable data practices law;
4. Employees shall have the right to representation consistent with the appropriate collective bargaining agreement or personnel plan;
5. Be conducted in accordance with applicable due process standards and privacy laws;
6. Inform both the complainant and respondent of the outcome in a timely manner, as

permitted by applicable privacy law.

The past sexual history of the complainant and respondent shall be deemed irrelevant except as that history may directly relate to the incident being considered.

A respondent's use of any drug, including alcohol, judged to be related to an offense may be considered to be an exacerbating rather than mitigating circumstance.

Subpart C. Relationship to parallel proceedings. In general, Minnesota State Colleges and Universities investigation and disciplinary procedures for allegations of sexual violence will proceed independent of any action taken in criminal or civil courts. A college or university need not, and in most cases should not, delay its proceedings while a parallel legal action is on-going. If a college or university is aware of a criminal proceeding involving the alleged incident, they may contact the prosecuting authority to coordinate when feasible. Criminal or civil court proceedings are not a substitute for Minnesota State Colleges and Universities procedures.

Subpart D. False statements prohibited. Minnesota State Colleges and Universities takes allegations of sexual violence very seriously and recognizes the consequences such allegations may have on a respondent as well as the complainant. Any individual who knowingly provides false information regarding the filing of a complaint or report of sexual violence or during the investigation of such a complaint or report may be subject to discipline or under certain circumstances, legal action. Complaints of conduct that are found not to violate policy are not assumed to be false.

Subpart E. Withdrawn complaint. If a complainant no longer desires to pursue a complaint through the college or university's proceeding, the college or university reserves the right to investigate and resolve the complaint as it deems appropriate.

Subpart F. Minnesota State Colleges and Universities discretion to pursue certain allegations. Minnesota State Colleges and Universities reserves discretion whether to pursue alleged violations of policy under appropriate circumstances, including, but not limited to, a determination that an effective investigation is not feasible because of the passage of time, or because the respondent is no longer a student or employee of the college or university.

Subpart G. Minnesota State Colleges and Universities discretion to deal with policy violations disclosed in investigation. Minnesota State Colleges and Universities reserves the right to determine whether to pursue violations of policy by students or employees other than the respondent, including a complainant or witness, that come to light during the investigation of an incident of sexual violence. In order to encourage reporting of sexual violence, under appropriate circumstances college or university administrators may choose to deal with violations of Minnesota State Colleges and Universities policy in a manner other than disciplinary action.

Subpart H. Procedure for employees, students and individuals who are both an employee and student.

Employees. If the respondent is an employee, the investigation and disciplinary decision-making shall be conducted pursuant to the procedures outlined in Board Procedure 1.B.1.1 except that use of the optional “Personal Resolution” described in Part 3. Subpart B. should not be encouraged in dealing with allegations of sexual violence due to the seriousness of the conduct.

Nothing in this procedure is intended to expand, diminish or alter in any manner any right or remedy available under a collective bargaining agreement, personnel plan or law. Any disciplinary action imposed as a result of an investigation conducted under this procedure will be processed in accordance with the applicable collective bargaining agreement or personnel plan.

Students. The college or university may elect to process complaints against students under this procedure using either the investigation and decisionmaking process of System Procedure 1B.1.1 or Board Policy 3.6. The college or university shall notify students of the process used as required by Part 5.

If a college or university elects to use its procedures under Board Policy 3.6 for *incidents of* sexual violence, the conduct panel shall make written findings and recommendations, including proposed sanctions, if any, which will be submitted to a decisionmaker designated by the President. If the decisionmaker issues an adverse decision against the student, the student may appeal to the president or designee.

Individuals who are both an employee and a student. If the respondent is both a student and employee, the investigation shall be conducted by the designated officer, as defined by Board Procedure 1.B.1.1., Part 2, Subpart A. The results of the investigation shall be submitted for review to both the decisionmaker appointed under Procedure 1.B.1.1 Part 2, Subpart B, concerning the personnel action, and to the President or designee concerning the student action.

Subpart I. Sanctions. Sanctions that may be imposed if a finding is made that sexual violence has occurred include, but are not limited to, suspension, expulsion of students or termination from employment. The appropriate sanction will be determined on a case-by-case basis taking into account the severity of the conduct, the student’s or employee’s previous disciplinary history, and other factors as appropriate.

Subpart J. Retaliation prohibited. Actions by a student or employee intended as retaliation, reprisal or intimidation against an individual for making a complaint or participating in any way in a report or investigation under this policy are prohibited and are subject to appropriate disciplinary action.

Part 7. Sexual violence prevention and education.

Subpart A. Campus-wide training. Colleges, universities, and the system office must include in their sexual violence policy a description of educational programs that they offer to students and employees to promote the awareness of sexual violence offenses, including sexual violence prevention measures and procedures for responding to incidents. Education shall emphasize the importance of preserving evidence for proof of a criminal offense. Colleges and universities and affiliated student organizations are encouraged to develop educational programs, brochures, posters and other means of information to decrease the incidence of sexual violence and advise individuals of the legal and other options available if they are the complainants of an incident or they learn of such an incident.

Subpart B. Training for individuals charged with decision making authority. Each college, university and the system office shall provide appropriate training and other resources to individuals charged with decision making responsibilities under applicable procedures in order to facilitate a fair, respectful and confidential procedure on allegations of sexual violence in accordance with this and other applicable policies, procedures and laws.

Part 8. Maintenance of report/complaint procedure documentation. Data that is collected, created, received, maintained or disseminated about incidents of sexual violence will be handled in accordance with the privacy requirements of the Minnesota Statutes §13 (Minnesota Government Data Practices Act), and other applicable laws.

Information on reports of incidents of sexual violence that are made to Campus Security Authorities shall be documented in accordance with the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act, codified at 20 United States Code section 1092 (f). Such information will be used to report campus crime statistics on college and university campuses as required by that Act.

During and upon the completion of the complaint process, the complaint file shall be maintained in a secure location. Access to complaint file information shall be in accordance with the applicable collective bargaining agreement or personnel plan, the Minnesota Government Data Practices Act, the Family Educational Rights and Privacy Act and other applicable law and policy.

Minnesota State University Moorhead follows the 1B.1.1 procedure in resolving complaints of Sexual Violence. The 1B.1.1 procedure can be found at the following web address:
<http://web.mnstate.edu/affirm/Policies/mnscu1B11.pdf>

Designated Officers at MSU Moorhead

Ashley Atteberry

Director of Student Conduct & Resolution
 Title IX Coordinator
 Owens Hall 206
 Minnesota State University Moorhead
 Moorhead, MN 56563
 218/477-2174/V

Greg Lemke

Director of Public Safety
 MSUM Public Safety Office
 1616 9th Ave. S.
 Minnesota State University Moorhead
 Moorhead, MN 56563
 218/477-5869/V

NOTE: Allegations of violence will be handled under other appropriate policies/procedures, including the University's Zero Tolerance of Workplace Violence Policy and Plan, Nondiscrimination Policy and Procedure, or the University's Student Conduct Code. For information or assistance regarding these policies/procedures contact:

Zero Tolerance of Workplace Violence Policy and Plan

Greg Lemke, Director of Public Safety
Public Safety Office
1616 9th Ave. S.
Minnesota State University Moorhead
Moorhead, MN 56563
218/477-5869/V

Mark Yuran, Chief Human Resources Officer
Owens Hall 210
Minnesota State University Moorhead
Moorhead, MN 56563
218/477-2066/V

Nondiscrimination in Employment and Education Opportunity (Including harassment)

Ashley Atteberry, Director of Student Conduct & Resolution/Title IX Coordinator
Owens Hall 206D
Minnesota State University Moorhead
Moorhead, MN 56563
218/477-2174/V

Student Conduct Code

Ashley Atteberry, Director of Student Conduct & Resolution/Title IX Coordinator
Owens Hall 206D
Minnesota State University Moorhead
Moorhead, MN 56563
218/477-2174/V

In compliance with the Jeanne Clery Act, all alleged criminal activity will be reported to the MSUM Campus Security Office and/or the appropriate law enforcement agency.

For TTY Communication, contact the Minnesota Relay Service at 1 -800-627-3529.