

# Sexual/Gender-Based Misconduct Policy

## I. Introduction

Members of the college community (students, faculty, staff, and administration), contractors, or individual guests and visitors have the right to be free from all forms of sexual- and gender-based discrimination, examples of which can include acts of sexual violence, sexual harassment, domestic violence, dating violence, and stalking. Southwestern Michigan College believes in a zero-tolerance policy for gender-based misconduct. When an allegation of misconduct is brought to an appropriate administrator's attention, and a respondent is found to have violated this policy, serious sanctions up to termination of employment or expulsion from the college will be used to reasonably ensure that such actions are never repeated. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated.

## II. Scope and Jurisdiction of Misconduct Policy

A. The college Sexual/Gender-Based Misconduct Policy shall apply to conduct that occurs on college premises, at college-sponsored activities, and off-campus conduct that adversely affects the college community and/or the pursuit of its objectives. All reports of sexual misconduct will be handled by the office of the Chief of Staff:

Tom Atkinson

[tatkinson@swmich.edu](mailto:tatkinson@swmich.edu)

269-782-1276

David C Briegel Building Room 2104

B. In addition, each student of the college shall be responsible for his/her conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment (and even if their conduct is not discovered until after a degree is awarded). This policy shall apply to a student's conduct even if the student withdraws from school while a disciplinary matter is pending. The Chief of Staff shall decide whether this policy shall be applied to conduct by a community member occurring off campus, on a case by case basis, in his/her sole discretion.

## III. Expectations of Physical Sexual Conduct

A. The expectations of our community regarding sexual conduct can be summarized as follows: In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing, and voluntary consent prior to and during sexual activity. Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want sexually and what you don't.

B. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Silence--without actions demonstrating permission--cannot be assumed to show consent.

C. Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex. Coercion happens when someone is pressured unreasonably for sex.

D. Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to

understand what they are doing. Under this policy, “No” always means “No,” and “Yes” may not always mean “Yes.” Anything but a clear, knowing, and voluntary consent to any sexual activity is equivalent to a “no.”

#### IV. Expectations of Consensual Relationships

- A. Relationships in which power differentials are inherent (for example, employees and those over whom they have direct responsibility or faculty and a student whom they are instructing) are prohibited. Consensual romantic, amorous, or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical, therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring them to the timely attention of their supervisor and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities or shift the student or employee out of being supervised or evaluated by someone with whom they have established a consensual relationship. Failure to self-report such relationships to their supervisor and/or Human Resources shall result in disciplinary action for an employee.
- B. All members of the SMC community are advised of the Office of Civil Rights Comments on Adult Employee-Student Relationships: “With respect to sexual activity in particular...In cases involving a student who meets the legal age of consent in his or her state, there will still be a strong presumption that sexual activity between an adult school employee and a student is unwelcome and nonconsensual,” (Department of Education-Office of Civil Rights, Questions and Answers on Title IX and Sexual Violence, April 29, 2014).

#### V. Sexual Misconduct Offenses

##### A. Sexual Harassment

1. Sexual harassment is unwelcome, gender-based verbal, written, online and/or physical conduct that is, sufficiently severe, pervasive, or objectively offensive that it unreasonably interferes with, limits, or deprives someone of the ability to participate in or benefit from the college’s educational program and/or activities, employment, promotion, or emotional well-being on the job, and is based on power differentials (*quid pro quo*), the creation of a hostile environment, or retaliation.
2. Examples include but are not limited to, an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence; stalking; gender-based bullying.

##### B. Non-consensual Sexual Contact

1. Non-consensual sexual contact is any intentional sexual touching, however slight, with any body part or object, by a man or a woman upon a man or a woman that is without consent and/or by force. This includes the attempt to commit any of these acts.
2. Examples include intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another person touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth, or other orifice.

##### C. Non-consensual Sexual Intercourse

1. Non-consensual sexual intercourse is any sexual intercourse however slight, with any object or body part, by a person upon another person that is without consent and/or by force. This includes the attempt to commit any of these acts.

2. Examples include vaginal penetration by a penis, object, tongue, or finger, anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

#### D. Sexual Exploitation

1. Sexual exploitation occurs when an individual takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. This includes the attempt to commit any of these acts.
2. Examples of sexual exploitation include, but are not limited to:
  - a. Invasion of sexual privacy.
  - b. Offering a sexual partner to other partners for financial gain.
  - c. Non-consensual video- or audio-taping of sexual activity.
  - d. Going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex).
  - e. Engaging in voyeurism, watching someone engaged in private activities without their knowledge or consent.
  - f. Knowingly transmitting an STI or HIV to another student.
  - g. Exposing one's genitals in non-consensual circumstances or inducing another to expose their genitals.
  - h. Sexually-based stalking and/or bullying (including cyber) may also be forms of sexual exploitation.

#### E. Other Gender-based Misconduct Offenses

Other violations of the Southwestern Michigan College rules, policies, and Student Code of Conduct may fall under this policy when the parties involved are or have been in an intimate relationship with each other or their actions are sex- or gender-based.

### VI. Sexual Misconduct Definitions

#### A. Consent

1. Consent is clear, knowing, and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. 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.
2. Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
3. Previous relationships or prior consent cannot imply consent to future sexual acts.

#### B. Force/Coercion

1. Force is the use of Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent ("Have sex with me or I'll hit you." "Okay, don't hit me; I'll do what you want.").
2. Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
3. NOTE: There is no requirement that a party resists the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not

demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

4. In order to give effective consent, one must be of legal age.
5. Sexual activity with someone who one should know to be--or based on the circumstances should reasonably have known to be--mentally or physically incapacitated (by alcohol or other drug use, unconsciousness, or blackout), constitutes a violation of this policy.
  - a. Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).
  - b. This policy also covers a person whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of rape drugs. Possession, use, and/or distribution of any of these substances is prohibited, and administering one of these drugs to another student is a violation of this policy. Use of alcohol or other drugs will never function as a defense for any behavior that violates this policy.

#### C. Retaliation

Retaliation is defined as any adverse action or act of harassing or bothering a reporting party, witness or advocate during or after an informal or formal investigation. Retaliation may be by the charge individual or by another individual doing so on their behalf. Retaliation will not be tolerated and may result in severe sanctions or additional discipline.

### VII. Reporting

#### A. Confidential Reporting

1. If one desires that details of the incident be kept confidential, they should speak with a private counselor, members of the clergy and chaplains, or off-campus rape crisis resources who can maintain confidentiality. The college recommends contacting Domestic and Sexual Abuse Services at 1-800-828-2023.
2. Reporting to Those Who Can Likely Maintain the Privacy of What You Share
  - a. You can seek advice from certain resources that are not required to tell anyone else your private, personally identifiable information unless there is cause for fear for your safety, or the safety of others. These are individuals who the college has not specifically designated as “responsible employees” for purposes of putting the institution on notice and for whom mandatory reporting is required, other than in the stated limited circumstances. These resources include those without supervisory responsibility or remedial authority to address sexual misconduct, such as faculty members, advisors to student organizations, career services staff, admissions officers, student activities personnel, and many others. If you are unsure of someone’s duties and ability to maintain your privacy, ask them before you talk to them. They will be able to tell you, and help you make decisions about who can help you best.
  - b. Some of these resources should be instructed to share incident reports with their supervisors, but they will not share any personally identifiable information about your report unless you give permission, except in the event that the incident reveals a need to protect you or other members of the community. If personally identifiable information is shared, it will only be shared as necessary with as few people as possible, and all efforts will be made to protect your privacy.

## B. Reporting Sexual Misconduct

### 1. Employees as Mandated Reporters

- a. Southwestern Michigan College employees **shall** report violations and possible violations of this policy to the college within 24 hours of being made aware of the potential violation. The only exception to this policy are to those employees notified in writing by the college that they are specifically exempt as mandated reporters due to their role as private counselors, pastoral care staff etc.
- b. Notification can be accomplished by notifying a supervisor, housing manager, the Chief of Staff, the Human Resources director, or the Security Office or electronically through the Wired “Concerns” reporting system.

### 2. Reporting Sexual Misconduct

- a. It is SMC’s position that those community members who believe they have been a victim of a violation of this policy should be allowed to exercise their will in how to proceed, including the right not to report the incident but still request accommodations from the college to ensure their safety.
- b. The following options are available to report an incident of sexual/gender-based misconduct:
  - i. Contact law enforcement. The Michigan statute covering sexual misconduct is Michigan Compiled Law Section 750.520a-m.
  - ii. Contact the college by contacting a college official or by filing an electronic report through the Concerns reporting system on the college website.
  - iii. Contact a third-party advocacy center (see To Report Confidentially).
  - iv. File a civil court order for no contact or other civil action through the county court system.
  - v. Contact the United States Department of Education Office of Civil Rights:

233 N. Michigan Ave., Suite 240

Chicago, IL 60601

800-368-1019

[ocr@edu.gov](mailto:ocr@edu.gov)

### 3. To Report Confidentially

- a. If a complainant desires that details of the incident be kept confidential, they should speak with a private counselor, members of the clergy and chaplains, or off-campus sexual or domestic assault crisis resources who can maintain confidentiality. A list of these resources shall be maintained by the college.
- b. Anytime a report is received by the college, the college shall evaluate the incident to ensure the safety of the campus and that federal law is complied with. In cases of pattern, predation, threat, weapons and/or violence, the college will investigate and mitigate any threats to the safety of the campus community. In cases where the reporting party does not want to pursue a formal complaint and **the college community is not at risk**, the college will offer supports and remedies to the reporting party but will not pursue formal action.
- c. When a formal report is taken, the college will only share information with people responsible for handling the incident in a way that protects the rights and privacy of the reporting party to the extent permissible by law and the investigative process.

## VIII. College Reporting Actions

### A. Federal Statistical Reporting Obligations

1. Certain campus officials have a duty to report sexual misconduct for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or off campus, in the surrounding area, but no addresses are given) for publication in the annual Campus Security Report. This report can be found in room 2104 of the Briegel Building and also on the college website and helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety.
2. Mandated federal reporters include: student/conduct affairs, campus law enforcement, local police, intramural coaches, residence life staff, student activities staff, human resources staff, academic advisors, advisors to student organizations, and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

B. Federal Timely Warning Reporting Obligations

Victims of sexual misconduct should also be aware that college administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The college will make every effort to ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger. The reporters for timely warning purposes are exactly the same as detailed at the end of the above paragraph.

IX. Formal Complaint Process for Sexual/Gender-Based Misconduct

All reports of sexual/gender-based misconduct to the college will be handled by the office of the Chief of Staff who is identified in this document also as the Title IX Coordinator. For reports involving employees as respondents, the Director of Human Resources will be notified and will assist in the inquiry into the matter.

A. Investigation Procedures

1. The Sexual/Gender-based Misconduct procedures that are outlined in the SMC Student Handbook shall be followed when misconduct by a student is alleged.
2. The Discrimination and Harassment Grievance Procedures as outlined in the SMC Employee handbook will be followed when the misconduct involves employees and all other community members.

B. Training

The Chief of Staff shall ensure that all current and new community members are trained on the information contained in this policy as well as the subsequent procedures attached to it. This training shall also include instruction on ways to limit the occurrence of sexual/gender-based misconduct, including bystander intervention techniques.

X. Parts of the Complaint Process

A. Part I: Assignment of Investigator

Upon receipt of a complaint, the Chief of Staff will:

1. Assign an investigator to the case. The investigator may be one or more individuals. If there is more than one investigator, they shall be present at all meetings.
2. Review if any immediate steps need to be taken for the safety of campus or individuals involved.
3. Monitor that the investigation is completed within 60 days unless there are reasonable documented external factors which require an extension.

B. Part II: Pre-investigation

Prior to the beginning of the formal investigation, the investigator may review all information in order to:

1. Initiate any necessary remedial actions.
2. Determine the identity and contact information of the complainant (whether that be the initiator, the alleged victim, or a college proxy or representative).
3. Identify the correct policies allegedly violated.
4. Determine if there is reasonable cause to charge the accused individual and what policy violations should be alleged as part of the complaint.
5. If there is insufficient evidence to support reasonable cause, the complaint should be closed with no further action.
6. Meet with the complainant to finalize the complaint.

C. Part III: Formal Investigation

Once the pre-investigation is completed and it is determined there is reasonable cause to charge the student, the formal investigation process will begin.

1. A Notice of Charge letter will be sent to the accused student that includes the charges and a scheduled initial meeting time.
2. The accused student will be presented with the opportunity to accept responsibility. If responsibility is accepted, the investigator may meet with any individuals they deem necessary before moving to sanctioning.
3. The investigator will meet with all individuals involved, including all witnesses.
4. The investigation process may require several meetings before completion. Please see Part IV: Investigation Meeting Details for more information.
5. The investigator will review all additional available information.

D. Part IV: Investigation Meeting Details

1. Each meeting will be held privately and closed to the public. At no time during the investigation will the accused student and the complainant be in the same room.
2. These meetings are entirely administrative in nature and are not considered legal proceedings.
3. Each interview will be recorded by the college. This will be the sole recording for the meeting.
4. Both parties will be allowed an advisor to be present during the meetings. The advisor may only speak with their party in a way that does not disrupt the meeting. At no time will they be allowed to address the investigators.
5. The college reserves the right to compel individuals to participate in the investigation.

E. Part V: Determining Responsibility

1. At the conclusion of the formal investigation, the investigator will determine if the accused student is responsible for the alleged violation and assign appropriate sanctions.
2. The investigator will make a decision based on the preponderance of evidence (51%). This means that they will be determining if it is more likely than not the violation took place.
3. Once the decision is made, an Investigation Outcome Letter will be sent both parties. There are two possible outcomes:
  - a. Not Responsible  
It was determined that there was not enough available information to show that it was more likely than not that the violation took place.

b. Responsible

It was determined that there was enough available information to show that it was more likely than not that the violation took place.

4. If the student is found not responsible, both parties will have the option to appeal (see Part VII: Appeal).
5. If the student is found responsible, the Investigation Outcome Letter will contain information about sanction (See Part VI: Sanctioning).

F. Part VI: Sanctioning

1. Once an individual is found responsible, the investigator will determine sanctioning based on the following criteria:
  - a. The goal of sanction is to mitigate the situation, prevent its reoccurrence, and remedy its effects on the victim and college community.
  - b. While the investigators reserve the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior, the following are the usual sanctions as related to Sexual Misconduct.
2. Any student found responsible for violating the policy on Non-Consensual or Forced Sexual Contact (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident and taking into account any previous campus conduct code violations.
3. Any student found responsible for violating the policy on Non-Consensual or Forced Sexual Intercourse will likely face a recommended sanction of suspension or expulsion.
4. Any student found responsible for violating the policy on sexual exploitation or sexual harassment will likely receive a recommended sanction ranging from warning to expulsion, depending on the severity of the incident and taking into account any previous campus conduct code violations.

G. Part VII: Appeal

1. Once the outcome letter is complete, each party will have a chance to appeal.
2. Each party has the right to appeal:
  - a. The finding of responsibility.
  - b. Sanctions imposed.
3. All appeals must be received within five (5) business days.
4. Appeals will be sent directly to the Chief of Staff.
5. Appeals are not intended to be full re-hearings of the complaint (de novo). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the grounds for appeal.
6. The Chief of Staff may meet with individuals involved but is not required to unless they deem it necessary.
7. New information will only be considered if the information was not available at the time of the initial investigation.
8. The Chief of Staff will make the following determinations:
  - a. Was the finding of responsibility correct.
  - b. Was the sanction imposed proper and did it meet the goals in Part VI.a.i.
9. The Chief of Staff may lessen, alter, or dismiss any finding or sanction from the investigators.
10. In cases where the appeal results in reinstatement to the institution or of privileges, all reasonable attempts will be made to restore the student to their prior status, recognizing that some opportunities lost may be irretrievable in the short term.

11. The appeals committee or officer will render a written decision on the appeal to all parties within seven (7) business days from hearing of the appeal.
12. The decision of the Chief of Staff is the final, official decision of the college. There are no more options to appeal after this point.

XI. Additional Important Information

A. Attempted Violations

In most circumstances, the college will treat attempts to commit any of the violations listed in this handbook as if those attempts had been completed.

B. College as Complainant

As necessary, the college reserves the right to initiate a complaint, to serve as complainant, and to initiate conduct proceedings without a formal complaint by the victim of misconduct.

C. False Reports

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

D. Immunity for Victims and Witnesses

The college community encourages the reporting of Student Code of Conduct violations, especially sexual misconduct. Sometimes, victims or witnesses are hesitant to report to college officials or participate in grievance processes because they fear that they themselves may be charged with policy violations, such as underage drinking that occurred at the time of the incident. It is in the best interest of this community that as many victims as possible choose to report to college officials and that witnesses come forward to share what they know. To encourage reporting, the college pursues a policy of offering victims of sexual misconduct and witnesses to sexual misconduct limited immunity from being charged for policy violations related to the sexual misconduct incident. While violations cannot be completely overlooked, the college will provide educational rather than punitive responses, in such cases.

E. Bystander Engagement

The welfare of students in our community is of paramount importance. At times, students on and off campus may need assistance. The college encourages students to offer help and assistance to others in need. Sometimes, students are hesitant to offer assistance to others for fear that they may get themselves in trouble (for example, a student who has been drinking underage might hesitate to help take a sexual misconduct victim to get help). The college pursues a policy of partial immunity for students who offer help to others in need. While policy violations cannot be overlooked, the college will provide educational options, rather than punishment, to those who offer their assistance to others in need.

F. Parental Notification

In regards to the Sexual Misconduct Policy, Southwestern Michigan College will not contact parents unless it is determined to be absolutely necessary. The college reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. The college may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is a non-dependent, the college will contact parents/guardians to inform them of situations in which there is a significant and health and/or safety risk. The college also reserves the right to designate which college officials have a need to know about individual conduct complaints pursuant to the Family Educational Rights and Privacy Act.

G. Notification of Outcomes

The outcome of a campus hearing is part of the educational record of the accused student and

is protected from release under a federal law, FERPA. However, the college observes the legal exceptions as follows:

1. Complainants in non-consensual sexual contact/intercourse, sexual exploitation, sexual harassment, stalking, and relationship violence incidents have an absolute right to be informed of the outcome, essential findings, and sanctions of the hearing, in writing, without condition or limitation.
2. The college may release publicly the name, nature of the violation, and the sanction for any student who is found in violation of a college policy that is a "crime of violence," including arson, burglary, robbery, criminal homicide, sex offenses, assault, destruction/damage/vandalism of property, and kidnapping/abduction. The college will release this information to the complainant in any of these offenses regardless of the outcome.

#### H. Past Sexual History/Character

The past sexual history or sexual character of a party will not be admissible by the other party in the investigation or hearing unless such information is determined to be highly relevant by the chair. All such information sought to be admitted will be presumed irrelevant, and any request to overcome this presumption by the parties must be included in the complaint/response or a subsequent written request and must be reviewed in advance of the hearing by the Student Conduct Administrator. While previous conduct violations by the accused student are not generally admissible as information about the present alleged violation, the Student Conduct Administrator may supply previous complaint information to the investigators, the conduct board, or may consider it him/herself if s/he is hearing the complaint, only if:

1. The accused was previously found to be responsible.
2. The previous incident was substantially similar to the present allegation.
3. Information indicates a pattern of behavior and substantial conformity with that pattern by the accused student.

#### XII. Statement of the Rights of the Accuser

- A. The right to investigation and appropriate resolution of all credible complaints of sexual misconduct made in good faith to college administrators.
- B. The right to be treated with respect by college officials.
- C. The right of both accuser and accused to have the same opportunity to have others present (in support or advisory roles) during the campus hearing process.
- D. The right not to be discouraged by college officials from reporting an assault to both on-campus and off-campus authorities.
- E. The right to be informed of the outcome and sanction of any disciplinary hearing involving sexual assault.
- F. The right to be informed by college officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student so chooses. This also includes the right not to report, if this is the victim's desire.
- G. The right to be notified of available counseling, mental health, or student services for victims of sexual assault, both on campus and in the community.
- H. The right to notification of and options for, and available assistance in, changing academic and living situations after an alleged sexual assault incident, if so requested by the victim and if such changes are reasonably available (no formal complaint or investigation, campus or criminal, need occur before this option is available). Accommodations may include change of an on-campus student's housing to a different on-campus location, assistance from college support staff in completing the relocation, arranging to dissolve a housing contract and pro-rating a

refund, exam (paper, assignment) rescheduling, taking an incomplete in a class, transferring class sections. temporary withdrawal, alternative course completion options.

- I. The right not to have irrelevant prior sexual history admitted as evidence in a campus hearing.
- J. The right not to have any complaint of sexual assault mediated (as opposed to adjudicated).
- K. The right to make a victim-impact statement at the investigation and to have that statement considered by the investigator in determining its sanction.
- L. The right to a campus no-contact order against another student who has engaged in or threatens to engage in stalking, threatening, harassing, or other improper behavior that presents a danger to the welfare of the complaining student or others.
- M. The right to have complaints of sexual misconduct responded to quickly and with sensitivity by the investigator.
- N. The right to appeal the finding and sanction of the investigation, in accordance with the standards for appeal established by the institution.
- O. The right to review all documentary evidence available regarding the complaint, subject to the privacy limitations imposed by state and federal law.
- P. The right to be informed of the names of all witnesses who will be called to give testimony, except in cases where a witness' identity will not be revealed to the accused student for compelling safety reasons (this does not include the name of the alleged victim/complainant, which will always be revealed).
- Q. The right to preservation of privacy, to the extent possible and allowed by law.
- R. The right for the investigation to be closed to the public.
- S. The right to petition that any member of the conduct body be removed on the basis of demonstrated bias.
- T. The right to bring a victim advocate or advisor to all phases of the investigation and campus conduct proceeding.
- U. The right to ask the investigators to identify and question relevant witnesses, including expert witnesses.
- V. The right to be fully informed of campus conduct rules and procedures as well as the nature and extent of all alleged violations contained within the complaint.
- W. The right to have the college compel the presence of student, faculty, and staff witnesses and the opportunity (if desired) to ask questions, directly or indirectly, of witnesses (including the accused student), and the right to challenge documentary evidence.
- X. The right to have complaints heard by conduct and appeals officers who have received annual sexual misconduct training.
- Y. The right to have college policies and procedures followed without material deviation.
- Z. The right to be informed in advance of any public release of information regarding the complaint.
- AA. The right not to have released to the public any personally identifiable information about the complainant without his or her consent.

XIII. Statement of the Rights of the Accused Student

- A. The right to investigation and appropriate resolution of all credible complaints of sexual misconduct made in good faith to college administrators against the accused student.
- B. The right to be treated with respect by college officials.
- C. The right to be informed of and have access to campus resources for medical, counseling, and advisory services.
- D. The right to be fully informed of the nature, rules and procedures of the campus conduct process and to timely written notice of all alleged violations within the complaint, including the nature of the violation and possible sanctions.

- E. The right to a thorough investigation before responsibility is determined.
- F. The right not to have irrelevant prior sexual history admitted as evidence in a campus hearing.
- G. The right to make an impact statement at the campus conduct proceeding and to have that statement considered by the board in determining its sanction.
- H. The right to appeal the finding and sanction of the conduct body, in accordance with the standards for appeal established by the institution.
- I. The right to review all documentary evidence available regarding the complaint, subject to the privacy limitations imposed by state and federal law at least 48 hours prior to the hearing.
- J. The right to be informed of the names of all witnesses who will be called to give testimony, except in cases where a witness' identity will not be revealed to the accused student for compelling safety reasons (this does not include the name of the alleged victim/complainant, which will always be revealed).
- K. The right the investigation closed to the public.
- L. The right to petition that any member of the conduct body be removed on the basis of bias.
- M. The right to have the college compel the presence of student, faculty, and staff witnesses and the opportunity to ask questions, directly or indirectly, of witnesses and the right to challenge documentary evidence.
- N. The right to have college policies and procedures followed without material deviation.
- O. The right to have an advisor or advocate to accompany and assist in the campus hearing process.
- P. The right to a fundamentally fair investigation, as defined in these procedures.
- Q. The right to a campus conduct outcome based solely on evidence presented during the conduct process. Such evidence shall be credible, relevant, based in fact, and without prejudice.
- R. The right to written notice of the outcome and sanction of the hearing.
- S. The right to a conduct panel comprised of representatives of both genders.
- T. The right to be informed in advance, when possible, of any public release of information regarding the complaint.

#### XIV. Examples of Sexual Misconduct

- A. Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00 p.m. until 3:00 a.m., Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. He keeps at her, begins to question her religious convictions, and accuses her of being "a prude." Finally, it seems to Bill that her resolve is weakening, and he convinces her to give him a "hand job" (hand to genital contact). Amanda would never had done it but for Bill's incessant advances. He feels that he successfully seduced her and that she wanted to do it all along but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn't want it, she could have left. **Bill is responsible for violating the college Non-Consensual or Forced Sexual Contact policy. It is likely that a college hearing board would find that the degree and duration of the pressure Bill applied to Amanda are unreasonable. Bill coerced Amanda into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. Consent is not effective when forced. Sex without effective consent is sexual misconduct.**
- B. Adam comes to Beth's dorm room with some mutual friends to watch a movie. Adam and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Adam and Beth are alone. They hit it off and are soon becoming more intimate. They start to make out. Adam verbally expresses his desire to have sex with Beth. Beth, who was abused by a babysitter when she was five and has not had any sexual relations since, is shocked at how quickly things are progressing. As Adam takes her by the wrist over to the bed, lays her down,

undresses her, and begins to have intercourse with her, Beth has a severe flashback to her childhood trauma. She wants to tell Adam to stop but cannot. Beth is stiff and unresponsive during the intercourse. Is this a policy violation? **Adam would be held responsible in this scenario for Non-Consensual Sexual Intercourse. It is the duty of the sexual initiator, Adam, to make sure that he has mutually understandable consent to engage in sex. Though consent need not be verbal, it is the clearest form of consent. Here, Adam had no verbal or non-verbal mutually understandable indication from Beth that she consented to sexual intercourse. Of course, wherever possible, students should attempt to be as clear as possible as to whether or not sexual contact is desired, but students must be aware that for psychological reasons, or because of alcohol or drug use, one's partner may not be in a position to provide as clear an indication as the policy requires. As the policy makes clear, consent must be actively, not passively, given.**

- C. Kevin and Amy are at a party. Kevin is not sure how much Amy has been drinking, but he is pretty sure it's a lot. After the party, he walks Amy to her room, and Amy comes on to Kevin, initiating sexual activity. Kevin asks her if she is really up to this, and Amy says yes. Clothes go flying, and they end up in Amy's bed. Suddenly, Amy runs for the bathroom. When she returns, her face is pale, and Kevin thinks she may have thrown up. Amy gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that Amy seems pretty groggy and passive, and he thinks Amy may have even passed out briefly during the sex. But he does not let that stop him. When Kevin runs into Amy the next day, he thanks her for the wild night. Amy remembers nothing and decides to make a complaint to the dean. **This is a violation of the Non-Consensual Sexual Intercourse Policy. Kevin should have known that Amy was incapable of making a rational, reasonable decision about sex. Even if Amy seemed to consent, Kevin was well aware that Amy had consumed a large amount of alcohol. He thought Amy was physically ill and that she passed out during sex. Kevin should be held accountable for taking advantage of Amy in her condition. This is not the level of respectful conduct expected of students.**

XV. Frequently Asked Questions

Here are some of the most commonly asked questions regarding the college's sexual misconduct policy and procedures.

- A. Does information about a complaint remain private?

The privacy of all parties to a complaint of sexual misconduct must be respected, except insofar as it interferes with the college's obligation to fully investigate allegations of sexual misconduct. Where privacy is not strictly kept, it will still be tightly controlled on a need-to-know basis. Dissemination of information and/or written materials to persons not involved in the complaint procedure is not permitted. Violations of the privacy of the complainant or the accused student may lead to conduct action by the college.

1. In all complaints of sexual misconduct, all parties will be informed of the outcome. In some instances, the administration also may choose to make a brief public announcement of the nature of the violation and the action taken without using the name or identifiable information of the alleged victim. Certain college administrators are informed of the outcome within the bounds of student privacy (e.g., the president of the college, Chief of Staff, Coordinator of Security). If there is a report of an act of alleged sexual misconduct to a conduct officer of the college and there is evidence that a felony has occurred, local police may be notified. This does not mean charges will be automatically filed or that a victim must speak with the police, but the institution may legally be required to notify law enforcement authorities. The institution also must statistically report the occurrence on campus of major violent crimes, including certain

sex offenses, in an annual report of campus crime statistics. This statistical report does not include personally identifiable information.

B. Will my parents be told?

No, not unless you tell them. Whether you are the complainant or the accused student, the college's primary relationship is to the student and not to the parent. However, in the event of major medical, disciplinary, or academic jeopardy, students are strongly encouraged to inform their parents. College officials may directly inform parents when requested to do so by a student, in a life-threatening situation, or if an accused student has signed the permission form which allows such communication.

C. Will the accused student know my identity?

Yes, if you file a formal complaint. Sexual misconduct is a serious offense and the accused student has the right to know the identity of the complainant/alleged victim. If there is a hearing, the college does provide options for questioning without confrontation, including closed-circuit testimony, Skype, using a room divider, or using separate hearing rooms.

D. Do I have to name the perpetrator?

1. Yes, if you want formal disciplinary action to be taken against the alleged perpetrator. No, if you choose to respond informally and do not file a formal complaint (but you should consult the complete confidentiality policy above to better understand the college's legal obligations depending on what information you share with different college officials). Victims should be aware that not identifying the perpetrator may limit the institution's ability to respond comprehensively.

E. What do I do if I am accused of sexual misconduct?

1. Do NOT contact the alleged victim. You may immediately want to contact someone in the campus community who can act as your advisor. You may also contact the Student Conduct Administrator who can explain the college's procedures for addressing sexual misconduct complaints. You may also want to talk to a confidential counselor or seek other community assistance.

F. What about changing residence hall rooms?

1. If you want to move, you may request a room change. Room changes under these circumstances are considered emergencies. It is typically institutional policy that in emergency room changes, the student is moved to the first available suitable room. If you want the accused student to move and believe that you have been the victim of sexual misconduct, you must be willing to pursue a formal or informal college complaint. No contact orders can be imposed, and room changes for the accused student can usually be arranged quickly. Other accommodations available to you might include:
  2. Assistance from college support staff in completing the relocation.
  3. Arranging to dissolve a housing contract and pro-rating a refund.
  4. Assistance with or rescheduling an academic assignment (paper, exams, etc.).
  5. Taking an incomplete in a class.
  6. Assistance with transferring class sections.
  7. Temporary withdrawal.
  8. Assistance with alternative course completion options.
  9. Other accommodations for safety as necessary.

G. What should I do about preserving evidence of a sexual assault?

Police are in the best position to secure evidence of a crime. Physical evidence of a criminal sexual assault must be collected from the alleged victim's person within 120 hours, though evidence can often be obtained from towels, sheets, clothes, etc. for much longer periods of

time. If you believe you have been a victim of a criminal sexual assault, you should go to the hospital emergency room before washing yourself or your clothing. The Sexual Assault Nurse Examiner (a specially trained nurse) at the hospital is usually on call 24 hours a day, 7 days a week (call the emergency room if you first want to speak to the nurse; ER will refer you). A victim advocate from the institution may also accompany you to the hospital, and law enforcement or security can provide transportation. If a victim goes to the hospital, local police will be called, but s/he is not obligated to talk to the police or to pursue prosecution. Having the evidence collected in this manner will help to keep all options available to a victim, but will not obligate him or her to any course of action. Collecting evidence can assist the authorities in pursuing criminal charges, should the victim decide later to exercise it.

For the victim: The hospital staff will collect evidence, check for injuries, address pregnancy concerns, and address the possibility of exposure to sexually transmitted infections. If you have changed clothing since the assault, bring the clothing you had on at the time of the assault with you to the hospital in a clean, sanitary container such as a clean paper grocery bag or wrapped in a clean sheet (plastic containers do not breathe, and may render evidence useless). If you have not changed clothes, bring a change of clothes with you to the hospital, if possible, as they will likely keep the clothes you are wearing as evidence. You can take a support person with you to the hospital, and they can accompany you through the exam, if you want. Do not disturb the crime scene—leave all sheets, towels, etc. that may bear evidence for the police to collect.

- H. Will a victim be sanctioned when reporting a sexual misconduct policy violation if he/she has illegally used drugs or alcohol?

No. The severity of the infraction will determine the nature of the college's response, but whenever possible the college will respond educationally rather than punitively to the illegal use of drugs and/or alcohol. The seriousness of sexual misconduct is a major concern and the college does not want any of the circumstances (e.g., drug or alcohol use) to inhibit the reporting of sexual misconduct.

- I. Will the use of drugs or alcohol affect the outcome of a sexual misconduct complaint?

The use of alcohol and/or drugs by either party will not diminish the accused student's responsibility. On the other hand, alcohol and/or drug use is likely to affect the complainant's memory and, therefore, may affect the outcome of the complaint. A person bringing a complaint of sexual misconduct must either remember the alleged incident or have sufficient circumstantial evidence, physical evidence, and/or witnesses to prove his/her complaint. If the complainant does not remember the circumstances of the alleged incident, it may not be possible to impose sanctions on the accused without further corroborating information. Use of alcohol and/or other drugs will never excuse a violation by an accused student.

- J. Will either party's prior use of drugs and/or alcohol be a factor when reporting sexual misconduct?

Not unless there is a compelling reason to believe that prior use or abuse is relevant to the present complaint.

- K. What should I do if I am uncertain about what happened?

- L. If you believe that you have experienced sexual misconduct, but are unsure of whether it was a violation of the institution's sexual misconduct policy, you should review the materials in this document and perhaps discuss your situation with a responsible college employee.

#### XVI. Sexual Violence—Risk Reduction Tips

- A. Risk reduction tips can often take a victim-blaming tone, even unintentionally. With no intention to victim-blame and with recognition that only those who commit sexual violence are responsible for those actions, these suggestions may nevertheless help you to reduce your risk

of experiencing a non-consensual sexual act. Below, suggestions to avoid committing a non-consensual sexual act are offered:

1. If you have limits, make them known as early as possible.
  2. Tell a sexual aggressor “NO” clearly and firmly.
  3. Try to remove yourself from the physical presence of a sexual aggressor.
  4. Find someone nearby and ask for help.
  5. Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
  6. Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.
- B. If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of sexual misconduct:
1. Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
  2. Understand and respect personal boundaries.
  3. DON'T MAKE ASSUMPTIONS about consent, about someone's sexual availability, about whether they are attracted to you, about how far you can go, or about whether they are physically and/or mentally able to consent. If there are any questions or ambiguity then you DO NOT have consent.
  4. Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension, and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
  5. Don't take advantage of someone's drunkenness or drugged state, even if they did it to themselves.
  6. Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size. Don't abuse that power.
  7. Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
  8. Silence and passivity cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.
- C. In campus hearings, legal terms like “guilt,” “innocence,” and “burdens of proof” are not applicable, but the college never assumes a student is in violation of college policy. Campus hearings are conducted to take into account the totality of all evidence available from all relevant sources.
- D. The college reserves the right to take whatever measures it deems necessary in response to an allegation of sexual misconduct in order to protect students' rights and personal safety. Such measures include, but are not limited to, modification of living arrangements, interim suspension from campus pending a hearing, and reporting the matter to the local police. Not all forms of sexual misconduct will be deemed to be equally serious offenses, and the college reserves the right to impose different sanctions, ranging from verbal warning to expulsion, depending on the severity of the offense. The college will consider the concerns and rights of both the complainant and the person accused of sexual misconduct.