



# POLICY

Category	Approval		
Series 100: Foundations and Basic Commitments	Effective	Administration	Board
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	8/14/23		2027

## HARASSMENT

**MTC 115**

Mitchell Technical College is committed to providing a learning and working environment free of harassment based on an individual's race, color, ethnicity, creed, religion, age, gender, disability, military status, national origin or ancestry, marital status, actual or perceived sexual orientation, gender identity and expression, status with regard to public assistance, or any other status or condition protected by applicable federal or state law.

It shall be a violation of this policy for any student, college personnel, or visitor to harass any individual through: (i) conduct or communication of a sexual nature or, (ii) communication disparaging a person's race, color, ethnicity, creed, religion, age, gender, disability, military status, national origin or ancestry, marital status, pregnancy, actual or perceived sexual orientation, gender identity and expression, status with regard to public assistance, or any other status or condition protected by applicable federal or state law. For the purpose of this policy, "college personnel" includes school board members, all College employees and agents, volunteers, contractors, and persons subject to the supervision and control of the College. This policy applies to violations that occur on any college property or at any college-sponsored or related activity at any location.

The College will investigate all complaints of harassment and appropriate action will be taken against the individual(s) who is found to have violated this policy.

Notification of this policy and applicable regulations will be posted in college buildings. Notice will also be advertised annually and included in all personnel and student handbooks.

### I. DEFINITIONS:

**A. Harassment:** Harassment consists of conduct related to a person's race, color, ethnicity, creed, religion, age, gender, disability, military status, national origin or ancestry, marital status, pregnancy, actual or perceived sexual orientation, gender identity and expression, status with regard to public assistance, or any other status or condition protected by applicable federal or state law, when the conduct is so severe, pervasive, and objectively offensive that it has the purpose or effect of:

1. Creating an intimidating, hostile, or offensive working or academic environment through verbal, non-verbal or electronic means of communication.

<sup>1</sup>Sexual harassment as defined and addressed by Title IX of the U.S. Education Amendments of 1972 ("Title IX") differs from this policy and is covered in MTC Policy 117. Any claim of discrimination or harassment will be reviewed by the MTC Title IX Coordinator to ensure the correct MTC policies and procedures are applied.

2. Substantially or unreasonably interfering with an individual's work performance, which deprives the staff member access to employment or deprives the student of academic opportunities.
3. Retaliating against any person who reports alleged harassment as set forth in Section III of this regulation.

**B. Sexual Harassment<sup>2</sup>:** Sexual harassment is any unwelcome sexual advance(s), request(s) for sexual favors, or other verbal, physical, and/or visual contact(s) of a sexual nature, or communication of a sexual nature when:

1. Submission to such conduct or communication is made, either explicitly or implicitly, during a term of a person's initial employment; or
2. Submission to or rejection of such conduct or communication by an individual is used as the basis for employment or educational decisions affecting the individual; or
3. Such conduct or communication has the purpose or effect of interfering with an individual's work or education, creating an intimidating, hostile, or offensive working or educational environment; or
4. Such conduct is so severe, pervasive, and objectively offensive that such conduct or communication has the purpose or effect of depriving the employee access to employment opportunities or benefits provided by the College or depriving a student of educational opportunities.

Sexual harassment may include, but is not limited to:

1. Unwelcome verbal harassment or abuse;
2. Unwelcome pressure for sexual activity;
3. Unwelcome, gender-motivated, or inappropriate patting, pinching, or physical contact, other than necessary restraint of students by teachers, administrators, or other school personnel to avoid physical harm to persons or property;
4. Unwelcome behavior or words, including demands for sexual favors, accompanied by implied or overt threats concerning the individual's employment or educational level; or
5. Unwelcome behavior or words, including demands for sexual favors, accompanied by implied or overt promises of preferential treatment with regard to an individual's employment or educational level.

## **II. Reporting Incidents of Harassment**

Any person who believes they have been the victim of harassment, as defined above, by a student, an employee of the College or a third party such as a contractor or a visitor, shall report the alleged acts immediately to the Vice President for Operations & Human Resources.

### **Informal Procedures**

The College is committed to the prompt and equitable resolution of all reports or complaints. An individual may voluntarily choose informal measures but will be informed of the options and timelines available in the formal complaint procedures. Early action or reporting assists in stopping the unwelcome or offensive behavior. Additionally, notes or journals including dates,

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times, places, witnesses, and nature of the incident help in the process. Informal steps may include: (1) advising an individual that their behavior is unwelcome, offensive, or inappropriate, and (2) notifying another individual of the behavior.

### **Formal Procedures**

At any time, an individual may choose to initiate a formal procedure by reporting it to the Vice President for Operations & Human Resources.

**A. Harassment Report:** A harassment report will be completed by the person filing the complaint or by the designated administrator. Information included in the report should include, but is not limited to, the following:

- Date report is filed
- Complainant's name and address
- Date(s) of the incident(s)
- Type of harassment
- Description of the incident(s)
- Name(s) of the person(s) involved in the incident(s)
- Name(s) of any witness(es) to the incident(s)
- What action, if any, has been taken
- Requested resolution of the complaint
- Signature of the complainant will be requested, but not required

**B. College-wide:** The Vice President for Operations & Human Resources is the designated administrator to receive reports or complaints of harassment from any individual, employee, or victim of harassment. If the complaint involves the Vice President for Operations & Human Resources, the complaint shall be filed directly with the President of the College. If the complaint involves the President, the complaint shall be filed directly with the Superintendent of the Mitchell School District 17-2 as applicable. If the complaint involves the Superintendent, the complaint shall be filed with the Vice President of Mitchell Technical College according to Mitchell School District 17-2 policy. The College shall post on web sites the name of the designated administrator including a mailing address and telephone number.

**C. Submission of a Complaint or Report of Harassment:** Submission of a complaint or report of harassment will not affect the individual's employment or work assignments.

**D. Confidentiality:** The College will make attempts to respect the confidentiality of the complainant and the individual(s) against whom the complaint is filed as much as possible consistent with the college's legal obligations and the necessity to investigate allegations of harassment and take disciplinary action when the conduct has occurred.

**E. Required Reporting:** If the accusations include possible criminal activity such as molestation, sexual battery, or similar contact, the designated administrator shall comply with all mandatory state reporting requirements including, but not limited to, contact with the State Department of Social Services or police authorities.

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### III. College Investigation and Action

**A.** The designated administrator will conduct an investigation to gather data regarding the alleged discrimination, take appropriate action regarding the complaint, and render a decision in writing to the complainant, with a copy to the President and Superintendent, within fourteen (14) calendar days of receipt of the formal complaint. The date of receipt of the complaint will be that date as stamped on the complaint when received in the office of the designated administrator.

**B.** In determining whether alleged conduct constitutes harassment, the following will be included in conducting the investigation: the surrounding circumstances, the nature of the advances, relationships between the parties involved, and the context in which the alleged incidents occurred.

**C.** The investigation may consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also consist of any other methods and documents deemed pertinent by the investigating party.

**D.** In addition, immediate steps may be taken at any point in the investigation to protect the complainant, students, and employees pending completion of an investigation of alleged harassment.

**E.** During the investigation all parties directly involved in the complaint may have legal or other representation. If any party elects to be represented at any step of the complaint procedure, the name of the representative must be declared in writing to the designated administrator along with the filing of the complaint, notification of any investigation, or the filing of any appeal.

**F.** If the complainant is not satisfied with the decision rendered by the designated administrator, s/he may appeal the decision to the President within seven (7) calendar days following receipt of the decision. The appeal must include the original complaint form, a copy of the decision from the designated administrator, and a written statement as to a reason for the appeal. The date of receipt of the appeal will be that date as stamped on the appeal when received in the office of the President.

**G.** The President or designee will review the materials submitted, may investigate the circumstances, and respond in writing within fourteen (14) calendar days from the date of the appeal. At the President's level, the appeal process may or may not include a conference with the parties involved.

**H.** If the complainant is not satisfied with the decision rendered by the President, s/he may appeal the decision to the Superintendent within seven (7) calendar days following receipt of the decision. The appeal must include the original complaint form, copies of the decisions from the designated administrator and the President, and a written statement as to a reason

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for the appeal. The date of receipt of the appeal will be that date as stamped on the appeal when received in the office of the Superintendent.

I. The Superintendent or designee will review the materials submitted, may investigate the circumstances, and respond in writing within fourteen (14) calendar days from the date of the appeal. At the Superintendent's level, the appeal process may or may not include a conference with the parties involved.

**IV. Prohibition against Retaliation:** The College will discipline any individual who retaliates against any person who testifies, assists, or participates in any investigation, proceeding, or hearing related to a harassment complaint.

Retaliation includes, but is not limited to, any form of intimidation, reprisal, or harassment. Retaliation is itself a violation of federal and state laws prohibiting discrimination and may lead to separate disciplinary action against an individual. If any school personnel or student who has filed a complaint or has testified, assisted, or participated in the investigation of harassment believes that s/he has been retaliated against because of his or her participation, s/he should follow the procedures set forth above.

This applies to retaliation that occurs through verbal, non-verbal, or electronic means of communications on school grounds when engaged in school activities.

**V. False Charges:** False accusations can have a serious detrimental effect on innocent parties. Charges found to have been intentionally dishonest or made maliciously without regard for truth may subject complainants to disciplinary action.

**VI. Uncomfortable Situations:** The College recognizes that not every uncomfortable situation constitutes harassment. However, all reported situations will be investigated.

**VII. Discipline:** Any college action taken pursuant to this policy will be consistent with requirements of college policies. The College will take such disciplinary action or other legal action that it deems necessary and appropriate, including, but not limited to, warning, suspension, or immediate discharge to end harassment and prevent its recurrence.

**VIII. Personnel and Student Records:** No record of a complaint shall be placed in the personnel file of an administrator, faculty member, or staff member or in the personal file of a student if the complaint is found to be unsubstantiated and without merit. If a complaint is substantiated, an official notation will be placed in the personnel file of the administrator, faculty member, or staff member or in the personal file of the student against whom the complaint was filed, and any official punitive action will be noted in the file.

If a complaint is found to be unsubstantiated and without merit at either the informal or formal level, the only record that will be retained will be the name of the complainant, the name of the individual against whom the complaint was made, the date the complaint was first brought to the attention of the College, a general statement of the nature of the complaint, a statement that the complaint was found to be unsubstantiated and without merit, and the level at which such determination was made.

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If after initial counseling on options or unsuccessful mediation the complainant does not wish to pursue the complaint and the Recipient does not initiate formal procedures, the only record that will be retained will be the name of the complainant, the name of the individual against whom the complaint was made, the date the complaint was first brought to the attention of the College, a general statement of and the nature of the complaint, and a statement that the complainant elected not to pursue the matter.

All records generated at any level in the handling of a complaint where it is determined an individual has been guilty of sexual harassment shall be retained permanently in a locked file in the office of the President or Designee. A statement shall be affixed to the file indicating that the contents thereof are being privileged as confidential and that access to the records contained in the file requires the written permission of the President or Designee. A record will be maintained of those obtaining access to the file, which record will contain the name of the individual obtaining access, the date, the reason, and the particular record or records reviewed.

Legal Reference: Title VII of the Civil Rights Act of 1964  
Title IX of the Education Amendments of 1972  
South Dakota Executive Order 81-08

8/10/15 – Additional protected statuses were added. Steps for appeal beyond the Superintendent were removed.  
6/10/19 – Designated administrator updated to Vice President. Records will be retained at the office of the President.  
10/14/20 – Clarified the definition of Sexual Harassment in MTC Policy 117 differs from MTC Policy 115 and that claims of discrimination or harassment will be reviewed by MTC Title IX Coordinator to ensure the correct policy and procedures are applied.  
8/14/23 – The Vice President for Operations & Human Resources is identified as the designated administrator of the Harassment Policy. Removed redundant language regarding the harassment report. Clarified the locations where the policy applies.

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