



# **Mitchell Technical College 2023 Annual Security and Fire Safety Report**

## **Reporting Period**

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## Introduction

Campus security and safety are vital in maintaining a positive learning environment for students and work environment for employees. It is important for the College to keep students, parents, and employees informed about campus safety and security.

Mitchell Technical College, through the office of Vice President for Operations, annually prepares and submits crime statistics to the U.S. Department of Education in accordance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”) by the timelines published in the Federal Register *34 C.F.R. §668.41(e)(5)*. The crime statistics are submitted through the Department’s annual Campus Safety and Security Survey for inclusion in the Office of Postsecondary Education’s Campus Safety and Security Data Analysis Cutting Tool. Campus crime statistics are also available at <http://ope.ed.gov/security>.

Mitchell Technical College, through the office of Vice President for Operations, prepares an annual security report (ASR) with all required elements as stated in the Clery Act and in *34 C.F.R. §668.46(b)* and publishes the single document report as a safety service to the Mitchell Tech community. Each employee and student receive an electronic notification of the report each year through email. Applicants for MTC employment are provided notification regarding the report and new employees are provided notification during their on-boarding orientation. The notification includes information regarding the report’s availability, a link to its exact electronic address, a description of its contents, and a notice that a paper copy will be provided upon request. The report can also be accessed electronically through the Mitchell Tech College Student Consumer Information webpage at <https://mitchelltech.edu/about/student-consumer-information/>.

### Key resources provided to the campus community include:

- [Student Catalog and Handbook](#)
- [MTC Policy 113 – Drug Free Workplace](#)
- [MTC Policy 114 – Crime Awareness and Campus Security Act of 1990 Compliance Policies and Procedures](#)
- [MTC Policy 115 – Harassment](#)
- [MTC Policy 117 – Sexual Harassment/Title IX](#)
- [MTC Policy 518 – Smoke Free Schools](#)
- [MTC Policy 1036 – Non-academic Probation, Suspension, and Expulsion](#)
- [34 CFR 668.46\(c\)\(1\) and 34 CFR 668.46\(b\)](#)

## Section 1

### Accurate and Prompt Reporting of Crimes

Community members, students, faculty, staff, and guests are encouraged to report all crimes and public safety related incidents in a timely manner. Mitchell Tech does not have campus police or security personnel. To report a crime or an emergency, dial 911. Crimes also should be reported in a timely manner to the Vice President for Operations to ensure, if required, inclusion in the annual crime statistics and to aid in providing timely warning notices to the community, when appropriate.

### Annual Disclosure of Crime Statistics

Mitchell Tech, through the office of the Vice President for Operations, annually prepares and submits crime statistics to the U.S. Department of Education in accordance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”) by the timelines published in the Federal Register *34 C.F.R. §668.41(e)(5)*. The crime statistics are submitted through the

Department's annual Campus Safety and Security Survey for inclusion in the Office of Postsecondary Education's Campus Safety and Security Data Analysis Cutting Tool. Campus crime statistics are also available at <http://ope.ed.gov/security>.

Pursuant to the Clery Act, the College, through the office of the Vice President for Operations, also compiles and publishes crime statistics in an Annual Security Report which is located at <https://mitchelltech.edu/about/student-consumer-information/>. As part of this obligation, members of the College's community who are considered to be Campus Security Authorities (identified in [MTC Policy 712](#)) are required to report crimes for inclusion as statistics in the College's Annual Security Report. Mitchell Tech also solicits crime statistics from the law enforcement agencies that have jurisdiction over the College's location. Agencies contacted include the Mitchell City Police Department, and other local and county law enforcement as applicable.

Individuals unable to obtain a hard copy from the College's website of the College's Annual Security Report that includes crime statistics may request one from Mitchell Tech at:

Vice President for Operations  
 Mitchell Technical College  
 1800 E Spruce St  
 Mitchell, SD 57301

### **Guidance to Pastoral and Professional Counselors**

Mitchell Tech does not employ pastoral or professional counselors and, as a result, has no procedures in place.

### **Law Enforcement Authority and Jurisdiction of Security Personnel**

Mitchell Tech does not employ or contract security personnel.

### **Monitoring of Student Organizations Non-Campus Locations**

Mitchell Tech does not have any officially recognized student organizations with non-campus locations.

### **Programs to Inform Students and Employees about Crime Prevention**

Mitchell Tech encourages all employees and students to accept personal responsibility for their own safety and the safety of others and to report all crimes that occur on the College campus to the Mitchell Police Department or to Mitchell Tech.

Students receive electronic notification regarding their access to the Catalog and Student Handbook, and the Annual Security and Fire Safety Report at least once per academic year. These publications contain information and guidelines related to drugs and alcohol, tobacco and smoke-free campus, sexual harassment, registered sex offenders listing, safety, theft/vandalism, dating violence, domestic violence, sexual assault, and stalking. The Center for Student Success also hosts educational programming to raise awareness throughout the year.

- Educational articles are available to students through MTC's Student Success classes and to students requesting information about specific crime-related topics. Educational activities and events related to alcohol or other drugs, or sexual violence awareness and support are provided through other emails coordinated through the Center for Student Success.
- Educational or informative signs are regularly posted on bulletin boards, in bathroom stalls, and on the tv monitors around campus.

All MTC employees are provided with a copy of the MTC Emergency Procedures and Evacuation Procedures upon hire, and training is provided during new employee orientation. New employees

also receive orientation and training regarding the policies listed below and sign an acknowledgement indicating their understanding and location of current board policies found online at <https://mitchelltech.edu/about/board-policies/>.

- [MTC Policy 113 Drug Free Workplace](#)
- [MTC Policy 114 Crime Awareness and Campus Security Act](#)
- [MTC Policy 115 Harassment](#)
- [MTC Policy 116 Equal Opportunity](#)
- [MTC Policy 117 Sexual Harassment/Title IX](#)
- [MTC Policy 743 Use of Alcohol and other Drugs by Employees](#)
- Mitchell Technical College Employee Handbook (MyTech-Human Resource – Internal)

**Programs to Inform Employees and Students about Campus Security Procedures and Practices – Types and Frequency**

Mitchell Tech provides employees and students annual notices concerning campus security procedures and practices. Mitchell Tech encourages all employees and students to accept personal responsibility for their own safety and the safety of others and to report all crimes that occur on the MTC campus to law enforcement and to Mitchell Tech.

**Reporting Clery Act Crimes and Voluntary, Confidential Crime Reporting**

Mitchell Tech encourages the campus community to immediately report Clery crimes or suspicious activity to Campus Security Authorities to help maintain the safest possible environment for students, faculty, staff, and visitors. A report from a victim who does not want to pursue action through Mitchell Tech, or the criminal justice system can be filed and maintain the confidentiality of the reporting individual. The College can document the report without revealing the victim’s identity. This allows Mitchell Tech to track the incident, compare it to other incidents, and take actions to keep further incidents from occurring.

“Campus Security Authority” is a Clery-specific term that encompasses certain Mitchell Tech employees who have a duty to report crimes they become aware of, as defined by the Clery Act and outlined in [MTC Policy 712, Campus Security Authority \(CSA\) Identification](#). The law defines a Campus Security Authority as “an official of an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline and campus judicial proceedings.”

Mitchell Tech identifies employees in the following roles as Campus Security Authorities:

- Vice President for Operations/Title IX Coordinator
- Vice President for Academics
- Director of Student Success
- Student Success Coaches
- Student Club Advisors (Rodeo, Skills USA, Student Veterans Organization, Student Rep Board, Trap)

Clery Crimes include the following:

<b>Criminal Homicide</b>	Murder/non-negligent manslaughter: the willful (non-negligent) killing of one human being by another
	Manslaughter by Negligence: the killing of another person through gross negligence

<b>Sexual Assault Sex Offenses</b>	<p>Sex offenses: Any sexual act directed against another person without the consent of the victim, including instances where the victim is incapable of giving consent</p> <p>Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim</p> <p>Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity</p> <p>Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law</p> <p>Statutory Rape: Sexual intercourse with a person who is under the age of consent.</p>
<b>Robbery</b>	Taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.
<b>Aggravated Assault</b>	Unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury.
<b>Burglary</b>	Unlawful entry of a structure to commit a felony or a theft
<b>Motor Vehicle Theft</b>	The theft or attempted theft of a motor vehicle.
<b>Arson</b>	Willful or malicious burning or attempt to burn with or without intent to defraud a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.
<b>Hate Crimes</b>	A criminal offense that manifests evidence that the victim was intentionally selected because of the perpetrator's bias against the victim.
<b>Dating Violence</b>	<p>Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:</p> <ul style="list-style-type: none"> <li>• the length of the relationship</li> <li>• the type of the relationship</li> <li>• the frequency of interaction between the persons involved in the relationship</li> </ul>
<b>Domestic Violence</b>	Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction...or by 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.
<b>Stalking</b>	Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.
<b>Liquor Law Violation</b>	The violation of state or local laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, or use of alcoholic beverages.

<b>Drug Law Violation</b>	The violation of laws prohibiting the production, distribution and/or use of certain controlled substances and the equipment or devices utilized in their preparation and/or use.
<b>Illegal Weapons Possession</b>	The violation of laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, concealment, or use of firearms, cutting instruments, explosives, incendiary devices, or other deadly weapons.

## Security and Access to Campus Facilities

MTC Clery Act Geography includes the following locations:

### On-Campus

- 1800 E Spruce St, Mitchell, SD
  - Campus Center
  - Energy Training Center
  - Nordby Trades Center
  - Technology Center
- 2021 E Spruce St, Mitchell, SD
  - Driver Training Center

### On-Campus Student Housing

- 1400 E Spruce St, Mitchell, SD
  - MTC does not own, operate, or manage the Campus Tech Apartments, located at 1400 E Spruce St. However, these apartments are considered on-campus student housing under the Clery Act, since they meet the following criteria: 1) are contiguous to MTC main campus; 2) are used to support MTC's education purpose; and 3) MTC is considered to be in control of the Campus Tech Apartments because the buildings are located on property that is owned by the MTC Foundation.

### Off-Campus

- 115 S Pepsi
  - Butler Building (Diesel Power Technology)
- 40625 W Havens St
  - MTC Land Lab, 85 acres of leased property for crop production

### Public Property

- Under the Clery Act, public property encompasses all public property, including thoroughfares, streets, sidewalks, and parking facilities that are within the campus, or immediately adjacent to and accessible from the campus.

Except as noted below, access to the Mitchell Tech campus facilities is authorized through the Vice President for Operations and Office of Technology. Building keys and fobs are issued to staff as needed by the Office of Technology. All staff are authorized to call the appropriate authorities in case of an emergency. All buildings are locked and unlocked by Mitchell Tech employees or by automated timers. Unless other arrangements have been made, buildings open at 7:15 am during weekdays and close at 5:15 pm. Hours may vary with holiday schedules or summer hours. All buildings remain locked after hours and throughout the weekend unless prior arrangements have been made for on-campus events. Students and visitors may access the facilities whenever open.

Students are granted 24/7 access to the Student Lounge and Fitness Center located in the Muth Technology Center after completing an orientation and review of the rules of the Fitness Center.

Students must scan their Mitchell Tech issued ID card every time they enter the Fitness Center, even if it is during normal business hours. After hours, students must scan their ID card to gain access to the Student Lounge and they must scan it again to gain access to the Fitness Center. When a student scans their ID card, a record is created that includes date and time of entry. In addition, motion-activated cameras are operational in both areas 24/7.

### **Security Considerations in the Maintenance of Campus Facilities**

Mitchell Tech custodial and maintenance staff monitor campus facilities, including those related to safety and security and to interior and exterior campus lighting. Maintenance staff manage the security system/door locks located throughout the campus and repair broken or malfunctioning locks. Fire extinguisher and sprinkler system functionality is documented and serviced on a regular schedule by certified vendors.

### **Sex Offender Registration**

In accordance with the Campus Sex Crimes Prevention Act of 2000, which amends the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, the Jeanne Clery Act and the Family Educational Rights and Privacy Act of 1974, Mitchell Tech provides a link to the South Dakota Sex Offender Registry website: <https://sor.sd.gov/>.

The act requires institutions of higher education to advise the campus community where the registered sex offender list provided by the state may be obtained. It also requires registered sex offenders in a state to provide notice to each institution of higher education in that state at which the person is employed or is a student.

As stated on the South Dakota Sex Offender Registry website:

“ANY PERSON WHO USES INFORMATION CONTAINED IN OR ACCESSED THROUGH THIS WEBSITE TO THREATEN, INTIMIDATE, OR HARASS ANY INDIVIDUAL, INCLUDING REGISTRANTS OR FAMILY MEMBERS, OR WHO OTHERWISE MISUSES THIS INFORMATION, MAY BE SUBJECT TO CRIMINAL PROSECUTION. A violation is a Class 6 felony, and the violator could be sentenced to the South Dakota State Penitentiary for up to two years and could be fined up to \$4,000. If you believe that any of the information found in these records is in error, or you would like additional information, please contact the sheriff of the county or the chief of police of the city where the sex offender resides.”

### **Timely Warnings, Emergency Response, and Evacuation Procedures**

#### ***Emergency Response and Evacuation and Timely Warning Notification Policy***

Mitchell Tech’s emergency notification and timely warning processes are consistent with the federal Clery Act legislation regarding emergency notification and timely warnings.

Upon confirmation of a campus emergency, the Mitchell Tech Vice President for Operations, or an employee designated by the President, issues notification without delay to alert the College community to a significant emergency or dangerous situation involving an immediate threat to the health and safety of students or employees on campus.

#### ***Emergency Response and Evacuation Notification and Procedures***

In response to a confirmed emergency, Mitchell Tech will, without delay, and considering the safety of the community, determine the content of the emergency notification and initiate the notification, unless issuing a notification will, in the professional judgment of law enforcement, the President, or the Vice



President for Operations, compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency. Mitchell Tech will notify the campus community upon confirmation of an emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on the campus using its emergency notification system.

Before the campus emergency warning system is activated, a Mitchell Tech leadership team member confirms that the emergency exists through contact with the appropriate law enforcement agency, contact with MTC personnel at the scene of the emergency, personal verification of the emergency, or contact with emergency personnel responding to the emergency. If emergency responders have not been notified of an emergency on campus, MTC leadership will immediately call 911. The President or designee will notify the Mitchell School District Superintendent of emergencies as appropriate.

The entire campus community is alerted through the MTECH emergency communication system when there is at least the potential that a very large segment of the community is affected or when a situation threatens the operation of the entire campus. The President or Vice President for Operations determines the content of the emergency warning, consulting with the Mitchell Police Department, and includes directions to students and employees on campus as well as those on the way to campus. Further notification of the larger Mitchell Community will be disseminated by commercial radio stations, the Mitchell Public Safety alert system, and direct contact if determined to be necessary.

The Vice President for Operations and designees are responsible for initiating the emergency notification process and follow this checklist:

1. Take necessary steps to get to a safe location. When you are safe, proceed to step two.
2. Send MTECH alert through the MTECH emergency notification system.
3. Upon conclusion of the event, send MTECH alert to all students and employees and email as appropriate to press contacts declaring the campus safe and indicate a time when more information will be available.

Mitchell Tech tests its emergency response procedures quarterly, including tests that are announced or unannounced. The tests may include notification exercises, drills, or other activities as deemed appropriate.

### **Emergency Response and Evacuation Flyers**

The [MTC Emergency Response](#) and [Emergency Evacuation Procedures](#) will be posted in all Mitchell Tech classrooms and laboratories. These procedures will be reviewed and discussed by MTC teachers with students at the beginning of each semester. Copies of the flyers are posted on the MTC website and provided to new employees.

### **Timely Warnings**

The Mitchell Tech Vice President for Operations, or an employee designated by the President, will issue a timely warning to the community when a Clery Act crime that poses a serious or continuing threat to students and employees is reported. In addition to issuing a timely warning for Clery Act crimes, Mitchell Tech will issue a timely warning in the event of threats to student, employee, and College property and other crimes that, in the judgment of College administrators, may pose a serious or continuing threat to the campus community.

Timely warnings will be issued on a case-by-case basis considering all facts surrounding a crime, including the following considerations:

- The type of crime reported must pose a serious threat to students and employees or their on-campus property.

- In addition, the crime must pose a continuing danger to the campus community.
- Finally, the possible risk of compromising law enforcement efforts will be considered.

Upon receipt of information that requires a timely warning to be issued, the President and Vice President for Operations will develop the warning content in consultation with Mitchell Police Department or other emergency officials and activate the emergency communication process to issue the warning.

The content of the timely warning includes all available information that enables students and employees to protect themselves and aid in the prevention of crime. All known and available information pertinent to the crime is included in the warning, such as the nature of the crime, the location of the crime, the target of the crime, and a description of the perpetrator(s), if the information does not compromise law enforcement efforts. Any additional relevant information that does not compromise law enforcement efforts is also included in the warning.

In every case, an evaluation of the circumstances is conducted to determine if a timely warning or other appropriate notification should be issued. Notifications are issued and continually updated until it is determined that the threat has ended.

Individuals with information warranting a timely warning, or emergency notification should report circumstances by dialing 911, by notifying a campus security authority, or by contacting the Mitchell Police Department.

Timely warnings will be issued to all students and employees using the MTECH alert notification system, the campus website, and/or social media sites.

### **Missing Student Notification**

Mitchell Technical College does not own, operate, or manage any on-campus student housing facilities. MTC does not own, operate, or manage the Campus Tech Apartments, located at 1400 E Spruce Street. However, for the purposes of the Higher Education Act (HEA) missing student notification regulations, MTC is considered to be in control of the Campus Tech Apartments because the buildings are located on property that is owned by the MTC Foundation.

MTC has established procedures to report a missing student, defined as a MTC student residing in the Campus Tech Apartments who is absent for an extended period (24 hours or more) with no visual, verbal, or written confirmation of the individual's whereabouts. The [Missing Student Procedure](#) is posted on the MTC Website.

### **Working Relationship of Campus Security and Law Enforcement Agencies**

Mitchell Tech does not employ or contract security personnel.

## Section 2

### **Sexual Assault, Domestic Violence, Dating Violence, Stalking – Prevention & Response**

Mitchell Tech is committed to providing a safe educational and working environment for its students, faculty, staff, and other members of the MTC community. MTC addresses sexual assault, domestic violence, dating violence, and stalking (SA/DV/DV/S) in its educational programs and activities. MTC is committed to preventing SA/DV/DV/S, as well as considering its effects on the MTC community.

MTC has adopted Policy and related Procedures (Enclosure 1 and Enclosure 2) to inform all persons of how to report or file a complaint in the event they are or have knowledge of someone involved in an incident of sexual harassment to include SA/DV/DV/S, and to inform them how Mitchell Tech will respond. It is important that all students and employees read these policies and procedures, so they fully understand their rights, obligations, and options if sexual harassment including SA/DV/DV/S occurs. Upon actual knowledge of SA/DV/DV/S, the Title IX Coordinator will immediately contact the victim to assist with Mitchell Tech policies and procedures, supportive measures, and resources including written notification of information on existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available to the victim. Below is information on programming Mitchell Tech provides to increase campus awareness and knowledge to prevent SA/DV/DV/S and to access resources that are available if SA/DV/DV/S occurs. These, too, are important for all students and employees to read and partake in so they know their rights, obligations, and options, and can be part of the solution to prevent sexual violence.

### **Programs to Prevent Sexual Assault, Domestic Violence, Dating Violence and Stalking**

MTC believes that SA/DV/DV/S prevention training and education cannot be accomplished via a single day or a single method of training. To that end, MTC will continue to educate all new and current students and employees using a variety of best practices aimed at educating the entire MTC community in a way that decreases SA/DV/DV/S and maintaining a culture where SA/DV/DV/S are not tolerated.

Training is provided on the following topics, using a method and manner appropriate to the institutional culture of the MTC campus:

- MTC prohibits sexual harassment, including sexual violence, other violence, or threats of violence, and will take administrative action per policy regarding any accused individual within the jurisdiction MTC;
- MTC will provide a written explanation of student's or employee's rights and options when a student or employee reports MTC that the student or employee has been a victim of SA/DV/DV/S whether the offense occurred on- or off-campus;
- Relevant definitions including, but not limited to, the definitions of sexual harassment and consent;
- Policies apply equally to all students regardless of sex, sexual orientation, gender identity, or gender expression;
- The role of the Title IX Coordinator and other relevant offices that address sexual violence prevention and response;
- Awareness of violence, its impact on victims/survivors and their friends and family, and its long-term impact;
- The Sexual Assault Awareness, Prevention, and Reporting document and the [MTC Policy 117 Sexual Harassment – Title IX](#);
- How to report sexual violence and other crimes to MTC officials and/or local law enforcement;
- How to obtain services and support;

- Bystander intervention and the importance of taking action, when one can safely do so, to prevent violence;
- Risk assessment and reduction including, but not limited to, steps that potential victims/survivors and potential assailants and bystanders to violence can take to lower the incidence of sexual violence; and
- Consequences and sanctions for individuals who commit these crimes.

The process is not limited to a single day of orientation or in-service but recognizes that students enroll at different times and employees start on different dates and gives MTC the flexibility to best educate students and employees at a time and manner that can most effectively bring these points to light.

Students and employees at MTC shall receive general and specialized training in sexual violence prevention. MTC will conduct a campaign, compliant with federal and state requirements, to educate the student and employee populations. Methods of training and educating students and employees may include, but are not limited to:

- Online training;
- Posters, bulletin boards, and other targeted print and email materials;
- Educational programs;
- Programming surrounding large recurring campus events;
- Partnering with state and local community organizations that provide outreach, support, crisis intervention, counseling, and other resources to reporters of crimes to offer training and education.

Partnerships can also be used to educate community organizations about the resources and remedies available on campus for students and employees seeking services.

### **Resources and Emergency External Reporting Options**

MTC is committed to treating all members of the community with dignity, care, and respect. All individuals are encouraged to seek the support of campus and community resources when SA/DV/DV/S occurs. These trained professionals can provide guidance in making decisions and provide information about available resources and procedural options. Individuals are encouraged to use all available resources on- and off-campus, regardless of when or where the incident occurred. There are many resources available on campus and in the surrounding community. As detailed below, there are confidential resources that by law cannot share information without the consent of the individual seeking assistance, except for extreme circumstances, such as a health and/or safety emergency.

#### On-campus Resources

On-campus options to obtain assistance and guidance include:

- Title IX Coordinator (Vice President for Operations) – (605) 995-7178

The following may also provide assistance at the direction of the Title IX Coordinator:

- MTC Director of Student Success (Assistant Title IX Coordinator) – (605) 995-7195

MTC is bound by mandatory reporting laws in certain situations, including the sexual abuse of a minor. Any MTC employee who suspects that a child under 18 years of age has been neglected or physically abused (including sexual abuse and emotional abuse) by a parent or other person, will report this information orally or in writing to the Title IX Coordinator. The Title IX Coordinator will immediately report this information to the state's attorney, the department of social services, the county sheriff, and/or the city police.

In all cases, MTC staff will maintain the privacy of an individual's information within the limited circle of those involved in the resolution of a complaint under this policy.

### Off-campus Resources

Off-campus options to obtain assistance and guidance confidentially (these outside options do not provide any information to the College):

- Crisis services offices will generally maintain confidentiality unless you request disclosure and sign a consent or waiver form. More information on an agency's policies on confidentiality may be obtained directly from the agency.
  - **Safe Place of Eastern South Dakota House**
    - <https://www.safeplace-esd.org>
    - (605) 996-4440
  - **South Dakota Domestic Violence Hotline**
    - [www.sdnafvsa.com](http://www.sdnafvsa.com)
    - (800) 430-7233
  - **211 Helpline Center**
    - [www.helplinecenter.org](http://www.helplinecenter.org)
    - Phone – 211 or text your zip code to 898211
- Off-campus healthcare providers (Medical office and insurance billing practices may reveal information to the insurance policyholder, including medication and/or examinations paid for or administered. Even individuals who can typically maintain confidentiality are subject to exceptions under the law, including when an individual is a threat to him or herself or others and the mandatory reporting of child abuse.)
  - **Avera Queen of Peace Hospital**
    - <http://www.avera.org/queen-of-peace>
    - (605) 995-2000
- Assistance can also be obtained through:
  - Legal Momentum: <https://www.legalmomentum.org/>
  - Pandora's Project: <http://www.pandys.org/>
  - RAINN: <https://www.rainn.org/get-help>
  - Safe Horizons: <http://www.safehorizon.org/>

Note that these hotlines are for crisis intervention, resources, and referrals, and are not reporting mechanisms, meaning that disclosure on a call to a hotline does not provide any information to the campus. Victims/survivors are encouraged to additionally contact a campus confidential or private resource so that the campus can take appropriate action in these cases.

### Emergency and External Reporting Options

MTC encourages all individuals to seek assistance from a medical provider and/or law enforcement immediately after an incident of sexual violence. This is the best option to ensure preservation of evidence to assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order and to begin a timely investigative and remedial response.

The College encourages all individuals to make a report to the College and to local law enforcement. Reporting options are not mutually exclusive. Both internal and criminal reports may be pursued simultaneously.

The College will help any MTC community member get to a safe place and will facilitate transportation to the hospital, coordinate with law enforcement, and provide information about on- and off-campus resources and options for resolution.

To file a criminal complaint with local law enforcement:

- Mitchell Police Department
  - 911 – Emergency
  - (605) 995-8400 non-emergency
  - 201 W First St, Mitchell
- Davison County Sheriff Office
  - (605) 995-8630
  - 1015 S Miller Ave, Mitchell

## **Section 3**

### **Introduction**

The Drug-Free Schools and Communities Act of 1989 (Public Law 101-226, 20 U.S.C. § 1011i), and its implementing regulations (34 C.F.R. Part 86), requires that an institution of higher education that receives Federal funding certify to the Secretary of Education that it has adopted and implemented a drug and alcohol abuse prevention program (DAAPP) to prevent the unlawful possession, use, or distribution of illicit drugs and alcohol by all students and employees on school premises or as part of any of its activities. The DAAPP must be communicated annually, in writing, to all students enrolled in any course(s) for which academic credit will be awarded as well as to all employees.

### **Drug and Alcohol Abuse Prevention Program (DAAPP)**

Mitchell Technical College has adopted and implemented a Drug and Alcohol Abuse Prevention Program (DAAPP) to prevent the unlawful possession, use, or distribution of illicit drugs and alcohol by all students and employees on school premises or as part of any of its activities. The DAAPP as well as other drug and alcohol awareness information is provided to all members of the College community through the Center for Student Success and Office of the Vice President for Operations. Employees and students may contact the Vice President for Operations or Director of Student Success for additional information on the risks involved with the misuse of drugs and alcohol and services available for assistance.

The Center for Students Success coordinates educational programming to raise awareness throughout the year including the following:

- Distribution and review of Mitchell Tech drug and alcohol policies during Student Success course.
- Inclusion of drug and alcohol education content in the Student Success curriculum.
- Provision of individualized programming, education, or intervention as needed or requested.
- Some MTC programs have zero-tolerance policies for drug and alcohol use. Beginning with the recruitment process, students in these programs are informed of drug testing requirements and the consequences of violating the policy.

- The Director of Student Success sends a notification with MTC's DAAPP to all students via emails in October of the Fall semester and again in January of the Spring semester, thus assuring that all students who enroll for credit at MTC will receive the notification.
- MTC's drug and alcohol policies are also posted on the MTC website along with the DAAPP.

Mitchell Tech publishes a biennial report describing drug and alcohol abuse education programs. The biennial review and supporting documents are available to any interested party upon request to the Vice President for Operations.

## ***Disclosure of DAAPP***

### **Students**

Students receive notification of MTC's drug and alcohol policies through the MTC Student Handbook, the Annual Security and Fire Safety Report, MTC policy webpage and as part of the curriculum of the Student Success class. Students who have knowledge of or receive notification of a drug or alcohol violation by a student or MTC employee shall immediately report the violation to the Vice President for Operations or the Director of Student Success.

### **Employees**

New employees receive a copy of the drug-free workplace policy, DAAPP, and notice of the ASR at the time of their new employee orientation. All employees are required to review these documents and sign an acknowledgment. An employee or supervisor having knowledge of or having received notification of a violation of the drug-free workplace policy by an employee shall immediately report such violation to the Vice President for Operations or Vice President for Academics. Employees who have knowledge or receive notification of a drug or alcohol violation by a student shall immediately report the violation to the Vice President for Operations or the Director of Student Success.

## **Standards of Conduct**

### **Possession, Use, and Sale of Alcoholic Beverages and Illegal Drugs**

Mitchell Tech is committed to a drug-free workplace and learning environment. All students and employees should be familiar with and abide by the Drug Free Workplace Policies ([MTC Policy 113](#) and [MTC Policy 743](#)). Mitchell Tech believes in providing assistance to employees and students with alcohol and other drug concerns while upholding the law. Mitchell Tech will report all criminal alcohol and other drug violations to the appropriate law enforcement agencies and cooperate with state and federal investigations related to these matters.

Mitchell Tech students or employees shall not be involved with the use, possession, or sale of drugs, alcohol, or any controlled substances including cannabis used or possessed for medical purposes in any manner that may impair any person's ability to perform assigned tasks or otherwise adversely impact their behavior. Furthermore, no student shall possess alcoholic beverages and/or the previously mentioned substances in the workplace, classroom, laboratory, vehicle, or at any intramural sports event, class trip, or campus function or consume alcoholic beverages in association with said places during working, classroom, laboratory, or vehicle operating hours or at any time prior to performing safety-sensitive functions which may impair that person's ability to perform their duties.

While South Dakota may permit certain actions regarding marijuana, the use and possession of marijuana whether for medical or recreational purposes, is prohibited under federal law. Federal law classifies marijuana (cannabis) as a Schedule 1 controlled substance and criminalizes the growth or use of marijuana. The use of medical marijuana is also restricted by federal laws such as the Drug-Free

Workplace Act and Drug-Free Schools and Communities Act of 1989. Consequently, any use or possession of marijuana (even medically issued) on property or vehicles owned or controlled by Mitchell Technical College or at any event hosted or sponsored by Mitchell Technical College is prohibited.

It is the policy of the Mitchell Tech that the unlawful manufacture, distribution, dispensation, possession, use, or being under the influence of a controlled substance on property of Mitchell Tech as a student or employee of Mitchell Tech while engaged in an activity assigned as part of his/her involvement with Mitchell Tech is prohibited unless said controlled substance is used as prescribed by a doctor. A description of applicable legal sanctions for students is listed in [MTC Policy 1035](#). For purposes of this section, a prescription does not include a written certification for use of medical marijuana, pursuant to SDCL 34-20G-1(23). Students who use medical marijuana pursuant to a validly issued written certification when not on property controlled by Mitchell Tech may subsequently report to class or participate in activities as long as such use does not cause impairment or disrupt academic or campus activities.

An employee has a duty to report to work able to perform the duties of their position, notifying the supervisor when they are not able to perform the duties of their position, and notifying their supervisor when they observe a colleague who is not able to perform their duties.

Students and employees may not consume alcoholic beverages on MTC property, during classes, or in connection with activities officially sponsored by MTC except as outlined by [MTC Policy 1143 Facility Usage – Use of Alcohol](#). (see extract below)

*MTC Policy 1143 extract:*

*No possession, use, or distribution of alcohol is permitted on MTC premises controlled by the Board of Education except as provided in this policy. Possession, use or distribution of alcoholic beverages in a lawful manner is permitted on premises controlled by the Board of Education which have been designated by the President of Mitchell Technical College as places where such possession, use and distribution may be granted, subject to such conditions as the president may also prescribe. Alcoholic beverages are not permitted on premises controlled by the Board of Education at any student sponsored program, activity, or event including MTC - recognized clubs and organizations and the Student Representative Board.*

## **Legal Sanctions for Unlawful Possession or Distribution of Illicit Drugs and Alcohol**

### **Alcohol Offenses**

The State of South Dakota sets 21 as the minimum age to purchase or possess any alcoholic beverage. A violation of any law or MTC policy regarding alcohol while at the workplace or on campus will be treated as a disciplinary matter by MTC.

Mitchell Tech will report all criminal alcohol violations to appropriate law enforcement agencies and will cooperate with state and federal investigations related to these matters.

### **Controlled Substance Offenses**

Criminal manufacture, distribution, possession, sale or use of drugs is covered in South Dakota Codified Law ([SDCL 22-42](#)) and Federal laws ([21 US Code 841 \(Manufacture & Distribution\)](#), [21 US Code 863 \(Paraphernalia\)](#), and [21 US Code 844 \(Possession\)](#)). Drugs include all controlled substances, illegal or controlled mood-altering chemicals, all look-alike drugs, all chemicals that release toxic



vapors, and any prescription or patent drugs except those medications prescribed by and under the supervision of a licensed physician in a manner consistent with MTC policy. A violation of any law or MTC policy regarding drugs while at the workplace or on campus will be treated as a disciplinary matter by MTC.

Mitchell Tech will report all illegal drug violations to appropriate law enforcement agencies and will cooperate with state and federal investigations related to these matters.

## Health Risks Associated with the Use of Illicit Drugs and Abuse of Alcohol

### Known Health Risks

As part of the effort to create a drug-free campus, MTC believes the MTC community should be educated about the physical and emotional health hazards the misuse of drugs and alcohol presents. MTC provides information and educational programs on substance abuse throughout the year to students and employees. Listed below are some of the health risks associated with using/abusing alcohol and various drugs.

(Please note that the dangers associated with substance abuse are not limited to only the conditions listed below. For additional information see CDC webpage <https://www.cdc.gov/alcohol/fact-sheets/alcohol-use.htm> and the Substance Abuse and Mental Health Services Administration (SAMHSA) <https://www.samhsa.gov/adult-drug-use>:

- Alcohol - Heart and liver damage; brain damage; death from overdose and accidents.
- Marijuana/Hashish - Impaired memory perception, interference with psychological maturation, possible damage to lungs and heart, psychological dependence
- Cocaine - Intense psychological dependence, sleeplessness and anxiety, nasal passage damage, lung damage, heart damage/heart attack, and death from overdose
- Stimulants - Loss of appetite, hallucinations, paranoia, convulsions, brain damage, cancers of the lung, throat, mouth, death from overdose
- Depressants - Infection, addiction, loss of appetite, death from overdose, nausea, and has severe interaction with alcohol
- Narcotics - Addiction with severe withdrawal symptoms, loss of appetite, death from overdose
- Hallucinogens - Anxiety, depression, impaired memory, emotional breakdown, death from overdose
- Inhalants - Drastic weight loss, brain damage, liver and bone marrow damage, high risk of sudden death

Contact the Vice President for Operations or the Center for Student Success for additional information on the risks involved with the misuse of drugs and alcohol.

### Maintenance of Drug-Free Workplace

Good faith efforts on the part of MTC to establish and maintain a drug-free workplace will include providing ongoing drug awareness educational programs and dissemination of drug awareness information for all members of the MTC community as well as implementation and strict enforcement of this policy.

The Vice President for Operations and Director of Student Success or designees will coordinate ongoing drug education and awareness programs guided by the biennial and other drug informational materials and programming as appropriate. Students and employees are expected to avail themselves of these programs and materials. Schedules and locations will be publicized in various media and by individual notification.

## Disciplinary Sanctions for Students or Employees

### Sanctions for Violation or Non-compliance

#### Students

Violations of MTC's drug and alcohol policies will be responded to in accordance with the seriousness and frequency of the offense. Any student displaying intoxicated behavior will immediately be referred to the Director of Student Success or Vice President for Operations. Students found in violation of any of these policies will be subject to the following consequences.

#### **Reasonable Suspicion**

Mitchell Tech practices zero tolerance for drug or alcohol use by students and employees while in classrooms, labs, or safety-sensitive areas. When an instructor, supervisor or administrator observes a student with behavior or an appearance that is characteristic of alcohol or drug use, the student will be required to submit to drug or alcohol testing. The student will be immediately suspended from school until test results are received. Mitchell Tech is responsible for the cost of this test.

#### **Positive Test Results for Students after Reasonable Suspicion**

A student with a positive test result will meet with the Director of Student Success or designee to determine disciplinary and treatment options that the student must follow in order to be reinstated into school. Mitchell Tech's intent is to establish a positive environment in which these problems can be addressed locally in a helpful and supportive manner rather than a punitive way.

If a student tests positive for alcohol (0.02 or higher), the student will be removed from classes and taken home. A breath alcohol test administered the following day must be considered negative for alcohol concentration before the student may return to classes. If a student tests positive for alcohol in a subsequent follow-up test, the student will be referred to a substance abuse professional (SAP) and must complete a prescribed treatment plan and follow-up testing in order to remain enrolled in the program at Mitchell Tech. The student can continue to attend classes until such time as they can meet with the SAP as long as they test negative on alcohol tests that will be administered daily. The student is responsible for the cost of the initial referral to an SAP. The student will be responsible for the cost of any follow-up counseling or treatment and any follow-up drug testing.

If a student tests positive for drug use, the student will be immediately suspended from school until Mitchell Tech receives results from the review by the medical review officer. Based on the medical review officer's report of a positive drug test, the student will be required to meet with a substance abuse professional (SAP) to determine the counseling or treatment plan the student must follow to remain enrolled at Mitchell Tech. The student would also be subject to unannounced follow-up testing as determined by the SAP in order to remain in classes. The student is responsible for the cost of the initial referral to an SAP. The student will be responsible for the cost of any follow-up counseling or treatment and any follow-up drug testing.

Cannabidiol (CBD) use is not a legitimate medical explanation for a laboratory-confirmed marijuana or tetrahydrocannabinol (THC) positive result. Therefore, Medical Review Officers will verify a drug test confirmed at the appropriate cutoffs as positive, even if the person being tested states, he or she only used a CBD product.

All positive tests for drug use (refusal to submit to a test or an altered specimen is considered a positive test result) will be reviewed by a medical review officer who is a licensed physician with knowledge of substance abuse disorders. The medical review officer will interpret and evaluate the results of each test, along with relevant medical information, including possession of a medical marijuana card, about each student, to determine whether or not a positive test resulted. If the result of the test is positive, the medical review officer will also determine if the student was impaired at the time of the test because of drug use. (Students who use medical marijuana pursuant to a validly issued written certification when not on property controlled by the College may subsequently report to class or participate in activities as long as such use does not cause impairment or disrupt academic or campus activities.) The medical review officer will contact the student whose test is positive or whose test has been altered or refused. Mitchell Tech will also be notified of a positive test result.

Based on the medical review officer's review of a positive drug test, the student will be required to meet with a substance abuse professional (SAP) to determine the counseling or treatment plan the student must follow to remain enrolled at Mitchell Tech. The student would also be subject to unannounced follow-up testing as determined by the SAP in order to remain in classes. The student is responsible for the cost of the initial referral to an SAP. The student will be responsible for the cost of any follow-up counseling or treatment and any follow-up drug testing.

When the student has completed the treatment plan as outlined by the substance abuse professional, the student's name will be returned to the selection pool for random drug testing as long as the student remains enrolled in the program.

If the results of a positive drug test are confirmed by a medical review officer and are not the result of medication currently prescribed to the student, the student will be dismissed from any zero-tolerance program which currently includes the Power Line Construction & Maintenance and Electrical Utilities & Substation Technology programs. The zero-tolerance policy is consistent with industry standards and is recommended by industry. For purposes of this section, a prescription does not include a written certification for use of medical marijuana, pursuant to SDCL 34-20G-1(23).

## Employees

Violations of MTC's drug-free workplace policy by employees will result in disciplinary actions that may include a warning, temporary suspension from duties with or without pay, or termination of employment. Disciplinary actions will be pursued consistent with existing contractual agreements. The nature and extent of these actions depend on a variety of factors, including the severity of any work rule violations, the pattern and frequency of observed substance related problems, past work record, or any other consideration which may be considered relevant by the College. The need for disciplinary action and the appropriate penalty for employees will be handled accordingly by the Vice President for Operations and others as appropriate.

### **Reasonable Suspicion**

Drug or alcohol testing may be conducted when a supervisor or administrator observes impairment, behavior, or actions that indicate the individual is not able to perform the duties of their position. Mitchell Tech is responsible for the cost of this test.

### **Positive Test Results for Employees after Reasonable Suspicion**

All positive tests (refusal to submit to a test or an altered specimen is considered a positive test result) will be reviewed by a medical review officer who is a licensed physician with knowledge of substance abuse disorders. The medical review officer will interpret and evaluate the results of each test, along with relevant medical information about each student or staff member, to determine whether a positive

test resulted. The medical review officer will contact the individual whose test is positive or whose test has been altered or refused. ([MTC Policy 743](#))

## **Drug and Alcohol Counseling, Treatment, Rehabilitation or Re-Entry Programs Available to Students and Employees**

Students are encouraged to contact the Center for Student Success for assistance with drug and alcohol concerns. Employees should contact the Vice President for Operations. Community resources and confidential third-party counseling services are available as indicated below.

The South Dakota Department of Social Services maintains a statewide list of prevention and treatment programs. The list is available at <https://dss.sd.gov/behavioralhealth/resources.aspx>.

### **Mitchell Alcohol and Drug Resources**

- Stepping Stones
  - 901 S Miller St
  - 605-995-8180
- AA (Alcoholics Anonymous)
  - 424 E 9th St
  - 605-996-8264
- Dakota Counseling Institute
  - 910 W Havens St
  - 605-996-9686
- Lutheran Social Services
  - 411 N Duff Ave
  - 800-568-2401
- 211 Helpline Center
  - [www.helplinecenter.org](http://www.helplinecenter.org)
  - Phone – 211



## ***2020-2022 Crime Statistics Summary***

### Crime Statistics

MTC collects crime statistics from the Mitchell Police Department and the Davison County Sheriff's Office annually. A request for information is made to the above agencies each calendar year.

2020				
Criminal Offenses	On-Campus	On-Campus Housing	Non-Campus	Public Property
Murder/Non-negligent Manslaughter	0	0	0	0
Manslaughter by negligence	0	0	0	0
Rape	0	0	0	0
Fondling	0	0	0	0
Incest	0	0	0	0
Statutory Rape	0	0	0	0
Robbery	0	0	0	0
Aggravated Assault	0	0	0	0
Burglary	0	0	0	0
Motor Vehicle Theft	0	0	0	0
Arson	0	0	0	0

2021				
Criminal Offenses	On-Campus	On-Campus Housing	Non-Campus	Public Property
Murder/Non-negligent Manslaughter	0	0	0	0
Manslaughter by negligence	0	0	0	0
Rape	0	0	0	0
Fondling	0	0	0	0
Incest	0	0	0	0
Statutory Rape	0	0	0	0
Robbery	0	0	0	0
Aggravated Assault	0	0	0	0
Burglary	0	1	0	0
Motor Vehicle Theft	0	0	0	0
Arson	0	0	0	0

2022				
Criminal Offenses	On-Campus	On-Campus Housing	Non-Campus	Public Property
Murder/Non-negligent Manslaughter	0	0	0	0
Manslaughter by negligence	0	0	0	0
Rape	0	1	0	0
Fondling	0	0	0	0
Incest	0	0	0	0
Statutory Rape	0	0	0	0
Robbery	0	0	0	0
Aggravated Assault	0	0	0	0
Burglary	0	1	0	0
Motor Vehicle Theft	0	0	0	0
Arson	0	0	0	0

## Violence Against Women Act (VAWA) Offenses

2020				
Offense	On-Campus	On-Campus Housing	Non-Campus	Public Property
Domestic Violence	0	0	0	0
Dating Violence	0	0	0	0
Stalking	0	0	0	0

2021				
Offense	On-Campus	On-Campus Housing	Non-Campus	Public Property
Domestic Violence	0	0	0	0
Dating Violence	0	0	0	0
Stalking	0	0	0	0

2022				
Offense	On-Campus	On-Campus Housing	Non-Campus	Public Property
Domestic Violence	0	0	0	0
Dating Violence	0	0	0	0
Stalking	0	0	0	0

## Arrests Made

2020				
Offense	On-Campus	On-Campus Housing	Non-Campus	Public Property
Illegal Weapons Possession	0	0	0	0
Drug Law Violations	0	0	0	0
Liquor Law Violations	0	0	0	0

2021				
Offense	On-Campus	On-Campus Housing	Non-Campus	Public Property
Illegal Weapons Possession	0	0	0	0
Drug Law Violations	0	0	0	0
Liquor Law Violations	0	0	0	0

2022				
Offense	On-Campus	On-Campus Housing	Non-Campus	Public Property
Illegal Weapons Possession	0	0	0	0
Drug Law Violations	0	0	0	0
Liquor Law Violations	0	0	0	0

## Hate Crimes

There were no reported Hate Crimes for the years 2020, 2021, or 2022.

## Unfounded Crimes

There was 1 unfounded crime (as categorized by Mitchell Police Department) in 2020, no unfounded crimes in 2021, and no unfounded crimes in 2022.

## Disciplinary Actions Taken

2020				
Offense	On-Campus	On-Campus Housing	Non-Campus	Public Property
Illegal Weapons Possession	0	0	0	0
Drug Law Violations	0	0	0	0
Liquor Law Violations	0	0	0	0

2021				
Offense	On-Campus	On-Campus Housing	Non-Campus	Public Property
Illegal Weapons Possession	0	0	0	0
Drug Law Violations	0	0	0	0
Liquor Law Violations	0	0	0	0

2022				
Offense	On-Campus	On-Campus Housing	Non-Campus	Public Property
Illegal Weapons Possession	0	0	0	0
Drug Law Violations	0	0	0	0
Liquor Law Violations	0	1	0	0

## Annual Fire Safety Report

Mitchell Technical College does not own, operate, or manage any on-campus student housing facilities. In particular, MTC does not own, operate, or manage the Campus Tech Apartments, located at 1400 E Spruce St. However, for the purposes of the *Clery Act*, MTC is considered to be in control of the Campus Tech Apartments because the buildings are located on property that is owned by the MTC Foundation.

Since the Campus Tech Apartments located at 1400 East Spruce Street are considered On-Campus student housing under the Clery Act, MTC is required to maintain and disclose statistics for fires that occur in those facilities as well as to disclose fire safety policies and procedures for these facilities. This report covers the period January 1, 2021 – December 31, 2021.

### Fire Safety requirements include:

1. Maintain a log of all reported fires that occur in on-campus student housing facilities;
2. Publish an annual fire safety report that contains fire safety policies and fire statistics for these facilities; and
3. Submit fire statistics annually to the U.S. Department of Education.



## Components of the Fire Safety Report

1. Fire Safety System installed in the Campus Tech Apartments includes:
  - a. Smoke Detectors located in each apartment for detection of smoke and potential fire.
  - b. Fire Extinguishers are installed in public hallways for use in the event of a fire.
  - c. Sprinkler System is located throughout the building to extinguish fires.
2. Number of Fire Drills held during the previous calendar year. There were no fire drills conducted during the 2022 calendar year.
3. Policies on portable electrical appliances, smoking and open flames in student housing facility.
  - a. Smoking is not permitted anywhere within the building.
  - b. Fire pits, personal grills, and chiminea type equipment are not allowed on the Campus Tech Apartment Grounds.
  - c. Open Flames are prohibited in student housing.
  - d. Portable electrical appliances such as George Foreman Grill, Pizza Pizzaz, are allowed in student housing.
4. Procedures for student housing evacuation. Students are provided an Emergency Procedure handout upon moving into their apartment. Students are directed to call 911 and get out of the building in the event of a fire.
5. Policies regarding Fire Safety Education and training:
  - a. Students are provided written guidelines during check-in that include Campus Tech Apartments Rules and Regulations as well as Emergency Procedures.
  - b. The Campus Tech Apartment Property Manager has conducted fire extinguisher and safety training for employees.
  - c. Fire safety is a topic addressed during new Student Orientation through a presentation by representatives from the Mitchell Public Safety Office. This information is reinforced during the Student Success class taken by incoming students.
6. Reporting. The following individuals may receive reports of fires (after the fact) to record information/statistics for inclusion in the Annual Fire Safety Report:
  - a. Vice President for Operations
  - b. Director of Student Success
  - c. Manager, Mills Property Management
7. Future Improvements – MTC and Mills Property Management will meet as needed to consider updates and revisions of the current Campus Tech Apartment Rules & Regulations.
8. Fire Statistics. Annual statistics are submitted online the U.S. Department of Education and are included in this report below:

### Fire Statistics

There were no reported fires in any on-campus student housing facilities for 2022.



# POLICY

Category		Approval		
Series 100: Foundations and Basic Commitments		Effective	Administration	Board
		8/14/2020	8/14/2020	10/14/2020
		Revised		For Review
		8/14/2020		

## SEXUAL HARASSMENT – TITLE IX

## MTC 117

ATIXA 2020 MODEL POLICY AND PROCEDURES  
USE AND ADAPTATION OF THIS MODEL WITH CITATION TO ATIXA IS PERMITTED THROUGH A LIMITED  
LICENSE TO MITCHELL TECHNICAL COLLEGE.  
ALL OTHER RIGHTS RESERVED.  
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### 1. Definitions

- *Advisor* means a person, who may be, but is not required to be an attorney, chosen by a party, or appointed by the institution to accompany the party to meetings related to the Grievance Process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- *Appeal Decision-maker* refers to those who have decision-making authority within Appeals as part of the Grievance Process.
- *Complainant* means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. A Complainant must be participating in or attempting to participate in a Mitchell Technical College (MTC) education program or activity at the time of filing the Formal Complaint.
- *Day* means Monday through Friday, except for holidays and other times when MTC's administrative offices are closed.
- *Decision-maker(s)* means the Hearing Decision-maker, the Appeal Decision-maker, the Disciplinary Sanctions Decision-maker, or any combination thereof.
- *Disciplinary Sanction* means a consequence imposed by MTC on a Respondent who is found to have violated this policy<sup>1</sup>. Disciplinary sanctions are not supportive measures and may be punitive and may burden the Respondent.
- *Disciplinary Sanction Decision-maker* refers to those who have decision-making authority in determining disciplinary sanctions as part of the Grievance Process.
- *Education program or activity* means locations, events, or circumstances within the United States where MTC exercises substantial control over both the Respondent and the context

<sup>1</sup>MTC 117 policy and procedures are tightly woven. Therefore, any reference to policy or procedure may be referring to the MTC117 policy and procedures as a whole.

in which the sexual harassment occurs and includes any building owned or controlled by a student organization that is officially recognized by MTC.

- *Final Determination* means a conclusion by the preponderance of the evidence standard that the alleged conduct did or did not violate policy.
- *Finding* means a conclusion by the preponderance of the evidence standard that the conduct did or did not occur as alleged (as in a “finding of fact”).
- *Formal Complaint* means a document submitted and signed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that MTC investigate the allegation. At the time of filing the Formal Complaint, a Complainant must be participating in or attempting to participate in the education program or activity of MTC.
- *Grievance Process* also referred to as “Grievance Process A,” means the resolution process designated by MTC to address conduct that falls within this policy, and which complies with the requirements of the Title IX regulations (34 CFR §106.45). This is detailed in MTC Procedure 117 Grievance Process A
- *Grievance Process Pool* includes any Investigators, Informal Resolution Facilitators, Hearing Decision-makers, Appeal Decision-makers, and Sanctioning Decision-makers who may perform any or all of these roles (though not at the same time or with respect to the same case).
- *Hearing Decision-maker* refers to those who have decision-making authority within Hearings as part of the Grievance Process.
- *Investigator* means the person or persons charged by MTC with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence as part of the Grievance Process.
- *Obligated Reporter* means an employee of MTC who is obligated by policy to share knowledge, Notice, and/or reports of harassment with the Title IX Coordinator. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as an Official with Authority.
- *Notice* (actual knowledge) means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of sexual harassment or allegations of sexual harassment. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of MTC with actual knowledge is the Respondent.
- *Official with Authority* (OWA) means an employee of MTC explicitly vested with the authority to implement corrective measures for sexual harassment on behalf of MTC.
- *Parties* include the Complainant(s) and Respondent(s), collectively.

- *Preponderance of the Evidence* means more likely to have occurred than not. Under the preponderance standard, the burden of proof is met when there is a greater than a 50% chance that something occurred.
- *Process A* means the Grievance Process used with this policy.
- *Process B* means any process designated by MTC to apply only when Process A does not, as determined by the Title IX Coordinator.
- *Remedies* are post-finding actions, where a determination of responsibility of sexual harassment has been made against the Respondent in accordance with the Grievance Process, directed to the Complainant to restore or preserve equal access to MTC's education program or activity. Such remedies may include supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.
- *Respondent* means an employee, student, or organization that has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- *Resolution* means the result of the Grievance Process.
- *Sexual Harassment* means conduct on the basis of sex that satisfies one or more of the following:
  1. An employee of MTC conditioning the provision of an aid, benefit, or service of MTC on an individual's participation in unwelcome sexual conduct (i.e., quid pro quo);
  2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to MTC's education program or activity; or
  3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

[See Section 16](#), for greater detail.

- *Supportive measures* mean non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to MTC's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or MTC's educational environment or deter sexual harassment.
- *Title IX Coordinator* is at least one official designated by MTC to ensure compliance with Title IX and MTC's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.
- *Title IX Team* refers to the Title IX Coordinator and any member of the Grievance Process Pool.

## **2. Rationale for Policy**

MTC is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from sexual harassment. To ensure compliance with federal and state civil rights laws, MTC has developed this policy and related procedures to provide a prompt, fair, and impartial process for those involved in an allegation of sexual harassment as defined by this policy. MTC values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties during what is often a difficult time for all those involved.

## **3. Applicable Scope**

This policy and associated procedures apply to all allegations of sexual harassment as defined in this policy occurring in connection with MTC's education program or activity within the United States. Alleged incidents of sexual discrimination or harassment not covered by this policy may be covered under other MTC policies.

At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the education program or activity of MTC, and the Respondent must be a member of the MTC community. This community includes, but is not limited to, students,<sup>2</sup> student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, and invitees.

## **4. Title IX Coordinator**

The Vice President for Operations and Human Resources serves as the Title IX Coordinator and oversees implementation of this policy. The Title IX Coordinator has the primary responsibility for coordinating MTC's efforts related to the intake, the implementation of supportive measures, and the Grievance Process. The Title IX Coordinator also has the primary responsibility for the design and implementation of remedies to stop, remediate, and prevent sexual harassment prohibited under this policy.

Reports of alleged sex discrimination or sexual harassment and inquiries or concerns regarding this policy may be made internally to:

Scott Fossum  
Title IX Coordinator  
Mitchell Technical College  
1800 East Spruce Street  
Mitchell, SD 57301  
(605) 995-7178  
Email: [scott.fossum@mitchelltech.edu](mailto:scott.fossum@mitchelltech.edu)

## **5. Independence and Conflict-of-Interest**

The Title IX Coordinator acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures.

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<sup>2</sup> For the purpose of this policy, MTC defines "student" as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with MTC.

The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the MTC President. Concerns of bias or a potential conflict of interest by a member of the Grievance Process Pool should be raised with the Title IX Coordinator. Reports of misconduct committed by the Title IX Coordinator should be reported to the MTC President. Reports of misconduct committed by a member of the Grievance Process Pool should be reported to the Title IX Coordinator.

## **6. Required Training of the Title IX Team<sup>3</sup>**

The Title IX Team consists of the Title IX Coordinator and the Grievance Process Pool (the Pool) who may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent. The Title IX Coordinator is trained annually, and Pool members will be trained in their role before participating in the Grievance Process.

All training materials for the Title IX Coordinator and the Pool must not rely on sex stereotypes and must promote impartial investigations and adjudications of Formal Complaints of sexual harassment. Training materials will be posted on the Title IX page of the MTC website.

Training for the Title IX Coordinator and the Pool will include where appropriate for the role:

- The application of MTC's Sexual Harassment – Title IX Policy and Procedures (117)
- How to serve impartially, including by avoiding prejudice of the facts at issue, conflicts of interest, and bias
- The definition of sexual harassment as it applies in this Policy
- The scope of MTC's education program or activity
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- Issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant
- Reporting, confidentiality, and privacy requirements
- How to use any technology to be used at a live hearing

## **7. Notice and Formal Complaints of Sexual Harassment**

**Notice** - Any person may report (give Notice of) sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the MTC Title IX Coordinator, or by any other means that results in the MTC Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number, electronic mail address, or by mail to the office address listed for the MTC Title IX Coordinator in section 4. Reports may also be made to an Official with Authority

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<sup>3</sup> The Title IX Coordinator and other applicable MTC employees are trained annually as required by VAWA.

(see section 18). Upon Notice, MTC's Title IX Coordinator will immediately contact the Complainant, if identified, to offer supportive measures and explain the process to file a Formal Complaint.

Anonymous reports are accepted but can give rise to a need to investigate. MTC tries to provide supportive measures to all Complainants, which may be impossible with an anonymous report. Because Notice carries no obligation to a Complainant to file a Formal Complaint, and as MTC respects Complainant requests to dismiss Formal Complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows MTC to discuss and/or provide supportive measures.

**Formal Complaint** - A Complainant may file a Formal Complaint with the Title IX Coordinator in person, by mail, or by electronic mail by using the contact information for the Title IX Coordinator in section 4. A Formal Complaint must contain the Complainant's physical or digital signature and requests that MTC investigate the allegations and initiate the Grievance Process. If a Formal Complaint is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly. Formal Complaints may also be filed with an Official with Authority (see section 18).

The Title IX Coordinator may sign a Formal Complaint when it is deemed necessary for the safety and security of the campus. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party.

## **8. Supportive Measures**

Upon Notice or a Formal Complaint of alleged sexual harassment, MTC's Title IX Coordinator will promptly contact the Complainant to offer and implement appropriate and reasonable supportive measures. The Title IX Coordinator will work with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented and inform the Complainant that supportive measures are available with or without filing a Formal Complaint. At the time that supportive measures are offered, MTC will inform the Complainant, in writing, of the process to file a Formal Complaint with MTC either at that time or in the future, if they have not done so already. If a Complainant refuses supportive measures, the Title IX Coordinator will document the refusal.

Supportive measures may be offered to a Respondent upon the filing of a Formal Complaint. All supportive measures offered and implemented will be documented. MTC will maintain the privacy of the supportive measures, provided that privacy does not impair MTC's ability to provide the supportive measures. MTC will act to ensure as minimal an academic impact on the parties as possible. MTC will implement supportive measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering work arrangements for employees or student-employees

- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Be-On-the-Lookout (BOLO) orders
- No contact orders
- [Timely warnings](#) (per Clery Act)
- Class schedule modifications
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.

### **9. Emergency Removal**

Nothing contained in this policy shall preclude MTC from removing a student Respondent entirely or partially from their education program or activity on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal. MTC Policy 117 – Grievance Process A describes the Emergency Removal process. A Formal Complaint and Grievance Process do not need to be in place for an Emergency Removal to occur.

Where the Respondent is a non-student employee, the employee may be placed on administrative leave (with or without pay) while a Grievance Process is pending, without needing to meet the emergency removal standards.

### **10. Promptness**

All allegations are acted upon promptly by MTC once it has received Notice or a Formal Complaint. Formal Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but MTC will avoid all undue delays within its control.

Any time the general timeframes for the Grievance Process outlined in MTC procedures will be delayed, MTC will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

### **11. Privacy**

Every effort is made by MTC to preserve the privacy of reports. MTC will not share the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or Formal Complaint of sexual harassment, any Complainant, any individual who has been reported to be the perpetrator of sexual harassment, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or other grievance proceeding arising under these policies and procedures.

For the purpose of this policy, privacy and confidentiality have distinct meanings.



- Privacy means that information related to Notice, a Formal Complaint, supportive measures, and the Grievance Process will be shared with a limited number of MTC employees and the Title IX Team who “need to know” in order to assist in the assessment, investigation, and resolution of the report. All employees and Title IX Team members who are involved in MTC’s response to Notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (“FERPA”), as outlined in MTC’s FERPA Policy ([MTC 1061](#)). The privacy of employee records will be protected in accordance with Human Resources processes.
- Confidentiality exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, and others, with their patients, clients, and parishioners.

MTC reserves the right to determine which MTC officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA). Information will be shared as necessary with Investigators, Advisors, Decision-makers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties’ rights and privacy.

MTC may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the student first before doing so.

Confidentiality and obligated reporting are addressed more specifically in section 18.

## **12. Jurisdiction of MTC**

This policy applies to locations, events, or circumstances within the United States where MTC exercises substantial control over both the Respondent and the context in which the sexual harassment occurs and also includes any building owned or controlled by a student organization that is officially recognized by MTC.

If the Respondent is unknown or is not a member of the MTC community, the Title IX Coordinator will assist the Complainant with supportive measures and, when criminal conduct is alleged, in contacting local law enforcement if the individual would like to file a police report.

All vendors serving MTC through third-party contracts are subject to the policies and procedures of their employers or to these policies and procedures to which their employer has agreed to be bound by their contracts.

## **13. Time Limits on Reporting**

There is no time limitation on providing Notice/Formal Complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to MTC’s jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on Notice/Formal Complaints significantly impacted by the passage of time (including,

but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When Notice/Formal Complaint is affected by significant time delay, MTC will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of Notice/Formal Complaint.

#### **14. Online Sexual Harassment**

The policies of MTC are written and interpreted broadly to include online harassment, when the harassment occurs in or has an effect on MTC's education program or activity, or use MTC networks, websites, email, technology, or equipment.

Any online posting or other electronic communication occurring completely outside of the MTC's control (e.g., not occurring in an education program or activity or not on MTC networks, websites, technology, equipment, or using MTC email accounts) will only be subject to this policy when such online conduct can be shown to cause a substantial disruption to MTC's education program or activity.

Although MTC may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to MTC, it will engage in a variety of means to address and mitigate the effects, and supportive measures will be offered to the Complainant.

#### **15. Policy on Nondiscrimination**

MTC will respond promptly to allegations of sexual harassment in a manner that is not deliberately indifferent. MTC will treat Complainants and Respondents equitably by offering supportive measures to every Complainant and following the Grievance Process before imposition of any disciplinary sanctions or other actions that are not supportive measures, against a Respondent. MTC will pursue every Formal Complaint filed by a Complainant or signed by a Title IX Coordinator using the Grievance Process and will effectively implement remedies designed to restore or preserve a Complainant's equal educational access any time a Respondent is found responsible for sexual harassment.

MTC will not tolerate racism, discrimination, harassment, exploitation or victimization of students, school employees, non-employees, or any person who is an invitee of MTC for any reason, including but not limited to race, color, ethnic background, national origin, pregnancy, marital status, religion, creed, age, sex, citizenship, political affiliation, mental and/or physical challenge, disability, sexual orientation, genetic information, gender identity, gender expression, status as a veteran, or any other status protected under applicable federal, state or local law. MTC is committed to providing an environment free from harassment and other forms of discrimination for students, employees, non-employees, and its invitees. The following person has been designated to handle inquiries or complaints regarding the non-discrimination policies: Vice President for Operations who serves as the Title IX Coordinator.

#### **16. Definitions of Sexual Harassment, Force, Coercing, Consent, and Incapacitation**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of South Dakota regard sexual harassment as

an unlawful discriminatory practice. Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

## **Sexual Harassment**

MTC has adopted the following definition of sexual harassment, as applied to this policy, in order to address the unique environment of an academic community.

**Sexual Harassment** means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of MTC conditioning<sup>4</sup> the provision of an aid, benefit, or service of MTC on the individual's participation in unwelcome sexual conduct. (i.e., quid pro quo)
2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to MTC's education program or activity.<sup>5</sup>
3. Sexual assault meaning any sexual act directed against another person with the consent of the victim, including instance where the victim is incapable of giving consent.
  - a) Rape (Except Statutory Rape) – The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
  - b) Sodomy - Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
  - c) Sexual Assault with An Object – To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
  - d) Fondling – The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.
  - e) Incest – Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

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<sup>4</sup> Implicitly or explicitly.

<sup>5</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

- f) Statutory Rape – Sexual intercourse with a person who is under the statutory age of consent.
4. Dating Violence meaning violence committed by a person who is in or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the Complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

For the purposes of this definition—

- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - Dating violence does not include acts covered under the definition of domestic violence.
5. Domestic Violence meaning felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or by 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 in which the crime of violence occurred.
6. Stalking meaning engaging in a course of conduct on the basis of sex directed at a specific person that would cause a reasonable person to
- a) Fear for the person’s safety or the safety of others; or
  - b) Suffer substantial emotional distress.

For the purposes of this definition—

- Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

MTC reserves the right to impose any level of disciplinary sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy.

## Force, Coercion, Consent, and Incapacitation<sup>6</sup>

As used in the offenses above, the following definitions and understandings apply:

**Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” “Okay, don’t hit me, I’ll do what you want.”).

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

**Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, 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.

### **Consent is:**

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Individuals may experience the same interaction in different ways. It is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain their consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

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<sup>6</sup> The state definition of consent, which is applicable to criminal prosecutions for sex offenses in a state may differ from the definition used on campus to address policy violations. Included for Clery/VAWA Sec. 304 compliance purposes.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on MTC to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM<sup>7</sup> or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so MTC’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

***Incapacitation:*** A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

## **17. Retaliation**

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. MTC will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

MTC and any member of MTC’s community are prohibited from taking materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Title IX or this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.

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<sup>7</sup> Bondage, discipline/dominance, submission/sadism, and masochism.

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this policy, constitutes retaliation.

Filing a Formal Complaint within Process B could be considered retaliatory if those charges could be applicable under Process A, when the Process B charges are made for the purpose of interfering with or circumventing any right or privilege provided afforded within Process A that is not provided by Process B. Therefore, MTC vets all Formal Complaints carefully to ensure this does not happen and to assure that Formal Complaints are tracked to the appropriate process.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination under Process B if Process A is not applicable as addressed in MTC Procedure 117 Grievance Process A.

## **18. Reporting Options**

In order to make informed choices, it is important to be aware of confidentiality and reporting requirements when consulting campus resources.

### **a. Title IX Coordinator**

Any person may report (give Notice of) sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the MTC Title IX Coordinator in section 4 of this policy. Such a report may be made at any time (including during non-business hours) by using the telephone number, electronic mail address, or by mail to the office address listed for the MTC Title IX Coordinator.

### **b. Official with Authority (OWA)**

Any person may report (give Notice of) sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail to an OWA to include the following:

- MTC President
- Vice President for Academic Affairs
- Dean of Student Success

### c. Confidential Resources

If a Complainant would like the details of an incident to be kept confidential and the incident not to be reported to the Title IX Coordinator or to an OWA to trigger action under this policy, the Complainant may do the following:

- Students may request to speak to a Licensed Professional Counselor through the Dean of Student Success or a Student Success Coach without revealing the alleged sexual harassment. If the student informs the Student Success Coach of the alleged sexual harassment, the Student Success Coach will be obligated to inform the Title IX Coordinator.
- Non-student employees may utilize the community resources such as those outlined below.
- Complainants may also identify community resources on the Title IX page of the MTC website. Community resources may include:
  - Licensed professional counselors and other medical providers
  - Local rape crisis counselors
  - Domestic violence resources
  - Local or state assistance agencies
  - Attorneys

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

### d. Obligated Reporter

Obligated Reporters are MTC employees who are expected to report actual or suspected sexual harassment to the Title IX Coordinator or to an OWA immediately upon knowledge. Obligated Reporters must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

The following are designated by MTC as Obligated Reporters:

- Supervisors of MTC employees (does not include supervisors of student employees)
- Faculty
- Student Success Coaches
- MTC Club Advisors

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide “knowledge” that must be reported to the Title IX Coordinator or an OWA by Obligated Reporters, unless the Complainant clearly indicates that they desire a report to be made or seek a specific response from MTC.

Failure of an Obligated Reporter, as described above in this section, to report an incident of sexual harassment of which they become aware is a violation of MTC policy and can be subject to disciplinary action for failure to comply. If an Obligated Reporter fails to report an incident of sexual harassment of which they become aware of to the Title IX Coordinator or an OWA, MTC is not on Notice.



Though this may seem obvious, when an Obligated Reporter is engaged in harassment or other violations of this policy, they still have a duty to report their own misconduct, though MTC is technically not on Notice when a harasser is also an Obligated Reporter unless the harasser does in fact report themselves.

Finally, it is important to clarify that an Obligated Reporter who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

### **19. When a Complainant Does Not Wish to Proceed**

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a Formal Complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether MTC proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a Formal Complaint to initiate a grievance process. The Title IX Coordinator's decision should be based on a compelling risk to health and/or safety that requires MTC to pursue formal action to protect the community. A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. MTC may also be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and MTC's ability to pursue a Formal Grievance Process fairly and effectively.

When the Title IX Coordinator executes the written Formal Complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

When MTC proceeds, the Complainant may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation.

Note that MTC's ability to remedy and respond to Notice may be limited if the Complainant does not want MTC to proceed with a Formal Complaint. The goal is to provide the Complainant with as much control over the process as possible, while balancing MTC's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow MTC to honor that request, MTC will offer supportive measures to the Complainant, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a Formal Complaint at a later date. Upon making a Formal Complaint, a Complainant has the right, and can expect, to have allegations taken seriously by MTC, and to have the incidents investigated and properly resolved through the Grievance Process. Please consider

that delays may cause limitations on access to evidence or may present issues with respect to the status of the parties.

## **20. Federal Timely Warning Obligations**

Parties reporting sexual assault, dating violence, domestic violence, and/or stalking should be aware that under the Clery Act, MTC must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

MTC will ensure that a Complainant'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 potential danger.

## **21. False Allegations and Evidence**

Deliberately false and/or malicious accusations under this policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under MTC policy ([MTC Policy 1036](#)).

## **22. Amnesty for Complainants and Witnesses**

MTC community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to MTC officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of MTC community that Complainants choose to report misconduct to MTC officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, MTC maintains a practice of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students and employees within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to a Respondent with respect to a Complainant.

### **23. External Administrative Contact Information**

Inquiries may be made externally to:

Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Customer Service Hotline: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

The EEOC has jurisdiction over Title IX Employment Claims. For Title IX concerns involving employees, inquiries may be made externally to:

Minneapolis Area Office  
Towle Building  
330 South Second Avenue, Suite 720  
Minneapolis, MN 55401-2224  
Phone: 612-552-7306  
TTY: 1-800-669-6820  
ASL Video Phone: 844-234-5122

### **24. Revision of this Policy and Related Procedures**

This Policy and related procedures supersede any previous policy(ies) addressing harassment, sexual misconduct and/or retaliation under Title IX and will be reviewed and updated annually by the Title IX Coordinator. MTC reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and procedures.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

**Legal references:**

Title IX of the US Education Amendments of 1972; 34 CFR Part 106; 20 U.S.C. 1092(f)(6)(A)(v); 34 U.S.C. 12291(a)(10); 34 U.S.C. 12291(a)(8); U.S.C. 12291(a)(30); Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act); Violence Against Women Act (VAWA); Family Educational Rights and Privacy Act (FERPA); 20 U.S.C. 1232g; FERPA regulations; 34 CFR part 99

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10/14/2020 - Policy117 Sexual Violence Response was rewritten and renamed Policy 117 Sexual Harassment – Title IX to comply with U.S. Department of Education regulations effective August 14, 2020, regarding Title IX.

## GRIEVANCE PROCESS – PROCESS A<sup>1</sup>

ATIXA 2020 INTERIM MODEL SEXUAL HARASSMENT POLICIES AND PROCEDURES  
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### **1. Definitions**

See MTC Policy 117.

### **2. Overview**

If a Complainant files a Formal Complaint requesting investigation of allegations of sexual harassment against a Respondent, Mitchell Technical College (MTC) will initiate the Grievance Process known as Process A.

Process A may also be used to address collateral misconduct (e.g., retaliation, vandalism, physical abuse of another) arising from the investigation of or occurring in conjunction with the reported alleged sexual harassment covered under Policy 117. All other allegations of misconduct unrelated to incidents covered by Policy 117 will be addressed through procedures described in other policies, procedures, or handbooks.

The following items pertain to the overall Grievance Process. **a)**

#### **Advisor**

MTC will not limit the choice or presence of an Advisor ([Appendix A](#)) for either the Complainant or Respondent in any meeting or grievance proceeding; however, MTC may establish restrictions regarding the extent to which the Advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.

When MTC provides the parties the opportunity to have someone other than their Advisor also present during a grievance proceeding, MTC will provide the parties with the same opportunities.

#### **b) Consolidation of Formal Complaints**

MTC may consolidate Formal Complaints as to allegations of sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a Grievance Process

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<sup>1</sup>117 policy and procedures are tightly woven. Therefore, any reference to policy or procedure may be referring to the 117 policy and procedures as a whole. It is important to use Policy 117 in conjunction with this procedure, and not to use this procedure as a stand-alone document.

involves more than one Complainant or more than one Respondent, references in this procedure to the singular “party,” “Complainant,” or “Respondent” include the plural, as applicable.

**c) Counterclaims**

MTC is obligated to ensure that the grievance process is not abused for retaliatory purposes. MTC permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the Grievance Process. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur. Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator.

When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of Policy 117 and/or Policy 115.

**d) Disciplinary Sanctions**

Disciplinary sanctions are consequences that may be imposed by MTC on a Respondent who is found to have violated this policy. Disciplinary sanctions may be punitive and may burden the Respondent. Disciplinary sanctions cannot be the same as the supportive measures offered by MTC.

See [Appendix B](#) for the determination, implementation, and types of disciplinary sanctions.

**e) Disabilities Accommodations in the Resolution Process**

MTC is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to MTC’s resolution process.

Anyone needing such accommodations or support should contact the MTC Disability Services Coordinator or the Dean of Student Success who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

**f) Emergency Removal**

**Student Respondent** - MTC can act to remove a student Respondent entirely or partially from its education program or activity on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator.

In all cases in which an emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified. This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested, objections to the emergency removal will be deemed waived.

A student Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion.

MTC will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

**Employee Respondent** - Where the Respondent is a non-student employee, the employee may be placed on administrative leave (with or without pay) while a grievance process is pending, without needing to meet the emergency removal standards.

#### **g) Ensuring Impartiality**

Any individual materially involved in the administration of the resolution process including the Title IX Coordinator, Investigator(s), and Decision-maker(s) may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Pool members to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the MTC President.

#### **h) Notice of Participation**

MTC will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

### **i) Preservation of Records/Recordkeeping**

MTC will maintain for a period of at least seven (7) years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to MTC's education program or activity;
4. Any Appeal and the result therefrom;
5. Any Informal Resolution and the result therefrom;
6. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. MTC will make these training materials publicly available on MTC's website; and
7. Any actions, including any supportive measures, taken in response to a report or Formal Complaint of sexual harassment, including:
  - a. The basis for all conclusions that the response was not deliberately indifferent;
  - b. Any measures designed to restore or preserve equal access to MTC's education program or activity; and
  - c. If no supportive measures were provided to the Complainant, documentation of the reasons why such a response was not clearly unreasonable in light of the known circumstances.

MTC will also maintain any and all records in accordance with state and federal laws.

### **j) Privacy of the Resolution Process**

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with MTC policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, with the exception of information the parties agree not to disclose related to an Informal Resolution. MTC encourages parties to discuss any sharing of information with their Advisors before doing so.

### **k) Remedies**

Following the conclusion of the resolution process, where a determination of responsibility of sexual harassment has been made against the Respondent, remedies may be directed to the Complainant to restore or preserve equal access to MTC's education program or activity. Remedies may consist of supportive measures, but remedies may also include actions that in fact burden the Respondent or are punitive or disciplinary in nature. The Title IX Coordinator is responsible for effective implementation of any remedies.

MTC will maintain the privacy of any remedies, provided privacy does not impair MTC's ability to provide these services.

These remedies may include, but are not limited to:



- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of work arrangements for employees
- Climate surveys
- Policy modification and/or training
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

#### **l) Revision of Policy 117 and Procedures**

Policy 117 and Procedures supersede any previous policy(ies) addressing harassment, sexual misconduct and/or retaliation under Title IX and will be reviewed and updated annually by the Title IX Coordinator. MTC reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in Policy 117 and procedures.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

Policy 117 and procedures are effective August 14, 2020.

#### **m) Statement of Rights of the Parties**

Please read [Appendix C](#) for a Statement of Rights of the Parties.

#### **n) Withdrawal or Resignation While Charges Pending**

##### **1. Students:**

Should a student Respondent withdraw or leave with unresolved allegations pending, the resolution process may continue. If a student Respondent wishes to return to MTC, any disciplinary sanctions imposed as a result of the resolution process outcome will be enforced. The Title IX Coordinator will maintain records of any sanctions imposed as a result of the resolution process in the permanent file.

MTC will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged sexual harassment.

2. Employees:

Should an employee Respondent resign or exit employment with unresolved allegations pending, the resolution process may continue. If an employee Respondent seeks reemployment, any disciplinary sanctions imposed as a result of the resolution process outcome will be enforced. The Title IX Coordinator and the Director of Human Resources will maintain records of any sanctions imposed as a result of the resolution process in the permanent file.

MTC will continue to address and remedy any systemic issues or concerns that contributed to the alleged violation(s), and any ongoing effects of the alleged sexual harassment.

## **PROCESS A<sup>8</sup>**

### **1. Meeting with the Complainant**

Upon receipt of a Formal Complaint, the Title IX Coordinator works with the Complainant to make sure the Formal Complaint is correctly completed, provides supportive measures (as described in Policy 117), if not already done, and explains the Grievance Process.

### **2. Initial Assessment**

The Title IX Coordinator reviews the Formal Complaint for applicability under Policy 117. The Title IX Coordinator shall determine whether the conduct alleged, if taken as true, would constitute sexual harassment as defined in Policy 117, and if the allegations contained in the Formal Complaint occurred in MTC's education program or activity.

If the Title IX Coordinator determines that Policy 117 does not apply to some aspects of the Formal Complaint or to the Formal Complaint in its entirety, and therefore, those aspects will be "dismissed", the parties will be notified through the NOIA. The parties have the right to appeal the Dismissal ([Appendix D](#)) as described in the Appeal process ([Appendix E](#)).

Please note that dismissing aspects of a Formal Complaint or a Formal Complaint in its entirety under Title IX is solely a procedural requirement under Title IX and does not limit MTC's authority to address the Formal Complaint with an appropriate process and remedies. For the aspects of the Formal Complaint that do not fall under Policy 117, the Title IX Coordinator will assess which policies/procedures may apply. If another policy and/or procedure apply, the matter will be referred for action under the appropriate policy and/or procedure which will be referenced as Process B.

### **3. Notice of Investigation of Allegations (NOIA)**

After reviewing the Formal Complaint and the Grievance Process with the Complainant and completing the initial assessment, the Title IX Coordinator will provide written notice of the investigation and allegations (the "NOIA") to the Respondent. This facilitates the Respondent's ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- MTC's Grievance Process for allegations of violations of MTC Policy 117, including, if applicable, any Informal Resolution process (a copy of this procedure is to be provided),
- A meaningful summary of all the allegations of sexual harassment potentially constituting sexual harassment as defined in Policy 117,
- The identity of the involved parties in the incident (if known),
- The conduct allegedly constituting sexual harassment under Policy 117,

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<sup>8</sup> Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution.

- The date and location of the alleged incident(s) (if known),
- A statement that MTC presumes the Respondent is not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Grievance Process,
- Information on the need for each party to have an Advisor of their choosing, who may be, but is not required to be, an attorney and suggestions for ways to identify an Advisor, and
- A statement informing the parties that MTC's policy 117 and MTC Catalog and Student Handbook (General Student Conduct) prohibits knowingly making false statements, including knowingly submitting false information during the resolution process.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various allegations.

The NOIA and any amendments or updates will be made simultaneously to the parties in writing and may be delivered by one or more of the following methods: in person, emailed to the parties' MTC-issued email, or mailed to the local or permanent address(es) of the parties as indicated in official MTC records. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

#### **4. Informal Resolution Option**

If an Informal Resolution option is requested by either the Complainant or the Respondent, the Title IX Coordinator assesses whether the Formal Complaint is suitable for Informal Resolution. If the Title IX Coordinator determines an Informal Resolution is viable, the Title IX Coordinator will determine if both parties are willing to engage in Informal Resolution.

Informal Resolution process and options are in [Appendix F](#).

#### **5. Formal Resolution**

##### **a) Grievance Process Pool**

The Formal Grievance Process relies on a pool of individuals ("the Pool") to carry out the process. The Grievance Process Pool includes any Investigator and Decisionmaker(s) who may perform any or all of these roles (though not at the same time or with respect to the same case).

Pool members are appointed by the Title IX Coordinator. The Pool acts with independence and impartiality.

##### **b) Resolution Timeline**

MTC will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) day time period, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

**c) Temporary Delays and Extension of Time For Good Cause in the Resolution Process**

MTC may undertake a short delay or provide an extension of time in its resolution process (several days to a few weeks) for good cause. Such circumstances may include but are not limited to: the absence of a party, a party's Advisor, or a witness; concurrent law enforcement activity with law enforcement asking to temporarily delay the Grievance Process; or the need for accommodation of disabilities.

MTC will communicate in writing the time extension or anticipated duration of the delay and the reason to the parties and provide the parties with status updates if necessary. MTC will promptly resume the resolution process as soon as feasible. During such a delay, MTC will implement supportive measures as deemed appropriate.

MTC action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

**d) Appointment of Investigators**

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints an Investigator to conduct the investigation, usually within two (2) days of determining that an investigation should proceed.

**e) Objective Evaluation of Evidence**

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

MTC operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

**f) Investigation Timeline**

Investigations are completed expeditiously, normally within thirty (30) days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

MTC will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

### **g) Steps in the Investigation Process**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses and obtaining available and relevant evidence.

MTC will ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on MTC and not on the parties provided that MTC cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless MTC obtains that party's voluntary, written consent to do so for the Grievance Process.

All parties have an equal opportunity, through the investigation process, to present witnesses, including fact and expert witnesses, to provide inculpatory and exculpatory evidence, and to fully review and respond to all evidence on the record. MTC will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

The Investigator takes the following steps, if not already completed (not necessarily in this order):

- Identify all policies implicated by the alleged misconduct
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties
- Provide, to a person whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of the investigative interview with sufficient time for the person to prepare to participate
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Gather, assess, and synthesize evidence, but make no conclusions and render no recommendations as part of their report
- Perform an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness
- Provide regular status updates to the parties throughout the investigation
- Write an Initial Investigation Report fully summarizing the investigation, all witness interviews, and fairly addressing all relevant evidence and provide the report to the parties and the parties' Advisor, if any, for review and a written response
  - The Initial Investigation Report must provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including the evidence upon which MTC does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation

- MTC will send to each party and the party's Advisor, if any, the Initial Investigation Report and evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have at least 10 days to submit a written response, which the Investigator will consider prior to completion of the Final Investigation Report. The parties may elect to waive the full ten days
  - MTC will also make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination
- The Investigator may elect to respond in writing in the Initial Investigation Report to the parties' submitted responses and/or to share the responses between the parties for additional responses
  - The Investigator will incorporate relevant elements of the parties' written responses into the Final Investigation Report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator should document all rationales for any changes made after the review and comment period
  - The Investigator shares the report with the Title IX Coordinator for their review and feedback
  - The Investigator will incorporate any relevant feedback and additional relevant evidence (if applicable), and the Final Investigation Report is then shared with all parties and their Advisors, if any, through secure electronic transmission or hard copy at least ten (10) days prior to a hearing

#### **h) Role and Participation of Witnesses in the Investigation**

Witnesses (as distinguished from the parties) who are employees of MTC are expected to cooperate with and participate in MTC's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., clinical placement, summer break) may require individuals to be interviewed remotely. Zoom, Microsoft Teams, FaceTime, or similar technologies may be used for interviews if the Investigator determines that timeliness or efficiency dictate a need for remote interviewing. MTC will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

#### **i) Recording of Interviews**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If the Investigator elects to audio and/or video record interviews, all involved parties must be made aware of audio and/or video recording.

#### **j) Evidentiary Considerations in the Investigation**

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions

and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

**k) Referral for Hearing**

Provided that the Formal Complaint is not resolved through Informal Resolution, once the Final Investigation Report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be less than ten (10) days from the conclusion of the investigation – when the Final Investigation Report is transmitted to the parties and the Hearing Decisionmaker—unless all parties and the Decision-maker agree to an expedited timeline.

The Title IX Coordinator will select an appropriate Hearing Decision-maker.

**l) Hearing Decision-maker Composition**

MTC will designate a single Decision-maker. The single Decision-maker will also Chair the hearing.

The Decision-maker will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate Decision-maker sit in throughout the hearing process in the event that a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.

The Title IX Coordinator may not serve as a Decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Chair or designee.

**m) Evidentiary Considerations in the Hearing**

Any evidence that the Decision-maker determines is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.



Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate disciplinary sanction upon a determination of responsibility. This information is only considered at the disciplinary sanction stage of the process and is not shared until then.

After post-hearing deliberation, the Decision-maker renders a determination based on the preponderance of the evidence, whether it is more likely than not that the Respondent violated the Policy as alleged.

#### **n) Notice of Hearing**

No less than ten (10) days prior to the hearing, the Title IX Coordinator will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential disciplinary sanctions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker and parties to simultaneously see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least five (5) days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-maker. For compelling reasons, the Decision-maker or Title IX Coordinator may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and MTC will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials that will be provided to or have been provided to the Decision-maker about the matter, unless they have been provided already.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations that may be needed at the hearing, at least seven (7) days prior to the hearing.
- Whether parties can/cannot bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to Policy 117) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by MTC and remain within the 60–90-day goal for resolution.

**o) Alternative Hearing Participation Options**

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator at least five (5) days prior to the hearing.

The Title IX Coordinator can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator know at least five (5) days prior to the hearing so that appropriate arrangements can be made.

**p) Preparation for the Hearing**

The Title IX Coordinator, after any necessary consultation with the parties and the Pool, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the Final Investigation Report to the parties at least ten (10) days prior to the hearing, if not already done.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator, unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The parties will be given the name of the Decision-maker at least ten (10) days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than five (5) days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator will give the Decision-maker a list of the names of all parties, witnesses, and Advisors at least five (5) days in advance of the hearing. Any Decisionmaker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

**q) Pre-Hearing Meetings**

The Chair may, but is not required to, convene a pre-hearing meeting(s) with the parties and their Advisors to invite them to submit the questions or topics they (the parties and their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

At each pre-hearing meeting with a party and their Advisor, the Chair will consider arguments that evidence identified in the Final Investigation Report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant.

The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator or ask either or both to attend pre-hearing meetings. The legal counsel may not be the general legal counsel for MTC.

The pre-hearing meeting(s) will be recorded.

**r) Hearing Procedures**

At the hearing, the Decision-maker has the authority to hear and make determinations on all allegations of sexual harassment and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the sexual harassment, even though those collateral allegations may not specifically fall within the Policy.

Participants at the hearing will include the Chair/Decision-maker, the hearing facilitator(s), the Investigator who conducted the investigation, the parties, Advisors to the parties, any called witnesses, the Title IX Coordinator, and anyone providing authorized accommodations or assistive services.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker and the parties and will then be excused.

**s) Joint Hearings**

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

**t) The Order of the Hearing – Introductions and Explanation of Procedure**

The Chair explains the procedures and introduces the participants. The Chair with assistance from the hearing facilitator then conducts the hearing according to the hearing script.

Elements at the hearing to include, but not limited to, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing are managed by the hearing facilitator(s). The hearing facilitator(s) may also attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

**u) Investigator Presents the Final Investigation Report**

The Investigator will then present a summary of the Final Investigation Report and will be subject to questioning by the Decision-maker and the parties (through their Advisors). The Investigator will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-maker should ask the Investigator their opinions on credibility, recommended findings, or determinations, and the Investigator, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

**v) Testimony and Questioning**

Once the Investigator presents their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-maker and then by the parties through their Advisors (“cross-examination”). The Decision-maker must permit each party’s Advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. All questions will be subjected to a relevance determination by the Chair.

The Advisor, who will remain seated during questioning, will pose the proposed question directly, orally, and in real time, the proceeding will pause to allow the Chair to consider it, and the Chair will determine whether the question will be permitted, disallowed, or

rephrased. The Chair may invite explanations or persuasive statements regarding relevance with the Advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

**w) Refusal to Submit to Cross-Examination and Inferences**

Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker can only rely on whatever relevant evidence is available through the investigation and the hearing in making the ultimate determination of responsibility. The Decision-maker may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to cross-examination or answer other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the Decision-maker may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

If a party's Advisor of choice refuses to comply with MTC's established rules of decorum for the hearing, MTC may require the party to use a different Advisor. If an MTC-provided Advisor refuses to comply with the rules of decorum, MTC may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

**x) Recording Hearings**

Hearings (but not deliberations) are recorded by MTC for purposes of review in the event of an Appeal. If a recording is not feasible, a transcript will be made. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker, the parties, their Advisors, and appropriate administrators of MTC will be permitted to listen to the recording or review the transcript in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording or transcript without permission of the Title IX Coordinator.

**y) Deliberation, Decision-making, and Standard of Proof**

The Decision-maker will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. The preponderance of the evidence standard of proof is used.

The Decision-maker will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, and credibility assessments.

This report must be submitted to the Title IX Coordinator within two (2) days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

If the Decision-maker determines the Respondent is responsible for the policy violation(s) in question, the Title IX Coordinator will determine any remedies and start the disciplinary sanction process as described in [Appendix B](#).

#### **z) Notice of Outcome**

Using the Hearing Decision-maker's deliberation statement and the Disciplinary Sanctions Decision-maker's disciplinary sanction(s), if any, the Title IX Coordinator will work with the Decision-maker to prepare a Notice of Outcome which will include the following:

1. Identification of the allegations potentially constituting sexual harassment as defined by Policy 117;
2. Identification of violation(s) covered by other MTC policies that were part of the hearing;
3. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
4. Findings on each alleged policy violation (findings of fact supporting the determination);
5. Conclusions regarding the application of the relevant policy to the facts at issue;
6. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
7. A statement of, if any, disciplinary sanctions MTC will impose on the Respondent;
8. A statement of whether remedies designed to restore or preserve equal access to MTC's education program or activity will be provided by MTC to the Complainant (the details or specifics of the remedies are not shared with the Respondent unless the remedy directly relates to the Respondent);
9. MTC's procedures and permissible bases for the Complainant and Respondent to appeal; and
10. Information on when the results are considered by MTC to be final.

The Title IX Coordinator will then simultaneously share the Notice of Outcome with the parties and their Advisors within seven (7) days of receiving the Decision-maker's deliberation statement. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official MTC records, or emailed to the parties' MTC-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

## **APPENDIX A: ADVISORS**

### **Right to an Advisor**

The parties may each have an Advisor<sup>9</sup> of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>10</sup>

#### **1. Who Can Serve as an Advisor**

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses.

The parties may choose Advisors from inside or outside of the MTC community. The Title IX Coordinator will also offer to assign an Advisor for any party if the party so chooses. MTC cannot guarantee equal advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, MTC is not obligated to provide an attorney.

#### **2. Advisor's Role**

Parties have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing. Parties must have an Advisor during the hearing process.

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

Under U.S. Department of Education regulations under Title IX, a form of indirect questioning is required during the hearing but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, MTC will appoint an Advisor for the limited purpose of conducting any questioning of the other party and witnesses.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct questioning, MTC will appoint an Advisor who will do so, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses may also be conducted by the Decision-maker during the hearing.

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<sup>9</sup> The law permits one Advisor for each party (witnesses are not entitled to Advisors within the process, though they can be advised externally).

<sup>10</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

All Advisors are subject to the same MTC policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address MTC officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding, and the Advisor may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except during a hearing proceeding, during cross-examination.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this procedure will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting or proceeding will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

### **3. Sharing Information with the Advisor**

MTC expects that the parties may wish to have MTC share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

MTC also provides a consent form that authorizes MTC to share such information directly with their Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before MTC is able to share records with an Advisor.

If a party requests that all communication be made through their attorney Advisor, MTC will not comply with that request.

### **4. Privacy of Records Shared with Advisor**

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by MTC. MTC may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by MTC's privacy expectations.

### **5. Expectations of an Advisor**

MTC generally expects an Advisor to adjust their schedule to allow them to attend MTC meetings when planned but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.



MTC may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

## **6. Expectations of the Parties with Respect to Advisors**

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) days before the hearing.

## **APPENDIX B: DISCIPLINARY SANCTIONS**

If the Respondent is determined responsible for the allegation(s) of sexual harassment as a result of the resolution process, the Title IX Coordinator appoints a Disciplinary Sanctions Decisionmaker to determine what, if any, disciplinary sanctions are to be imposed upon the Respondent.

Factors considered by the Disciplinary Sanctions Decision-maker when determining a disciplinary sanction may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for disciplinary sanctions to bring an end to the sexual harassment
- The need for disciplinary sanctions to prevent the future recurrence of sexual harassment
- The need to remedy the effects of the sexual harassment on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant

The disciplinary sanction(s) determined by the Disciplinary Sanctions Decision-maker will be provided to the Title IX Coordinator for the Hearing Decision-maker to include in the Notice of Outcome.

The disciplinary sanction(s) will be implemented as soon as is feasible, either upon the outcome of any Appeal or the expiration of the window to Appeal without an Appeal being requested.

All Respondents are expected to comply with the assigned disciplinary sanctions within the timeframe specified in the Notice of Outcome. Failure to abide by the disciplinary sanction(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional disciplinary sanction(s), including suspension, expulsion, and/or termination from MTC. A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

The disciplinary sanction(s) described in this Procedure are not exclusive of, and may be in addition to, other actions taken, or disciplinary sanctions imposed by external authorities. Disciplinary sanctions may include:

### **a. Student Disciplinary Sanctions**

The following are the usual disciplinary sanctions that may be imposed upon students or organizations singly or in combination:

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any MTC policy, procedure, or directive will result in more severe disciplinary sanctions.

- *Required Counseling:* A mandate to meet with and engage in counseling to better comprehend the misconduct and its effects.
- *Conduct Probation:* A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Conduct Suspension:* Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on conduct probation through the remainder of their tenure as a student at MTC.
- *Expulsion:* Permanent termination of student status and revocation of rights to be on campus for any reason or to attend MTC-sponsored events.
- *Organizational Disciplinary Sanctions:* Deactivation, loss of recognition, loss of some or all privileges (including MTC registration) for a specified period of time.
- *Other Actions:* In addition to or in place of the above disciplinary sanctions, MTC may assign any other disciplinary sanctions as deemed appropriate.

#### **b. Employee Disciplinary Sanctions**

Disciplinary sanctions for an employee who has engaged in sexual harassment may include:

- *Warning – Verbal or Written*
- *Performance Improvement Plan*
- *Enhanced supervision, observation, or review*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Loss of Oversight or Supervisory Responsibility*
- *Transfer*
- *Reassignment*
- *Assignment to new supervisor*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above disciplinary sanctions, MTC may assign any other disciplinary sanctions as deemed appropriate.

## **APPENDIX C: STATEMENT OF RIGHTS OF THE PARTIES**

- The right to an equitable investigation and resolution of all credible allegations of prohibited sexual harassment reported to the Title IX Coordinator or an OWA.
- The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible disciplinary sanctions.
- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) or to clarify potentially implicated policy violations.
- The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.
- The right to be treated with respect by MTC officials and the Title IX Team.
- The right to have MTC policies and procedures followed without material deviation.
- The right not to be pressured to informally resolve any reported sexual harassment.
- The right not to be discouraged by MTC officials from reporting sexual harassment to both on-campus and off-campus authorities.
- The right to be informed by MTC officials of options to notify proper law enforcement authorities, and the option(s) to be assisted by MTC authorities in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report, as well.
- The right to have allegations of violations of this Policy responded to promptly and with sensitivity by MTC.
- The right to be informed of available interim actions and supportive measures.
- The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
- The right to ask the Investigator(s) and Decision-maker(s) to identify and question relevant witnesses, including expert witnesses.
- The right to provide the Investigator(s)/Decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Chair, may be asked of any party or witness.
- The right not to have irrelevant prior sexual history or character admitted as evidence.
- The right to know the relevant and directly related evidence obtained and to respond to that evidence.
- The right to a fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
- The right to receive a copy of the investigation report, including all factual, policy, and/or credibility analyses performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) days to review the report prior to the hearing.

- The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record.
- The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- The right to regular updates on the status of the investigation and/or resolution.
- The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and Decision-maker(s) who have received relevant training.
- The right to preservation of privacy, to the extent possible and permitted by law.
- The right to meetings, interviews, and/or hearings that are closed to the public.
- The right to petition that any Title IX Team member in the process be recused on the basis of disqualifying bias and/or conflict of interest.
- The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.
- The right to the use of the appropriate standard of evidence, preponderance of the evidence, to make a finding after an objective evaluation of all relevant evidence.
- The right to be present, including presence via remote technology, during all testimony given and evidence presented during any formal resolution hearing.
- The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and disciplinary sanction(s) of the resolution process and a detailed rationale of the decision, delivered simultaneously (without undue delay) to the parties.
- The right to be informed in writing of when a decision by MTC is considered final and any changes to the disciplinary sanction(s) that occur before the decision is finalized.
- The right to be informed of the opportunity to appeal the finding(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by MTC.
- The right to a fundamentally fair resolution as defined in these procedures.

## **APPENDIX D: DISMISSAL (MANDATORY AND DISCRETIONARY)** <sup>11</sup>

Upon any dismissal, MTC will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal in [Appendix E](#).

### **1. Mandatory Dismissal**

MTC must dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- a) The conduct alleged in the Formal Complaint would not constitute sexual harassment as defined in Policy 117, even if proved; and/or
- b) The conduct did not occur in an educational program or activity controlled by MTC (including buildings or property controlled by recognized student organizations), and/or MTC does not have control of the Respondent; and/or
- c) The conduct did not occur against a person in the United States; and/or
- d) At the time of filing a Formal Complaint, a Complainant is not participating in or attempting to participate in the education program or activity of MTC.<sup>12</sup>

### **2. Discretionary Dismissal**

MTC may dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing:

- a) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein; or
- b) The Respondent is no longer enrolled in or employed by MTC; or
- c) Specific circumstances prevent MTC from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

A Complainant who decides to withdraw a Formal Complaint may later request to reinstate it or refile it.

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<sup>11</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

<sup>12</sup> Such a Complainant may still receive supportive measures, but the formal grievance process is not applicable.

## **APPENDIX E: APPEALS**

### **1. Request for Appeal**

MTC will implement appeal procedures equally for both parties. Any party may file a Request for Appeal for:

- a) A *determination regarding responsibility* as a result of the Formal Resolution process (as stated in the Notice of Outcome); or
- b) MTC's *dismissal* of a Formal Complaint or any allegations therein.

The Request for Appeal must be submitted in writing to the Title IX Coordinator within five (5) days of the Notice of Outcome or of notice of the dismissal. The Request for Appeal must include the reasons the party is appealing the *determination regarding responsibility* or the *dismissal* decision and evidence supporting the request.

Upon receiving a Request for Appeal, the Title IX Coordinator will –

- a) Designate an Appeal Decision-maker. MTC will ensure that the Appeal Decisionmaker is not the same person as the Decision-maker that reached the determination regarding responsibility or dismissal, the Investigator, or the Title IX Coordinator.
- b) Notify the other party of the Appeal in writing and provide a copy of the Request for Appeal to that party within two (2) days of the Request for Appeal being filed.
- c) Forward the Request for Appeal within five (5) days of receiving the Request for Appeal to the Appeal Decision-maker for a Review for Standing to determine if the request meets the requirements to move forward as an Appeal.

### **2. Review for Standing**

This Review for Standing is not a review of the merits of the appeal, but solely a determination as to whether the Request for Appeal meets the grounds for appeal and is timely filed so that the Appeal can move forward. The Appeal Decision-maker will complete the Review for Standing within three (3) days of receiving the Request for Appeal.

Appeals are limited to the following grounds:

- a) Procedural irregularity that affected the outcome of the matter;
- b) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or
- c) The Title IX Coordinator, Investigator, or Decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

Request for Appeals will be denied if either of the following apply:

- a) The Request for Appeal is not submitted in writing to the Title IX Coordinator within five (5) days of the delivery of the Notice of Outcome or the notice of the dismissal.
- b) None of the grounds in the Request for Appeal meet the Grounds for Appeal as stated above as determined by the Appeals Decision-maker.

Request for Appeals will be approved if the following applies:

- a) The Request for Appeal is submitted in writing to the Title IX Coordinator within five (5) days of the delivery of the Notice of Outcome or the notice of the dismissal, and
- b) Any of the grounds in the Request for Appeal meet the Grounds for Appeal as stated above as determined by the Appeals Decision-maker.

Parties and their Advisors, if any, will be promptly notified in writing of the denial or the approval of the Request for Appeal and the rationale. Notification will be made simultaneously and may be delivered in person, emailed to the parties' MTC-issued email, or mailed to the local or permanent address(es) of the parties as indicated in official MTC records. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

Parties will be given a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome of the Review for Standing. Parties will be given three (3) days to review and submit a response to the portion of the Review for Standing that was denied or approved and involves them. All responses to the Review for Standing will be forwarded by the Appeal Decision-maker to all parties.

Upon reviewing the Review for Standing and all written statements submitted by the parties in the 3-day review period, the Appeal Decision-maker will either Dismiss the Request for Appeal or move the Request for Appeal forward as an Appeal. Decisions by the Appeal Decision-maker to Dismiss the Request for Appeal are final.

### **3. Appeal**

An Appeal is a review of the merits of the appeal – the reasons and evidence provided in the Request for Appeal.

The Appeal Decision-maker will collect any additional information needed and all documentation regarding the Request for Appeal, the Review for Standing, and the subsequent written statements/responses by the parties. The Appeal Decision-maker will render a decision (Appeal Outcome) in no more than five (5) days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

Notification of the Appeal Outcome will be sent to all parties in writing including the decision on each ground and rationale for each decision. Notification will be made simultaneously and may be delivered in person, emailed to the parties' MTC-issued email, or mailed to the local or permanent address(es) of the parties as indicated in official MTC records. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.



The Appeal Outcome is final.

#### **4. Disciplinary Sanctions Status During the Appeal**

Any disciplinary sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be continued or implemented.

If any of the disciplinary sanctions are to be implemented immediately post-hearing, but pre-appeal, then Emergency Removal procedures must be followed.

#### **5. Appeal Considerations**

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and making changes to the disciplinary sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or disciplinary sanction(s).
- The Appeal Decision-maker may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator and/or Decision-maker for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or disciplinary sanction is changed on remand (except in the case of a new hearing).
- In rare cases where a procedural or substantive error cannot be cured by the original Decision-maker (as in cases of bias), the appeal may order a new hearing with a new Decision-maker.
- The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases in which the appeal results in reinstatement to MTC or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

## APPENDIX F: INFORMAL RESOLUTION<sup>13</sup>

### 1. When Can an Informal Resolution Process Be Used?

Informal Resolution will only be offered if a Formal Complaint is filed, if it is done prior to reaching a determination regarding responsibility through the Formal Resolution process, and if the Title IX Coordinator approves. Informal Resolution is not a required component of the Grievance Process, and at no time will parties be pressured or required to pursue an Informal Resolution first in order to pursue a Formal Resolution.

Informal resolution may be appropriate when parties agree to the Informal Resolution process, and the process is approved by the Title IX Coordinator after evaluating the circumstances. At no time can an Informal Resolution process be used as the grievance (resolution) process for allegations that an employee sexually harassed a student; the Formal Resolution process must apply.

### 2. Starting the Informal Resolution Process

To request Informal Resolution, the Complainant or Respondent who wishes to initiate the Informal Resolution should contact the Title IX Coordinator.<sup>14</sup> Within two (2) days of receiving the request, the Title IX Coordinator will review to see if an Informal Resolution process is viable under the circumstances, and if yes, the Title IX Coordinator will contact the other party to see if they, too, would like to pursue an Informal Resolution.

Within two (2) days of determining that the parties are interested in the Informal Resolution process, the Title IX Coordinator will send the Informal Resolution Request paperwork to the parties to obtain each party's signed voluntary, written confirmation that they wish to resolve the matter through the Informal Resolution process. The Informal Resolution Request will include written notice of the reported misconduct and any disciplinary sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by MTC.

The Informal Resolution Request will also inform the parties that any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Resolution process. The parties will have five (5) days to return the signed Informal Resolution Request. Upon return of the signed Informal Resolution Request by all parties, the Informal Resolution process begins.

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<sup>13</sup> MTC will not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and Formal Resolution of Formal Complaints of sexual harassment.

<sup>14</sup> The Title IX Coordinator may also reach out to the parties to see if an Informal Resolution process is agreed upon when the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, and the Title IX Coordinator determines that an Informal Resolution is appropriate.

### **3. The Informal Resolution Process**

The Informal Resolution process will commence with an Informal Resolution Facilitator within five (5) days of receipt of all parties' signed Informal Resolution Requests.

The Informal Resolution process can include two different approaches:

#### **a) Negotiated Resolution**

Negotiated Resolution is when the Title IX Coordinator, with the consent of the parties, negotiates and implements a mutually agreed upon resolution to resolve the allegations that satisfies all parties and MTC.

The Title IX Coordinator may look to the following factors to assess whether Negotiated Resolution is appropriate:

- The parties' amenability to the Negotiated Resolution option;
- Likelihood of potential resolution, taking into account any power dynamics between the parties;
- The parties' motivation to participate;
- Civility of the parties;
- Results of a violence risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Formal Complaint complexity;
- Emotional investment/capability of the parties;
- Rationality of the parties; and/or
- Goals of the parties

#### **b) Respondent Accepts Responsibility for Alleged Violations**

This method may be used if the Respondent indicates an intent to accept responsibility for all of the alleged misconduct in the Formal Complaint, the Respondent agrees to the disciplinary sanctions, if any, and the Complainant agrees to the outcome.

The ultimate determination of which approach to use is to be made by the Title IX Coordinator.

### **4. Informal Resolution Outcome**

The ultimate determination of whether the Informal Resolution is successful (the Formal Complaint is resolved) is to be made by the Title IX Coordinator. The Title IX Coordinator will determine whether all parties and MTC are able to agree on the outcome of the Informal Resolution process.

If yes, within five (5) days, the outcome will be provided in writing to the parties through an Informal Resolution Agreement. The Informal Resolution Agreement will include all that apply – acknowledgment of responsibility by the Respondent for allegations, any disciplinary sanctions imposed on the Respondent, and whether remedies designed to restore or preserve equal access to MTC's education program or activity will be provided by MTC to the

Complainant (the details or specifics of the remedies are not shared with the Respondent unless the remedy directly relates to the Respondent).

The parties must sign the Informal Resolution Agreement showing their intent to be bound by the terms of the Agreement. The signed Informal Resolution Agreement must be returned to the Title IX Coordinator by all parties within three (3) days of delivery, or the Informal Resolution process will cease, and the Formal Resolution will resume at the same point where it was paused. The Informal Resolution Outcome becomes final upon the return of the signed Informal Resolution Agreement, if done within the required timeframe by all parties.

## **5. Disciplinary Sanctions and Remedies**

When an Informal Resolution is final, the appropriate disciplinary sanction(s) and/or remedies are promptly implemented in order to effectively stop the sexual harassment, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

Failure to abide by the Informal Resolution Agreement may result in additional disciplinary actions.

## **6. Appeals Not Allowed**

The final result of an Informal Resolution process is not subject to appeal once all parties indicate their written assent to all agreed upon terms of the Informal Resolution in the Informal Resolution Agreement. When the parties cannot agree on all terms of the Informal Resolution, the Formal Resolution process will resume at the same point where it was paused.

## **7. Recordkeeping**

Records of the Informal Resolution will be maintained per the Preservation of Records/ Recordkeeping section of this procedure, as applicable.



## **MITCHELL TECHNICAL COLLEGE PROCEDURE 117 - GRIEVANCE PROCESS B**

### **GRIEVANCE PROCESS B**

When allegations of discrimination and/or harassment do not fall under Policy 117, other policies and procedures may be applicable.

If an allegation is not covered under Policy 117 and Procedure 117 Grievance Process A, the matter may fall under another policy and procedure which will be referred to as Grievance Process B. The Title IX Coordinator will review all claims of discrimination and claims of harassment to determine which MTC policy and procedure applies.

Some of the policies and procedures that may apply include:

- MTC Catalog and Student Handbook
  - Student Rights and Responsibilities
  - Student Life – General Student Conduct
  - Student Life – General Information
  - Mitchell Tech Policies and Administrative Rules
- Board Policy MTC 111 Freedom of Expression
- Board Policy MTC 112 Nondiscrimination Policy
- Board Policy MTC 115 Harassment
- Board Policy MTC 116 Equal Opportunity
- Board Policy MTC 713 Employee Grievance Procedures
- Board Policies MTC 744/976 Appropriate Use of Information Technology Resources
- Board Policy MTC 934 Academic Freedom
- Board Policy MTC 1002 Equal Educational Opportunities
- Board Policy MTC 1036 Non-academic Probation, Suspension, and Expulsion
- Board Policy MTC 1044 Student Due Process
- Board Policy MTC 1045 Student Complaints and Appeals
- Board Policy MTC 1046 Student Discrimination Grievance Policy and Procedures