

# Minneapolis College of Art and Design

## Student Sexual Misconduct Policy

August 2020

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## **MCAD Student Sexual Misconduct Policy**

### **I. Policy Statement**

The Minneapolis College of Art and Design (the “**College**” or “**MCAD**”) is committed to fostering an atmosphere of mutual respect and to providing safe and nondiscriminatory learning and working environments. As such, the College prohibits and will not tolerate sexual misconduct by or against any member of the College community. The College’s Title IX Sexual Harassment Policy applies to complaints about the conduct described in that policy. The U.S. Department of Education prohibits a Title IX policy from covering conduct or circumstances not specified in Title IX. Complaints of sexual misconduct not covered by the Title IX Sexual Harassment Policy and described in this Policy (“**Sexual Misconduct**”) will be addressed by this Policy. Conduct which is defined as Sexual Harassment under the Title IX Sexual Harassment Policy will not be adjudicated under this Policy. An example of complaints which may fall under this Policy is complaints about conduct that occurred in connection with locations, events or circumstances over which the College did not exercise substantial control over the Respondent and the context in which the Sexual Misconduct occurred.

The College prohibits retaliation for good faith reports or for participating in the College’s processes set forth in this Student Sexual Misconduct Policy (the “**Policy**”).

The College is committed to keeping reports and proceedings conducted under this Policy as confidential as possible, consistent with its need to look into reports and applicable law.

### **II. Sexual Misconduct Administrative Team**

MCAD has designated the following individuals to oversee complaints of Sexual Misconduct:

Jen Zuccola  
Morrison Bldg, Room M104  
VP of Student Affairs  
Minneapolis, MN 55404  
Office Phone: 612-874-3626  
Email: [jzuccola@mcad.edu](mailto:jzuccola@mcad.edu)

Hope Denardo  
Morrison Bldg, Room M18  
Sr Director of Human Resources  
Minneapolis, MN 55404  
Office Phone: 612-874-3798  
Email: [hdenardo@mcad.edu](mailto:hdenardo@mcad.edu)

### **III. Definitions**

#### **A. Coercion**

“**Coercion**” means conduct or intimidation that would compel an individual to do something against their will by: (1) the use of physical force; (2) threats

of severely damaging consequences; or (3) pressure that would cause a reasonable person to fear severely damaging consequences. Consent cannot be obtained through coercion. Coercion is more than an effort to persuade or attract another person to engage in sexual activity. Coercive behavior differs from seductive behavior based on the degree and type of pressure someone used to obtain consent from another.

## **B. Complainant**

“**Complainant**” refers to any person(s) who initiates a complaint resolution process with the College under this Policy regarding conduct that is alleged to have violated this Policy. In addition, the term “Complainant” may also be used to refer generally to a person alleged to have been subjected to conduct that violates this Policy, whether or not that person has filed a Complaint.

## **C. Complaint**

“**Complaint**” refers to a formal allegation of an alleged Policy violation provided to the VP of Student Affairs by the Complainant that begins a complaint resolution process as set forth in the “Complaint Resolution Process” section of this Policy.

## **D. Consent**

“**Consent**” Under Federal Law means:

Words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. Consent does not mean the existence of a prior or current social relationship between the actor and the victim or that the victim failed to resist a particular sexual act. A person who is mentally incapacitated or physically helpless cannot consent to a sexual act.

The use of alcohol or drugs by either person will not diminish the actor’s responsibility for Sexual Assault under this Policy.

Under Minnesota Law **Consent** means:

Words or overt actions by a person indicating a freely-given and present agreement to perform a particular sexual act with the actor. Minnesota law expressly states that the existence of a prior or current relationship or the fact that the Complainant did not resist a particular sexual act is not consent. A person who is mentally incapacitated or physically helpless cannot consent to a sexual act. “Mentally incapacitated” means that a person under the influence of alcohol, a narcotic, anesthetic, or any other substance, administered to that person without the person’s agreement, lacks the

judgement to give a reasoned consent to sexual contact or sexual penetration; or that a person is under the influence of any substance or substances to a degree that renders them incapable of consenting or incapable of appreciating, understanding, or controlling a person's conduct. "Physically helpless" means that a person is asleep or not conscious, unable to withhold consent or to withdraw consent because of a physical condition, or unable to communicate non-consent and the condition is known or reasonably should have been known to the actor. Corroboration of a Complainant's testimony is not required to show lack of consent.

## **E. Dating Violence**

Under Federal Law "**Dating Violence**" means:

Violence committed by a person who is 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 reporting party's statement and with consideration to the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

Under Minnesota Law **Dating Violence** means:

1. An act of domestic abuse, which is defined as an act of physical harm, bodily injury, or assault;
2. The infliction of fear of imminent physical harm, bodily injury, or assault;
3. Terroristic threats, criminal sexual conduct, or interference with an emergency call that is committed against a family or household member by a family or household member.

Family or household member is defined as follows:

1. Spouses and former spouses;
2. Parents and children;
3. Persons related by blood;
4. Persons who are presently residing together or who have resided together in the past;
5. Persons who have a child in common regardless of whether they have been married or have lived together at any time;

6. A man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and
7. Persons involved in a significant romantic or sexual relationship.

## **F. Domestic Violence**

Under Federal Law “**Domestic Violence**” means:

A felony or misdemeanor crime of violence committed:

1. By a current or former spouse or intimate partner of the victim;
2. By a person with whom the victim shares a child in common;
3. By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
4. 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;
5. 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.

Under Minnesota Law “**Domestic Violence**” means:

1. Physical harm, bodily injury, or assault;
2. The infliction of fear of imminent physical harm, bodily injury, or assault; or
3. Terroristic threats, criminal sexual conduct, sexual extortion, or interference with an emergency call that is committed against a family or household member by a family or household member.

Family or household member is defined as follows:

1. Spouses and former spouses;
2. Parents and children;
3. Persons related by blood;
4. Persons who are presently residing together or who have resided together in the past;
5. Persons who have a child in common regardless of whether they have been married or have lived together at any time;

6. A man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and
7. Persons involved in a significant romantic or sexual relationship.

## **G. Incapacitation**

**“Incapacitation”** is the physical and/or mental inability to make informed, rational judgments and decisions. In addition, a person is incapacitated for purposes of this policy if the person is “mentally impaired” or “mentally incapacitated” as defined by Minnesota law. Under Minnesota law, “mentally impaired” means that a person, as a result of inadequately developed or impaired intelligence or a substantial psychiatric disorder of thought or mood, lacks the judgement to give a reasoned consent to sexual contact or sexual penetration. Under Minnesota law, “mentally incapacitated” means that a person under the influence of alcohol, a narcotic, anesthetic, or any other substance, administered to that person’s agreement, lacks the judgement to give a reasoned consent to sexual contact or sexual penetration or that a person is under the influence of any substance or substances to a degree that renders them incapable of consent or incapable of appreciating, understanding, or controlling the person’s conduct. States of incapacitation include sleep and blackouts. Where alcohol or other substances are involved, incapacitation is determined by how the substance impacts a person’s decision-making capacity, awareness of consequences, and ability to make informed judgments.

For purposes of this Policy, incapacitation is a state beyond drunkenness or intoxication. A person is not incapacitated merely because they have been drinking or using drugs. Because the impact of alcohol and other drugs varies from person to person, one should be cautious before engaging in sexual contact or intercourse when either party has been drinking alcohol or using other drugs.

## **H. Respondent**

**“Respondent”** refers to the person(s) named as the Respondent in a Complaint under this Policy.

## **I. Sexual Assault**

**“Sexual Assault”** means an actual, attempted, or threatened sexual contact with another person without that person’s consent. Sexual Assault includes 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, done without consent. It also includes physical contact with a person’s private body parts, including genital area, other bodily orifices (anal, oral or vaginal) or with a



person's buttocks or breasts, either over or under clothing, if the contact is done without consent. Sexual Assault can be committed by persons of the same sex or opposite sex, and could involve a stranger, acquaintance or date. Child (under 18) sexual abuse (statutory rape) and incest are also included in this Policy. Sexual Assault is a criminal act that can be prosecuted under Minnesota law.

## **J. Sexual Harassment**

**“Sexual Harassment” means** unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct or communication of a sexual nature when:

1. submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining education;
2. submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's education; or
3. that conduct or communication has the purpose or effect of substantially interfering with an individual's education, or creating an intimidating, hostile or offensive educational environment.

## **K. Sexual Misconduct**

**“Sexual Misconduct” means** the following forms of sex discrimination and other misconduct: Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking. Sexual Misconduct encompasses all instances of Dating Violence, Domestic Violence, and Stalking (as those terms are defined in this Policy), regardless of whether there is a sexual component to the behavior. Sexual Misconduct can take place between individuals in different power positions or between peers.

## **L. Stalking**

Under Federal law **“Stalking” means:**

As a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress. Course of conduct means two or more acts, but not limited to, acts in which the stalker 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. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Under Minnesota law “**Stalking**” means:

Conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress. Conduct includes, but is not limited to, acts in which an individual directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another individual, or interferes with, or damages another individual’s property. Stalking does not depend on the relationship between the actor and the Complainant. Stalking also does not require a specific intent to cause the Complainant harm. Stalking is a criminal act that can be prosecuted under Minnesota law.

#### **IV. Assistance Following an Incident of Sexual Misconduct**

##### **A. Information about Support Resources**

The College will provide support to any Complainant adversely impacted by Sexual Misconduct and any community member accused of a violation of this Policy. Both the College and the community provide a variety of resources to assist and support individuals who have experienced Sexual Misconduct or are affected by allegations of Sexual Misconduct.

The support resource information in Appendix A includes contact information for on- and off-campus resources (including confidential resources) that can provide an immediate response in a crisis situation, including assisting with obtaining needed resources and explaining reporting options. Emergency numbers and information about law enforcement reporting and health care options are also listed in Appendix A.

It is important for Complainants to preserve evidence so that, should they later decide to make a report to the College or law enforcement, that evidence is available. An individual can contact the VP of Student Affairs, MCAD’s Public Safety Officers or law enforcement for help with preserving evidence. A Complainant is encouraged to go to a hospital for treatment and preservation of evidence, if applicable under the circumstances, as soon as practicable after the Sexual Misconduct incident.

##### **B. Crime Victims’ Rights**

A summary of crime victims’ rights under Minnesota law, including the right to assistance from the Crime Victims Reparations Board, is set forth in Appendix B. Complete information about crime victims’ rights can be found online at: <https://dps.mn.gov/divisions/ojp/help-for-crime-victims/Pages/crime-victims-rights.aspx>. Information about victims’ rights also is available from the VP of

Student Affairs or from the Minnesota Department of Public Safety, Office of Justice Programs, and in Minnesota Statutes Chapter 611A.

## **V. Confidentiality**

The College is sensitive to the need for privacy for the Complainant, the Respondent, and any witnesses. Therefore, in investigating Complaints of Sexual Harassment or Sexual Assault, the College will be as discrete as possible. However, absolute confidentiality may not be possible in every case given the College's responsibility to provide members of the community with a positive working and learning environment that is free from Sexual Harassment and Sexual Assault. Conduct that is inconsistent with this Policy may pose a potential physical harm or danger to members of the College community, and in some cases, the College must issue a timely warning to the College community in compliance with the Clery Act, 20 U.S.C. § 1092. In these cases, the College will only provide enough information to safeguard the College community. Also, disclosure of the allegations to the Respondent, and to those within the College administration with a need to know, may be necessary to ensure a thorough, fair, and impartial investigation. Each situation will be resolved as discreetly as possible, with information shared only with those who need to know in order to investigate and resolve the matter. Requests for confidentiality will be considered to the greatest extent possible, provided such request does not preclude the College from effectively responding to the Complaint and taking appropriate corrective and preventive action. Any accommodations or protective measures provided to a Complainant will be kept as confidential as possible. All files, documents, and other materials collected during the investigation will be kept in the confidential files of the VP of Student Affairs. A student who reports an incident of Sexual Assault will, upon request, have access to his or her description of the incident as it was reported to the College. This right to access applies even if the student transfers to another postsecondary institution.

In connection with the College's legally required recordkeeping, statistical reporting, or community warnings under the federal Clery Act, the College will protect a Complainant's confidentiality to the extent possible even if the Complainant does not specifically request confidentiality. Publicly available recordkeeping, statistical reporting and disclosures will not include names or other information that may personally identify either party, to the extent permitted by law. To ensure that a Complainant's personally identifying information is not included in publicly available recordkeeping, the VP of Student Affairs describes the alleged incidents by removing the Complainant's and Respondent's names and any other identifiers that would enable the public to identify the Complainant or Respondent in the context of the incident report.

Minnesota law, Minn. Stat. Sec. 135A.15, requires institutions to collect statistics, without inclusion of any personally-identifying information, regarding the number of reports of Sexual Assault received by an institution and the number of types of resolutions. Nothing in this paragraph is intended to conflict with or limits the authority of the College to comply with other applicable state or federal laws.

## **VI. Reporting Sexual Misconduct**

The College encourages individuals who believe they or another person has experienced Sexual Misconduct to report the incident to the College. The College also encourages individuals who have experienced criminal sexual misconduct to report the incident to law enforcement.

### **A. Reporting to the College**

In order to take appropriate corrective action, College officials must be aware of Sexual Misconduct. Therefore, any individual who believes that they or another person has experienced Sexual Misconduct should promptly report such behavior. Reports may be made to the College by contacting the following officials:

Jen Zuccola  
VP of Student Affairs  
*[insert room #, address]*  
Minneapolis, MN 55404  
Office Phone: 612-874-3626  
Email: [jzuccola@mcad.edu](mailto:jzuccola@mcad.edu)

Autumn Amadou-Blegen  
AVP of Human Resources  
*[insert room #, address]*  
Minneapolis, MN 55404  
Office Phone: 612-874-3798  
Email: [aamodoublegen@mcad.edu](mailto:aamodoublegen@mcad.edu)

Reports can be made by telephone, email, or in person. The College requests that reports include as much information as possible, including, to the extent known, the name of the Complainant and the date, time, place, and circumstances of the incident(s) to enable the College to be better positioned to respond.

When a student or employee reports to the College that they have been a victim of alleged Sexual Assault, Domestic Violence, Dating Violence, or Stalking, regardless of location, the College will provide a written explanation of available rights, options, and procedures.

The College has an online reporting form option, which is available on its website at: \_\_\_\_\_

### **B. Anonymous Reporting**

The College accepts anonymous reports of Sexual Misconduct, which may be filed using the College's online reporting form available on its website at: <https://intranet.mcad.edu/content/anonymous-title-ix-reporting>. The College

may be limited in its ability to investigate an anonymous report unless sufficient information is furnished to enable the College to conduct a meaningful and fair investigation. The individual making the report is encouraged to provide as much detailed information as possible.

### **C. Amnesty for Other Policy Violations**

Any member of the College community who in good faith reports an incident of Sexual Harassment or Sexual Assault, whether as a Complainant or a witness, shall not be penalized by the College for admitting in the report to a violation of the College's student conduct policy on the personal use of drugs or alcohol.

### **D. The Initial Review and Response to Reports to the College**

When the College receives a report of alleged Sexual Misconduct, the VP of Student Affairs or their designee will seek to hold a preliminary meeting with the Complainant. The purpose of the preliminary meeting is to allow the College to gain a basic understanding of the nature and circumstances of the report, and, to review if the Complaint falls under the definitions of misconduct to justify a full investigation. This meeting is not an investigation interview.

### **E. Reporting to Law Enforcement**

Some types of Sexual Misconduct prohibited by this Policy may also be a crime. Individuals who believe they have experienced criminal sexual misconduct are strongly encouraged to notify local law enforcement. Individuals have the right to notify or decline to notify local law enforcement. The College will assist individuals who wish to notify law enforcement. Filing a report with law enforcement is not necessary for the College to proceed with institutional procedures and will not impede institutional procedures. A College investigation and a criminal investigation may be pursued simultaneously. At times, the College may briefly delay the start of its complaint resolution process under this Policy if requested by law enforcement in an effort to avoid interfering with law enforcement activities.

Individuals who would like to report to law enforcement should contact the following:

- 911 (for emergencies)
- Minneapolis Police Department, 5<sup>th</sup> Precinct  
3101 Nicollet Ave. South  
Minneapolis, MN 55408  
Phone: 612-673-3705  
Email: [police@ci.minneapolis.mn.us](mailto:police@ci.minneapolis.mn.us)

Website:

[http://www.minneapolismn.gov/police/precincts/police\\_about\\_5th-precinct](http://www.minneapolismn.gov/police/precincts/police_about_5th-precinct)

## **VII. Sexual Misconduct Complaint Resolution Process**

When the College receives a Complaint of Sexual Misconduct or decides that the College will initiate the complaint resolution process, the College will promptly respond and address the Complaint pursuant to the guidelines and procedures set forth in this Section.

Each process involving a Sexual Misconduct Complaint will provide a prompt, fair, and impartial investigation and resolution. Each Sexual Misconduct complaint resolution process will be conducted by individuals who receive annual training on the issues related to Sexual Misconduct and how to conduct an investigation and decision-making process that protects the safety of all and promotes accountability.

The College will take appropriate steps to eliminate Sexual Misconduct, prevent its recurrence, and remedy its discriminatory effects on the Complainant and others as quickly as possible. In some cases, interim measures may be taken before the investigation and disciplinary process has been completed in order to address the effects of the alleged conduct that is the subject of the Complaint. Any interim measures will respect the rights of all participants to be treated with fundamental fairness.

### **A. Complaint and Notice to Respondent**

The complaint resolution process is commenced by a Complainant's or the College's decision to move forward on a Sexual Misconduct Complaint pursuant to the College's complaint resolution process. If the College decides that it will move forward with a complaint resolution process despite a Complainant's request for confidentiality or non-action, it will notify the Complainant before proceeding.

When a Complaint is submitted by a Complainant, the VP of Student Affairs or their designee will review and assess the Complaint to determine whether it alleges a violation of this Policy. The VP of Student Affairs or their designee has discretion to dismiss a Complaint or refer a Complaint to be handled pursuant to other applicable College disciplinary procedures. The parties will be notified of any such determination and the Complainant will be informed of other procedures for resolving the Complaint and of other resources that may be available.

When, the VP of Student Affairs or their designee has determined that a Complaint will be processed under this Policy, the VP of Student Affairs or their designee will notify the Respondent and seek to meet with the Respondent. If a Respondent declines or does not make themselves available for an initial meeting with the VP of Student Affairs or their designee, the VP of Student Affairs or their designee will provide the Respondent the above information by written means. The written notification will include a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the formal resolution process.

## **B. Informal Resolution Process**

If the Complainant, the Respondent, and the College all agree to pursue an informal resolution, the VP of Student Affairs or their designee will attempt to facilitate a resolution that is agreeable to the parties and the College. The VP of Student Affairs or their designee will act as a neutral and will not be an advocate for either the Complainant or the Respondent in the informal resolution process. Under the informal resolution process, the College will only conduct such fact-finding as is useful to resolve the conflict and as is necessary to protect the interests of the parties, the College, and the College community.

Informal resolution may involve the imposition of individual and community remedies designed to maximize the Complainant's access to the College. The recommended resolution may also include other institutional responses, requirements, or sanctions imposed on the Respondent.

The College will not require a Complainant or Respondent to engage in mediation, directly confront the other party, or participate in any particular form of informal resolution. Participation in informal resolution is voluntary, and the Complainant and Respondent have the option to discontinue the informal process at any time and request the formal resolution process. The College also has the discretion to discontinue the informal process and move the Complaint to the formal resolution process. If at any point during the informal resolution process, the Complainant or Respondent or the College wishes to cease the informal resolution process and to proceed through the formal resolution process, the informal resolution process will stop and the formal resolution process outlined below will begin.

The informal resolution process ends when a resolution has been reached or when the Complainant, the Respondent, or the College terminates the process. If the parties to the Complaint agree in writing to the terms and conditions of a recommended resolution, which will include a description of the information

relied upon in the informal process, the case will be resolved without further process under this procedure. If all parties to the Complaint do not agree in writing to the terms and conditions of the recommended resolution, the Complaint will be referred to the formal resolution process.

Appeals are not allowed in cases where the parties have agreed to a voluntary informal resolution.

## **C. Formal Resolution Process**

### **1. Investigation**

A Complaint that is processed pursuant to the formal resolution process will be investigated by one or more investigators assigned by the VP of Student Affairs to conduct an adequate, reliable, and impartial investigation. The parties will receive written notice of the investigator(s) appointed. If any party has a concern that the investigator(s) has a conflict of interest, the party should report the concern in writing as indicated in the “Conflicts of Interest” section below.

The investigator(s) will conduct the investigation in a manner appropriate to the circumstances of the case, which will typically include interviews with the Complainant, the Respondent, and any witnesses; these interviews are generally audio-recorded. As part of the investigation, the College will provide an opportunity for both the Complainant and Respondent to advise the investigator(s) of any witnesses they believe should be interviewed, other evidence they believe should be reviewed by the investigator(s), and to suggest questions that they would like asked of the other party. The investigator(s), in consultation with the VP of Student Affairs, has discretion to assess the relevancy of any proposed witnesses and determine which interviews to conduct, including the discretion to conduct interviews of individuals not identified by the parties. Similarly, the investigator(s), in consultation with the VP of Student Affairs, has discretion to assess the relevancy of any suggested questions for the other party and determine which questions to ask or not ask. The interviews will be supplemented by the gathering of any physical, documentary, or other evidence, as deemed appropriate and available.

The investigation is designed to provide a fair and reliable gathering of the facts. The investigation will be thorough, impartial, and fair, and all individuals will be treated with appropriate sensitivity and respect. The investigation will be conducted in a manner that is respectful of individual privacy concerns.



Near the end of the investigation, the parties will be informed of a close of evidence date. The parties are required to submit any and all information and evidence they believe relevant by the close of evidence date. After the close of evidence date, the parties will not be permitted to submit new or additional evidence that existed prior to the close of evidence date, unless the investigator(s), in consultation with the VP of Student Affairs determines otherwise.

At the conclusion of the investigation, the investigator(s) will prepare a written report setting forth the relevant facts gathered. The investigator(s) generally will compile as part of the investigation report all evidence relevant to the alleged Sexual Misconduct in the College's possession, including any relevant information, documents, recordings, or other evidence.

## **2. Review of Investigation Report and Response and Rebuttal Statements**

The investigation report will be made available for review by the Complainant and Respondent and the Complainant and Respondent will have opportunities to submit response statements and rebuttal statements, as described below.

The VP of Student Affairs will provide a seven (7) calendar day review and response period for the Complainant and Respondent to have access to review the investigation report and submit a written response to the investigation report. The parties may provide a written response to the investigation report by submitting a response statement to the VP of Student Affairs by the end of the seven (7) day review and response period. The response statement may be used as an opportunity to clarify points in the investigation report or identify information previously given to the investigator(s) that is not included in the investigation report which the party believes should have been included.

The parties will have an opportunity to review the response statement submitted by the other party. The VP of Student Affairs will provide a three (3) calendar day review and rebuttal period for the Complainant and Respondent to have access to review any submitted response statement of the other party and submit a written rebuttal to the other party's response statement. The parties may provide a written rebuttal to the other party's response statement to the VP of Student Affairs by the end of the three-day review and rebuttal period. The rebuttal statement may be used only to respond to arguments made in the other party's response statement.

The parties will have an opportunity to review the rebuttal statement submitted by the other party. The VP of Student Affairs will provide a three

(3) calendar day period for the Complainant and Respondent to have access to review any submitted rebuttal statement of the other party. While the Complainant and Respondent will be given the opportunity to review any rebuttal statement of the other party, no further responses are permitted by either party.

The VP of Student Affairs will review any submitted response statements and rebuttal statements. Based on the statements, the VP of Student Affairs has the discretion to ask the investigator(s) for clarification, additional investigation, and/or to have information removed or redacted from the investigation report. In addition, the VP of Student Affairs may remove or redact any portions of the parties' written response and/or rebuttal statements that exceed the permitted scope or that otherwise exceed the scope of information that may be considered in the complaint resolution process, such as general character or reputation evidence and evidence relating to the Complainant's prior sexual history.

### **3. Decision-Making**

Following the investigation, the VP of Student Affairs will assign a decision maker to conduct an adequate, reliable, and impartial determination. The College reserves the right to appoint additional decision maker(s) to assist in making a determination in any given case. The College will ensure that decision maker(s) have received the appropriate training and are impartial and free of any conflict of interest. The parties will receive written notice of the decision maker(s) appointed. If any party has a concern that a decision maker has a conflict of interest, the party should report the concern in writing as indicated in the "Conflicts of Interest" section below.

The decision maker(s) will use a preponderance of the evidence standard to determine whether it is more likely than not that the Respondent violated the Policy. The Respondent is presumed to be not responsible for a Policy violation. The Respondent will be deemed responsible for a Policy violation only if the decision maker(s) conclude that there is sufficient evidence to support a finding that the Respondent more likely than not engaged in Sexual Misconduct.

If the decision maker(s) determine that the Respondent is responsible for a Policy violation, they will then determine sanctions and remedies. The decision maker(s) will impose sanctions and/or remedies as they determine necessary in their discretion to end the misconduct, prevent its recurrence, and address its effects. As part of that determination of sanctions and remedies, the decision maker(s) may, in their discretion, request information

from the VP of Student Affairs regarding any previous violations by the Respondent of any MCAD policy on sexual harassment or sexual misconduct and consider such other policy violations in assigning sanctions. If such information is shared with the decision maker(s), the parties will be notified.

The Complainant and Respondent will receive a written notice of the decision maker's decision. The notice will be provided to the Complainant and the Respondent at the same time.

The written notice will include the determination of the decision maker(s), any imposition of sanctions, the rationales for the decision and sanctions, and any remedies offered or provided to the Complainant, including how the evidence was weighed, how the information supports the result, and the standard of evidence applied. The written notice will also include information about the procedures for appeal, as set forth below, and when the result becomes final.

The time frame for the decision-making generally is within twenty (20) calendar days from the decision maker(s) receiving the investigation report and any response statements and rebuttal statements of the parties from the VP of Student Affairs. In some cases, more time may be required.

The determination of the decision maker(s) may be appealed as provided below. In the event that no appeal is filed within the time periods prescribed below, the decision will be final.

#### **4. Appeal**

Either party may appeal the decision maker's decision. An appeal may be made exclusively on one of the following grounds:

- There is new and significant evidence that was not reasonably available at the time the decision was made that could have affected the outcome of the process. However, prior intentional omission of evidence by the appealing party is not a ground for an appeal.
- A procedural error occurred that substantially affected the outcome of the process.
- The sanctions imposed or other response by the College were excessively severe or grossly inadequate.

The parties may request an appeal by submitting an appeal statement to the VP of Student Affairs within five (5) calendar days after written notice of the decision has been given. The appeal statement must explain the grounds for the appeal. The burden of proof is on the appealing party to show by a

preponderance of evidence that one or more of the above grounds for appeal are satisfied. While the parties may be assisted by their advisors in preparation of the appeal statement, when applicable, the appeal statement must be submitted by the party, must be the party's own statement, and may not be used to submit the statements of others on the party's behalf. Failure to file a timely appeal constitutes a waiver of any right to an appeal. If the appeal statement states a permissible ground for appeal as listed above, as determined by the VP of Student Affairs, the VP of Student Affairs will continue the appeals process.

The non-appealing party will be notified of any appeal and the alleged grounds for the appeal. The non-appealing party may submit a written response to the appeal to the VP of Student Affairs within five (5) calendar days of receiving notice of the appeal.

The VP of Student Affairs will review the appeal statement and any written response to the appeal. The VP of Student Affairs may remove or redact any portions of the statements which exceed the permitted scope of the appeal or that otherwise exceed the scope of information which may be considered in the complaint resolution process such as general character or reputation evidence and evidence relating to the Complainant's prior sexual history. The VP of Student Affairs generally will compile an appeal file, which may consist of any information, documents, or other evidence that is contained in the investigator's file.

The appeal file will be made available for review by the Complainant and Respondent. The VP of Student Affairs will provide a three (3) calendar day period for the Complainant and Respondent to have access to review the appeal file and such access generally will be provided during normal business hours in a designated on-campus location. Upon request, the appeal file will be sent to a party electronically, provided the party promises not to disclose the file or any of its contents to anyone other than their advisor.

The VP of Student Affairs will assign an appeal official to decide the appeal. Generally, the appeal official will be a member of the College, but could be from outside the College, who has not previously been involved in the specific complaint resolution process, has received necessary training, and is impartial and free of any conflict of interest. The parties will receive written notice of the appeal official appointed. If any party has a concern that the appeal official has a conflict of interest, the party should report the concern in writing as indicated in the "Conflicts of Interest" section below.

The appeal official will review the appeal file. The appeal official may, in their discretion, seek additional information from the investigator, the parties, or another individual, or request additional investigation by the investigator(s) through in-person meetings, written or other means. In the event that the appeal official requests additional information, the Complainant and Respondent will be notified and provided access to additional information received by the appeal official.

The appeal official will use a preponderance of the evidence standard to determine whether it is more likely than not that one of the above-listed grounds for appeal have been satisfied. If the appeal official determines that the appealing party has demonstrated that it is more likely than not that one of the above grounds for appeal is satisfied, generally, the appeal official will make a recommendation to the VP of Student Affairs. If the appeal official finds that the sanctions imposed or other response by the College are excessively severe or grossly inadequate, the appeal official has the discretion to modify the sanctions determination.

The appeal officer has the right to change the determination of the original decision maker(s) of whether the Respondent was responsible or not responsible for a policy violation.

If the appeal official determines that the appealing party has not demonstrated that it is more likely than not that one or more grounds for appeal have been satisfied, the appeal official will dismiss the appeal. This dismissal decision is final and is not appealable.

The appeal official will issue a written decision stating the appeal official's findings and decision on the appeal. The VP of Student Affairs may accept or reject the appeal official's written decision. The decision of the VP of Student Affairs is final. The time frame for the appeal generally is within thirty (30) calendar days from the appeal official's receipt of the appeal file. In some cases, more time may be required.

Sanctions generally will take effect immediately, notwithstanding an appeal. A request may be made to the VP of Student Affairs to defer the effective date of sanctions in exigent circumstances. In cases where the appeal results in reinstatement to the College or of privileges, all reasonable attempts will be made to restore the individual to his or her prior status.

Appeals arising out of alleged violations of this Policy must be made under this appeal process and are not eligible for consideration under any other faculty, staff or student grievance policies or processes.

## D. Possible Sanctions and Remedies

Sanctions and remedies that the College may assign in either the formal resolution process or the informal resolution process are intended to be corrective, educational, and disciplinary. Each potential sanction listed in this Section may be imposed alone or in combination for a Respondent found responsible for a violation of this Policy.

### 1. Sanctions

The sanctions which may be imposed include, but are not limited to, the following:

- *Oral Warning*: an oral notice that continuation or repetition of prohibited conduct may be cause for additional disciplinary action.
- *Formal Reprimand*: an official written statement of the College's disapproval of the actions of a Respondent and a warning that any future violation(s) will result in more serious discipline, up to and including dismissal.
- *Revocation of Admission*: a student may have an offer of admission revoked by the College.
- *Disciplinary Probation*: an official notice that the conduct of the Respondent is in violation of this Policy, but does not warrant suspension, dismissal or termination. Probation is for a designated period of time and includes the possibility of more severe disciplinary sanctions, up to and including dismissal, if the Respondent commits another violation during the probationary period. In the case of a student, during the probation period, a student will be considered "not in good standing" and may be excluded from some programs and curricular or extracurricular activities.
- *Suspension*: an involuntary separation of the Respondent from the College for a definite period of time and/or until certain conditions are met. Suspension of a student may require administrative review and approval by the appropriate officials prior to readmission.
- *Deferred Suspension*: the discipline of suspension may be placed in deferred status provided that the Respondent completes other assigned sanctions by specified deadline dates. Failure to complete all sanctions and provide evidence of completion by the deadline date(s) will result in the automatic implementation of the suspension without further charges or administrative procedures. If a Respondent is found responsible for another violation of College policy during the period of deferred

suspension, the Respondent may be permanently dismissed from the College.

- *Permanent Dismissal*: a Respondent can be involuntarily separated from the College.
- *Delay and/or Denial of Degree Award*: during the period disciplinary charges are pending against a student, the College may deny and/or delay issuance of a degree. Further, the College may refuse to issue a degree to a student who is serving a suspension or has been permanently dismissed from the College.
- *Revocation of Degree*: an awarded degree may be revoked for violations of this Policy, which occurred prior to the award of the degree but are discovered after the degree has been awarded, where the violation is sufficient to justify the suspension or permanent dismissal of the student.
- *Educational/Accountability Measures*: an individual may be required to attend an educational class, training, meeting, assessment, coaching, counseling, and/or rehabilitation, at the individual's expense.
- *Loss of Privileges and Access/Participation Restrictions*: an individual may lose one or more privileges afforded to them as a College community member or otherwise, including but not limited to loss of campus housing, campus access, or participation in a group, program, course, or activity.
- *Other Sanctions*: other sanctions may be imposed instead of or in addition to those specified above, which could include: (a) restitution (compensation for loss, damage or injury); (b) fines; (c) community service; (d) behavioral agreements (e) no trespass directives; (f) no contact directives; (g) restrictions on reapplication, rehire or reenrollment; and/or (h) removal or non-renewal of scholarships or honors.

The College reserves the right to take whatever measures it deems necessary in response to an allegation of Sexual Misconduct in order to protect student rights and personal safety. Not all forms of Sexual Misconduct will be deemed to be equally serious offenses, and the College reserves the right to impose differing sanctions, depending on the severity of the offense. In the event the College issues a sanction that is not contained in this Policy, it will include that sanction in its next policy update.

## 2. Remedies and Protective Measures

The College may also put in place remedies, accommodations, and protective measures for the Complainant or others, which may include, but are not limited to:

- A mutual or one-sided no contact directive;
- Prohibiting an individual involved from being on College property;
- Prohibiting an individual involved from participating in College-sponsored events or activities;
- Changing an individual's on campus residency, dining, or transportation arrangements, or prohibiting an individual from residing in a College residence;
- Special parking arrangements;
- Assistance in finding alternative housing;
- Changing an individual's student status;
- Changing an individual's class schedule;
- Providing academic accommodations or providing assistance with academic issues;
- Providing escorts;
- Access to counseling and medical services;
- Making information about protective orders available to a Complainant;
- Assistance identifying an advocate to help secure additional resources or assistance, including off-campus and community advocacy, support and services.

In addition, the College may recommend education, training, counseling, or other support services for others involved in the complaint resolution process, including Complainants and witnesses, in some instances—for example, when individuals have engaged in high-risk use of alcohol or drugs.

## **VIII. Rights and Obligations in the Complaint Resolution Process and General Provisions**

### **A. Rights of the Complainant and Respondent**

The College strives to provide a prompt and fair process for investigating and resolving Formal Complaints of Sexual Harassment. Throughout this process, both the Complainant and Respondent have the following rights, many of which are described in greater detail in this Policy:

- To be treated with respect and dignity.
- A prompt, fair and impartial investigation and resolution process.



- To present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- To have an advisor of their choice present during any grievance proceeding, who may be, but is not required to be, an attorney.
- To receive information about support available from College or community resources providing sexual assault advocacy or health services and information on free legal resources and services.
- To privacy, to the extent possible consistent with applicable law and College policy.
- To raise a concern regarding a possible conflict of interest or bias on the part of any person involved in the investigation, hearing, or appeal.
- To notification, in writing, of the outcome of the formal resolution process, including the outcome of any appeal, subject to compliance with FERPA, the Clery Act, and other federal or state law.
- To be free from retaliation as defined in this Policy.
- To the complete and prompt assistance of campus authorities, at the direction of law enforcement authorities, in obtaining, securing, and maintaining evidence in connection with a Sexual Assault incident.
- To the assistance of campus authorities in preserving materials relevant to the grievance process.
- To be provided access to their description of the incident, as it was reported to the College, including if the individual transfers to another post-secondary institution, subject to compliance with FERPA, the Clery Act, and other federal or state law. Requests for an individual's description of the incident should be made to the VP of Student Affairs.
- For a Complainant, to report Sexual Harassment to the College.
- For a Complainant, to receive assistance from the College, at the request of a Complainant, in reporting Sexual Assault to law enforcement at any stage of the process and the right to decline to make such a report.
- For a Complainant, to never be treated by campus authorities in a manner that suggests they are at fault for Sexual Harassment that occurred or that they should have acted in a different manner to avoid the Sexual Harassment.
- For a Complainant, the right to the assistance of campus personnel (during and after the grievance process), in cooperation with the appropriate law enforcement authorities, at a Sexual Assault Complainant's request, in

shielding a Complainant from unwanted contact with the Respondent, including but not limited to transfer to alternative classes or to alternative College-owned housing (if alternative classes or housing are available and feasible).

- For a Complainant, the right to decide when to repeat a description of an incident of Sexual Assault.
- For a Complainant, to be offered assistance from the Crime Victim Reparations Board and the Commissioner of Public Safety.
- For a Complainant who chooses to transfer to another post-secondary institution, at the student's request, the right to receive information about resources for victims of Sexual Assault at the institution to which the Complainant is transferring.

## **B. Advisors in Complaints of Sexual Assault, Domestic Violence, Dating Violence or Stalking**

A Complainant and Respondent have the right to be assisted by an advisor of their choice, including an attorney, in connection with a formal resolution process involving a complaint of Sexual Assault, Domestic Violence, Dating Violence or Stalking. Generally, the advisor selected by a party should be free of conflicts of interest in the formal resolution process and, if a member of the College community, the advisor should be free of conflicts in his or her position in the community. An individual has the right to decline a request to serve as an advisor in the College's formal resolution process.

The following requirements apply to the use of an advisor:

- The purpose of the advisor is to support a party during the formal resolution process. An advisor is permitted to accompany the party to in-person interviews or other meetings during the formal resolution process. In selecting an advisor, each party should consider the potential advisor's availability to attend in-person interviews and meetings. As a general matter, the College will not unnecessarily delay its processes to accommodate the schedules of advisors.
- Advisors may confer with their advisee, but they may not actively participate in the formal resolution process. The advisor may not appear in lieu of the Complainant or Respondent or speak on their behalf in either in-person or written communications to the College. The advisor may not communicate directly with the investigator, decision maker(s), appeal official, Sexual Misconduct Administrative Team or any other school official involved in the

formal resolution process and may not interrupt or otherwise delay the formal resolution process.

- Advisors may have access to information concerning a case only when accompanying the party (for in-person access to information) or only when the party has given permission for the advisor to be copied on emails or other correspondence (for access to written communications). An advisor's access to such information is subject to the same limitations as those placed upon the parties and conditioned upon the advisor's agreement to maintain the confidentiality of any student education records or other confidential information.
- If a party selects an attorney as an advisor, the advisor's participation in the formal resolution process is in the role of an advisor and not as an attorney representing a party. The advisor will have access to highly confidential information and is prohibited from sharing information obtained as an advisor during the formal resolution process with anyone, including other individuals who may be part of an attorney-client relationship with the party.
- The College will notify a party to a formal resolution process if another party involved in the formal resolution process has obtained an advisor. The notice shall indicate if the other party's advisor is an attorney.
- Advisors will be required to comply with advisor rules established by the College. Failure to comply with these requirements, including violations of confidentiality, or other forms of interference with the complaint resolution process by the advisor may result in disqualification of an advisor. The College reserves the right to dismiss an advisor.

### **C. Interim Actions and Protective Measures**

The VP of Student Affairs will consider whether interim actions, accommodations, or protective measures are reasonably necessary or appropriate to protect the parties and the broader College community, including protection from retaliation, pending completion of the assessment of a report and/or the complaint resolution process. The College will provide written notification to Complainants about options for, available assistance in, and how to request changes to academic, living, transportation, and other protective measures. Interim protective measures will be considered regardless of whether a Complainant chooses to report the incident to local law enforcement, asks to keep a reported violation of the Policy confidential, or requests that the College not investigate or otherwise act the matter. The College will comply with a student's reasonable request for a living and/or academic situation change following an alleged sex offense. When appropriate, such interim actions and

protective measures may be available to Complainant, Respondent, and others adversely impacted by the complaint resolution process, if requested and reasonably available.

Any person seeking interim action or protective measures, including Complainants and Respondents, should contact the VP of Student Affairs.

Examples of interim actions include, but are not limited to:

- Establishing a “no contact” directive prohibiting parties from communicating with each other or having other contact;
- Changing an individual’s on-campus residency, parking, transportation, working situations, or protective measures.
- Assistance in finding alternative housing;
- Changing an individual’s student status;
- Changing an individual’s class schedule;
- Providing academic accommodations or assistance, including but not limited to allowing an individual to drop a class in which both parties are enrolled without any academic penalty;
- Providing security escorts;
- Access to counseling and medical services;
- Making available information about protective orders and providing assistance with respect to obtaining and enforcing such orders;
- Assistance in identifying additional resources or assistance, including off-campus and community advocacy, support and services and student financial aid;
- For students who choose to transfer to another institution, at the student’s request, providing information about resources for Complainants of Sexual Assault at the institution to which the student is transferring.

Other protective measures may be available, if physical safety concerns or other overriding circumstances warrant them, including:

- Barring an individual from College property;
- Prohibiting an individual involved from participating in College sponsored events;
- Prohibiting an individual from residing in a College residence.

The College determines which measures are appropriate for a particular individual on a case-by-case basis. Such measures will vary based on the particular facts and circumstances, including, but not limited to, the specific need expressed by the individual, the age of the individuals involved, the severity or pervasiveness of the allegations, any continuing effects on the individual, whether the Complainant and Respondent share the same residence hall, dining hall, class or transportation, and whether other judicial measures have been taken to protect the Complainant. The VP of Student Affairs will be responsible for determining what measures will be put in place.

Interim actions or protective measures provided to an individual are confidential, provided confidentiality would not impair the ability of the College to provide the accommodations or protective measures. The College will only disclose information necessary to provide the accommodations or protective measures in a timely manner to individuals who need to know the information in order to effectively provide the accommodations or protective measures. The VP of Student Affairs will determine what information about an individual should be disclosed and to whom this information will be disclosed based on the facts and circumstances of the specific situation and the accommodation to be provided. The College will inform the individual before sharing personally identifying information that the College believes is necessary to provide an accommodation or protective measure. The College will tell the individual what information will be shared, with whom, and why.

#### **D. Conflicts of Interest**

If a Complainant or Respondent has any concern that any individual acting for the College under this Policy has a conflict of interest or bias, they should report the concern in writing to the VP of Student Affairs. Any concern regarding a conflict of interest or bias must be submitted within two (2) calendar days after receiving notice of the person's involvement in the process. The VP of Student Affairs will review the concerns and take appropriate steps to ensure that the assigned investigator(s), decision maker(s), and appeal officials do not have a conflict of interest or bias.

#### **IX. Complaints of Retaliation, Violation of Interim Measures, or Violation of Sanctions**

Any concern, report, or complaint relating to retaliation in violation of this Policy, violations of interim measures, or violations of sanctions should be reported promptly to the VP of Student Affairs. The College will take appropriate action under the Student Code of Conduct against any individual who retaliates against

another person in violation of this Policy or who violates interim measures or sanctions.

**“Retaliation”** means any adverse action, or threat thereof, taken against an individual for making a good faith report or Complaint of a potential violation of this Policy, supporting another person’s report or Complaint, responding in good faith to a Complaint or report, participating in good faith in the investigation of a Complaint or the Complaint resolution process, or opposing in good faith a practice or conduct that the person reasonably believes is in violation of this Policy. Retaliatory acts may include, but are not limited to: any form of intimidation, threats, harassment, coercion, and other adverse action.

## **X. Education and Training**

The College offers informational sessions on Sexual Misconduct to students, staff, and faculty. The Sexual Misconduct Administrative Team, investigators, decision makers, and appeal officials will be required to undergo annual training on the issues related to Sexual Misconduct including Dating Violence, Sexual Assault, and Stalking and on how to conduct an investigation that protects the safety of Complainants and promotes accountability.

The College will present education programs and campaigns that promote prevention and awareness of Sexual Misconduct for incoming and current students.