

920 SEXUAL MISCONDUCT AND INTERPERSONAL VIOLENCE POLICY

Effective Date: 3-11-2011 Revised Date: 12-20-2017

I. POLICY

As reflected in the University's Title IX policy, sexual misconduct is unacceptable and will not be tolerated at the University. This policy prohibits acts of sexual misconduct and interpersonal violence, including sexual harassment, sexual assault, sexual exploitation, and other forms of sex or gender-based harassment and discrimination, as well as the acts of stalking, dating violence, and domestic violence.

Victims could be students, employees, or third parties. Perpetrators could be students, employees, or third parties.

Reports under this policy will be dealt with promptly. Confidentiality will be maintained to the greatest extent possible. The University urges an individual who has experienced a sexual assault to make an official report.

II. SCOPE

All members of the University community, including students, faculty, staff, and independent contractors are subject to this policy. Violators will be subject to discipline up to and including termination, expulsion, or other appropriate institutional sanctions. Prosecution by external authorities may also occur.

II. DEFINITIONS/ REPORTING PARTY

A. Complainant/Reporting Party

The individual complaining of sexual misconduct or interpersonal violence is called the "complainant" or "reporting party" and those terms may be used interchangeably in this policy.

B. Consent

Consent is defined as "clear, ongoing, affirmative, conscious, knowing, mutual and voluntary permission" to engage in sexual activity. Consent is active, not passive. It is the responsibility of each person involved in the sexual activity to ensure that s/he has the affirmative Consent of the other or others to engage in the sexual activity. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in [and the conditions of] sexual activity. In order to give effective consent, one must be of legal age and have the capacity to give consent. Consent to any one form of sexual activity does not imply consent to any other form(s) of sexual activity. A previous relationship or prior consent does not imply consent to future sexual acts. Consent can also be withdrawn. Thus, even if a person agreed to sexual interaction or continued sexual interaction, that person has the right to change their mind, regardless of how much sexual interaction may

have already taken place. The legal age of consent in Texas is 17 years old.

C. Respondent

The person alleged to have engaged in any prohibited actions is generally referred to as the “respondent”.

D. Retaliation

Retaliation is considered any adverse action by any student, faculty or staff member against another individual as a result of that individual’s exercise of rights under the *Harassment Policy* or the *Sexual Misconduct and Interpersonal Violence Policy*, including participation in a complaint and/or investigation of unlawful sexual misconduct, sexual harassment and/or assault or gender-based misconduct. Retaliation includes adverse actions intended to deter any individual from reporting complaints or participating in an investigation.

Retaliation is strictly prohibited by law and this policy. Any person who is found to have engaged in retaliation shall be subject to disciplinary action. Persons who believe that they have been retaliated against for making a complaint/report or for cooperating in an investigation or hearing should immediately contact the Director of Human Resources, Title IX Coordinator or Deputy Title IX Coordinator. A complaint filed in good faith under this policy shall not constitute retaliation.

E. Prohibited Actions Related To Sexual Misconduct

1. Sexual Assault

Sexual assault is the commission of an unwanted sexual act, whether by an acquaintance or by a stranger that occurs without indication of consent of both individuals, and that occurs under threat or coercion. Sexual assault can occur either forcibly and/or against a person’s will, or when a person is incapable of giving consent. Silence does not in and of itself constitute consent.

Sexual assault may include, but is not limited to, rape, forcible sodomy, forcible oral copulation, sexual assault with an object, sexual battery, forcible fondling, and threat of sexual assault.

2. Sexual Harassment

McMurry University prohibits sexual harassment. Sexual harassment is unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual violence is a form of harassment prohibited by Title IX.

Sexual harassment is present when one or more of the following events occur:

- Another employee's position, compensation, or career potential is altered in return for sexual favors or in retaliation for not providing sexual favors.
- Sexual proposals are made which imply that a student's response might affect academic decisions.
- Conduct is of such a nature that it creates an objectively hostile or abusive working or learning environment.

Such conduct has the purpose or effect of interfering with an individual's work or educational performance, or of creating an intimidating, hostile, or offensive environment for work, learning, or participating in any University activity. The more serious the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment. A single act of rape, for example, is sufficiently severe to create a hostile environment.

3. **Sexual Violence**

Sexual violence includes physical sexual acts perpetrated against a person's will or when a person is incapable of giving consent due to drugs, alcohol, disability, etc.; rape, sexual assault, sexual battery and sexual coercion.

4. **Nonconsensual Sexual Intercourse**

Non-consensual sexual intercourse is defined as any sexual penetration (anal, oral, or vaginal) of the individual by any part of another individual's body or other object, without explicit consent. It is also considered non-consensual sexual intercourse if:

- the victim has a reasonable fear that the individual or another will be injured if the individual does not give consent,
- is incapable of giving consent due to physical or mental incapacity,
- or is prevented from resisting due to physical or mental incapacity.

Physical or mental incapacity may include, but is not limited to, the influence of drugs or alcohol, or if the individual has a mental or physical disability that would prohibit their ability to provide consent.

5. **Prohibited/Generally Inappropriate Consensual Amorous Relationships**

Consensual amorous relationships are prohibited between a student (not one's spouse) and any member of faculty or administrative staff who teaches, supervises, evaluates, or otherwise is in a position to exercise direct power or

authority over the student. Efforts by members of the faculty or administrative staff to initiate these relationships is prohibited. In cases in doubt, advice and counsel should be sought from the dean or administrative supervisor.

Consensual amorous relationships between a student (not one's spouse) and any member of the faculty or administrative staff who is not in a position to exercise direct power of authority over that student (e.g., when the student is in different school or department) are in general inappropriate. Any member of the faculty or administrative staff who engages in such a relationship must accept responsibility for assuring that it does not result in a conflict of interest or the perception thereof or raise other issues of professional ethics. In cases in doubt, advice and counsel should be sought from the dean or administrative supervisor.

F. Interpersonal Violence

1. Dating Violence

Dating violence is defined as controlling, abusive, and aggressive behavior in a romantic relationship. The existence of a romantic or intimate relationship will be determined based on the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship.

Dating violence includes the use of physical violence, coercion, threats, intimidation, isolation, or Stalking on another while in a dating relationship, or a social relationship of romantic or sexually intimate nature. Such violence includes other forms of emotional, sexual or economic abuse directed towards a person who is or has been in a dating relationship, or a social relationship of a romantic or sexually intimate nature with the victim. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. Dating violence can be a single act or a pattern of behavior in relationships.

2. Domestic Violence

Domestic violence includes felony or misdemeanor crimes of violence committed by:

- a current or former spouse of the victim,
- a person with whom the victim shares a child in common,
- a person cohabitating with or who has cohabitated with the victim as a spouse,
- or any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Examples of domestic violence include, but are not limited to:

- Hitting, punching, pinching, slapping, or choking someone or threatening violence against someone with whom the person is intimately involved,
- Violating a protective order,
- Harming a person's animals or children while in a marital relationship.

3. **Stalking**

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for his or her safety or the safety of others or (b) suffer substantial emotional distress.

Examples of stalking include, but are not limited to:

- spreading lies about a person,
- repeatedly communicating with a person who doesn't wish to be communicated with,
- persistently following a person or lying in wait for them,
- sending unwanted gifts.

Cyberstalking means to engage repeatedly communicate with a person who doesn't wish to be communicated with through the use the computer, text messaging, or any other electronic communication.

4. **Sexual Exploitation**

Sexual exploitation includes when one takes non-consensual or abusive sexual advantage of another for the benefit of anyone other than the one being exploited without his/her Consent.

Examples of sexual exploitation may include, but are not limited to:

- Prostituting another person
- Non-consensual photographing, video or audio-taping of sexual activity
- Viewing or distributing images of an individual's sexual activity, body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's Consent to have the image shared, or advance consent to view such an image, and for the purposes of arousing or gratifying sexual desire
- Knowingly transmitting an STD, HIV, or other communicable disease to another
- Exposing one's body parts in non-consensual circumstances; inducing another to expose their genitals
- Sexually-based stalking
- Knowingly contributing to the incapacitation of another person

IV. **REPORTING SEXUAL MISCONDUCT OR INTERPERSONAL VIOLENCE**

An individual who is the victim of sexual harassment, sexual assault, sexual misconduct, or any other actions prohibited by this policy, has knowledge of another person being the victim of any actions prohibited by this policy, or believes in good faith that s/he has witnessed a possible warning sign of actions prohibited by this policy, is encouraged to make a formal report to the Title IX Coordinator or Deputy Coordinators, and/or local law enforcement authorities.

Whether or not a victim or witness elects to report an act of sexual misconduct or other actions prohibited by this policy to the police, she or he is urged to contact the Title IX Coordinator or Deputy Coordinators.

In addition to the Title IX Coordinator and Deputy Title Coordinators, a report may be made to any Responsible Employee. The following employees of the University are designated as Responsible Employees:

- Staff/Administrators
- All Faculty (including part-time and remote faculty)
- Third Party Contractors (for example: food service, housing, IT, housekeeping, bookstore, etc.)

These individuals are required to report incidents and relevant details of sexual harassment, sexual assault and gender-based misconduct to the Title IX Coordinator and law enforcement, if necessary. Exceptions: University Counselors, University Chaplain and University Health Center Staff are not required to report sexual harassment, sexual assault and gender-based misconduct to the Title IX Coordinator. As required by law, all disclosures to any University employee of an on-campus sexual assault are tabulated for statistical purposes without personal-identifying information.

Notice to a Responsible Employee is official notice to the University. Members of the University community have the right and can expect to have incidents of sexual harassment, sexual assault and gender-based misconduct taken seriously by the University when formally reported, and to have those incidents investigated and properly resolved. Formal reporting means that only people who need to know will be told, and information will be shared only as necessary.

The University has procedures in place that strive to be sensitive to those who report sexual assault, domestic violence, dating violence, and stalking. These include informing individuals about their right to file criminal charges as well as the availability of medical, counseling and support services, and additional remedies to prevent contact between a complainant and an accused party, such as housing, academic, transportation and working accommodations, if reasonably available.

Complainants are provided with written notice of their rights when reporting to the Title IX Coordinator or a Deputy Title IX Coordinator.

Please see the University's *Harassment Policy* for information regarding lodging a complaint.

V. AMNESTY

The University offers amnesty for Student Code of Conduct violations related to reporting incidents outlined in this policy.

VI. INVESTIGATION AND RESOLUTION

Please see the University's *Harassment Policy* for information regarding the University's investigation and resolution process.

VII. EDUCATION AND PREVENTION

The University provides resources for education about and prevention of all types of sexual misconduct. Members of the University community are urged to take advantage of the following on-campus prevention and education resources:

- Annual Programs offered by Human Resources Department, Athletics Department, Student Affairs (for campus community)
- Online modules as assigned by Human Resources Department (for employees)
- Online modules as assigned by Student Affairs Department (for new students)

VIII. INTERIM AND PROTECTIVE MEASURES

Once the Title IX Coordinator or the Coordinator's designee has received a complaint and/or report of sexual harassment, sexual assault, sexual misconduct, or any other actions prohibited by this policy, the University will make an immediate assessment to determine if any interim measures are warranted, pending the investigation. See the University's *Harassment Policy* for more information regarding the investigation and resolution process.

The University may take whatever measures it deems necessary in response to an allegation in order to protect an individual's rights and personal safety, the safety of the University community, or if determined to be necessary to ensure the integrity of the investigation or adjudication process.

The Title IX Coordinator or Deputy Coordinators make determinations regarding interim measures on a case-by-case basis. Such measures include, but are not limited to, an interim suspension (immediate, temporary suspension pending the outcome of investigation and/or hearing process), a "no contact" letter (an order that an individual refrain from direct or indirect contact with another person or persons), restrictions on access to campus or areas of campus, and/or appropriate changes in academic schedule. Interim measures may include reporting the matter to the local police.

A victim or respondent may request a "no-contact" letter or other protection. Not all of the measures listed in this section will be necessary in every case. If an individual identifies an interim measure that is not already provided by the University, the Title IX office will consider whether the request can be granted. In those instances where interim measures affect both parties, the University will minimize the burden on the victim wherever appropriate.

Failure by any individual to adhere to the parameters of any interim measure under this policy is considered a policy violation and may lead to disciplinary action. Individuals are encouraged to report such failures by another party to the Title IX Coordinator or Deputy Coordinators. Depending on timing and other circumstances, allegations that an individual has violated any interim measure may be investigated and/or adjudicated (where appropriate) separately from or

as part of an ongoing matter.

A. Options Following a Sexual Assault

A member of the University community, who has experienced a sexual assault, whether a rape or another unwanted sexual contact, is urged to make an official report to the police and/or the Director of Campus Security. Whether or not the individual makes an official report, he or she is urged to seek appropriate help, which may include medical evaluation, obtaining information, support, and counseling, either on or off campus. Any of the resources listed in this policy can assist a person to access the full range of services available.

B. Medical Treatment

A person who has experienced a sexual assault is urged to seek appropriate medical evaluation as promptly as possible. For life-threatening conditions, call 911.

- Abilene Regional Medical Center, 6250 Hwy 83/84, 325-428-1000
- Hendrick Medical Center / Sexual Assault Nurse Examiner (SANE), 1900 Pine Street, 325-670-2151

C. Medical-Legal Evidence Collection

A person who has experienced a sexual assault (particularly rape, forcible oral copulation, or sodomy) is encouraged to request collection of medical-legal evidence. Collection of evidence entails interaction with police and a police report. Prompt collection of physical evidence is essential should a person later decide to pursue criminal prosecution and/or a civil action.

- Regional Crime Victims Crisis Hotline: 325-677-7895 (available 24/7)

D. Obtaining Information, Support, and Counseling

Whether or not one makes an official report, a person who has experienced a sexual assault is encouraged to obtain information, support and counseling. Counselors at a variety of agencies, both on and off campus, can help a person decide what steps to take, such as seeking medical attention, preserving evidence, obtaining counseling or reporting to authorities.

IX. CONFIDENTIALITY

The University will make every effort reasonably possible to preserve an individual's privacy and protect the confidentiality of information. The degree to which confidentiality can be protected, however, depends upon the professional role of the person being consulted. The professional being consulted should make these limits clear before any disclosure of facts.

If the Complainant requests confidentiality or requests that the complaint not be pursued, the University will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality. However, such a request may limit the University's ability to respond appropriately to the complaint.

Certain resources are not required to disclose private, personally identifiable information

unless there is cause for fear for your safety, or the safety of others. Specifically, reports to members of the clergy and chaplains off-campus are confidential resources.

As required by law, all disclosures to any University employee of an on-campus sexual assault are tabulated for statistical purposes without personal-identifying information. The University may have an obligation to proceed with an investigation, regardless of a reporting party's wishes to the contrary, in order to ensure the safety of the University Community. Reporting parties are not required to participate in the University's investigation.

The University may also weigh the reporting party's request for confidentiality against such factors as the seriousness of the alleged conduct, whether there have been other complaints of a similar nature against the same individual, the Respondent's rights to receive information about allegations if the information is maintained by the University as an "education record" under the Family Educational Rights and Privacy Act [FERPA] and other factors otherwise required by applicable law.

In most cases, information including the reporting party's name may be shared with the Respondent, witnesses, University officials who have a legitimate need-to-know, or law enforcement as applicable. Beyond that, the University will take steps to reasonably protect the Complainant's identity and the identity of all individuals involved.

The University may publicly disclose results of disciplinary proceedings if a student is found to have committed a crime of violence, or non-forcible Sex offense, as determined under this Policy.

Information, support and advice are available for anyone who wishes to discuss issues related to sexual assault, whether or not a sexual assault has actually occurred, and whether or not the person seeking information has been assaulted, has been accused of a sexual assault, or is a third-party.

The degree to which confidentiality can be protected depends upon the professional role of the person being consulted and should be addressed with that person before specific facts are disclosed.

- Director of Human Resources & Title IX Coordinator, 325-793-4998, Maedgen Building, Room 221
- Director of Campus Security, 325-793-4666, President Hall North 121
- Dean of Students & Campus Life, 325-793-4680, President Hall South 100

A. Officially Reporting A Sexual Assault

A person who has experienced a sexual assault is encouraged to make an official report by contacting local law enforcement.

- Abilene Police Department, 911
- Abilene Police Department non-emergency number, 325-673-8331

Whether or not a student elects to report a sexual assault to the police, he or she is urged to make

an official report directly to Director of Campus Security, 325-793-4666 or by contacting the Campus Conduct Hotline at 1-866-943-5787.

X. POLICY ENFORCEMENT

A. Disciplinary Action

All reported incidents of sexual assault will be investigated and the appropriate judicial procedures will be initiated if the evidence supports the allegation. For proven violations, possible sanctions may include, but are not limited to, expulsion, suspension, and/or termination. The University prohibits retaliation against any individual that reports an incident of sexual assault.

B. Legal Options

In addition to University disciplinary action, a person who engages in a sexual assault may be subject to a criminal prosecution and/or civil litigation. A person who wishes specific information may contact the local District Attorney's Office, a private attorney, and/or the Regional Victim Crisis Center.

- Abilene Regional Victim Crisis Center, 325-677-7895

XI. INSTITUTIONAL RESPONSE TO SEXUAL ASSAULT

A. Public Information

Requests for information concerning an incident of sexual assault may be directed to the Marketing & Communications Department, 325-793-4610.

B. Public Notification of Incidents

As required by law, the University collects and reports annually statistical information concerning sexual assaults occurring in its jurisdiction. To promote public safety, the University also alerts the campus community to incidents and trends of immediate concern.