



## **MSOE Sexual Misconduct Policy**

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**SCOPE NOTE: This policy is MSOE's policy with respect to all Title IX-based sexual misconduct at the University.**

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## **Section 1. Purpose of the Policy**

Members of the Milwaukee School of Engineering (MSOE) community, including students, faculty, staff, and other employees, as well as guests and visitors (i.e., third parties), have the right to be free from sexual misconduct, including sexual harassment and sexual violence. MSOE supports a zero-tolerance policy for gender-based misconduct. The University does not discriminate on the basis of sex in its education programs and activities. When an allegation of misconduct is brought to the attention of the University, and a respondent is found to have violated this policy, serious sanctions will be used to reasonably ensure that such actions are never repeated. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to provide the University with assistance in achieving best practices with respect to campus sexual misconduct, as recommended by the National Center For Higher Education Risk Management (NCHERM).

## **Section 2. Scope of the Policy and the University's Response to Sexual Misconduct**

The University's response to instances of sexual misconduct is detailed in this policy, and features definitions of offenses, including definitions of important related concepts in adjudication (e.g., "consent"), reporting options, guidance in the event of violent sexual misconduct, formal and informal sexual misconduct complaint and grievance processes, adjudication processes and procedures, as well as remedies.

Sexual misconduct at the University is addressed by policies and procedures that are in compliance with Title VII and Title IX federal laws, as well as other federal and state requirements, such as the Campus Sexual Violence Act (SaVE Act). Title VII law is concerned with employee-on-employee gender-based misconduct. MSOE's Human Resources Office maintains Title VII policies and procedures.

Sexual misconduct involving student-on-student, employee-on-student, student-on-employee, and student-third party situations is addressed by Title IX (and associated) law. This MSOE Sexual Misconduct Policy is designed to comply with Title IX best practices. The primary audience for this policy includes those individuals who believe they are victims of sexual misconduct (including students, faculty, and staff), those individuals who are accused of sexual misconduct, and those individuals who are participants in the sexual misconduct complaint and grievance process, including third-party individuals, although the policy is also intended to serve as one of the institution's proactive measures to prevent sexual harassment and violence, and as such, the policy will be widely distributed to all current and prospective members of the MSOE community.

In accordance with the jurisdictional oversight articulated in the University's Student Conduct Code, and Title IX law, this policy applies to current students and employees engaged in University educational, extracurricular, athletic, and other activities, including those individuals in off-campus locations.

This policy shall be widely distributed, and available and easily accessible on an ongoing basis in electronic and print formats.

## Section 3. Sexual Misconduct Offenses

### 3.1. Sexual Misconduct Offenses and Definitions

Sexual misconduct at the University includes, but is not limited to, the following conduct:

1. Sexual Harassment
2. Non-Consensual Sexual Contact (or attempts to commit same)
3. Non-Consensual Sexual Intercourse (or attempts to commit same)
4. Sexual Exploitation

#### 1. Sexual Harassment Is:

- Unwelcome, gender-based verbal or physical conduct that is,
- Sufficiently severe, pervasive and objectively offensive that it,
- Unreasonably interferes with, limits or deprives someone of the ability to participate in or benefit from the University's educational program and/or activities, and is
- At least one of the three possible types of sexual harassment, including hostile environment harassment, quid pro quo sexual harassment, or retaliatory harassment.

Verbal conduct can include, but is not limited to, written and oral statements, including statements posted on social media sites.

The determination of whether an environment is "hostile" must be based on a large number of circumstances, including (i) the frequency of the conduct, (ii) the nature and severity of the conduct, (iii) whether the conduct was physically threatening, (iv) whether the conduct was humiliating, (v) the effect of the conduct on the alleged victim's mental or emotional state, (vi) whether the conduct was directed at more than one person, (vii) whether the conduct unreasonably interfered with the alleged victim's educational or work performance, (viii) whether the statement is a mere utterance of an epithet which engenders offense in an employee or student, or offends by mere discourtesy or rudeness, (ix) whether the speech or conduct deserves the protections of academic freedom or the First Amendment.

In a harassment situation, the more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical.

*Quid pro quo* sexual harassment exists when there are (i) unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature, and (ii) submission to or rejection of such conduct results in adverse educational or employment action. As such, for the personal protection of members of the MSOE community, relationships in which power differentials are inherent (e.g., faculty-student, staff-student, administrator-student) are generally discouraged. Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical and are also prohibited. Retaliatory harassment is any adverse employment or educational action taken against a person because of the person's participation in a sexual misconduct complaint or investigation. Retaliatory harassment is prohibited by this policy.

In sexual misconduct investigations, MSOE will not only take steps to prevent retaliation but also the University will take strong responsive action if it occurs.

2. Non-Consensual Sexual Contact Is:

- Any intentional sexual touching,
- However slight,
- With any object,
- By a man or a woman upon a man or a woman,
- That is without consent and/or by force

Sexual Contact includes intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; sexual contact additionally includes any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

3. Non-Consensual Sexual Intercourse Is:

- Any sexual intercourse,
- However slight,
- With any object,
- By a man or a woman upon a man or a woman
- That is without consent and/or by force

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

4. Sexual Exploitation Includes, but is not limited to:

- Invasion of sexual privacy
- Non-consensual video or audio-taping of sexual activity
- Going beyond boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex)
- Engaging in voyeurism
- Knowingly transmitting an STI or HIV to another student
- Prostituting another student
- Exposing one's genitals in non-consensual circumstances
- Gender-based and/or sexually-based stalking and/or bullying
- Employing social media to carry out any of the above (or other) sexually exploitive or harassment-related activities

**Consent** is clear, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in sexual activity.

- Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- Previous relationships or prior consent cannot imply consent to future sexual acts.
- In order to give effective consent, one must be of legal age. In Wisconsin, the legal age of consent is generally considered to be 18 years of age. Refer to Section 948.09 of the *Wisconsin Statutes and Annotations* (Madison, WI: Legislative Reference Bureau).
- Consent cannot occur in situations associated with force, coercion, and incapacitation, which are further explained in the sections below.

**Force** is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent. Sexual violence is a form of sexual harassment (or sexual misconduct) prohibited by Title IX.

**Coercion** is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want to engage in any 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.

- There is no requirement that a party resists the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but nonconsensual sexual activity is not by definition forced.

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

- Sexual activity with *someone who one should know to be -- or based on the circumstances should reasonably have known to be -- mentally or physically incapacitated* (by alcohol or other drug use, unconsciousness or blackout), constitutes a violation of this policy.
- This policy also covers a person whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of date rape drugs, including but not limited to:
- Rohypnol (“Roofies”) and GHB (gamma-hydroxy butyrate, sometimes referred to as “Liquid Ecstasy,” “Grievous Bodily Harm,” “Gatorade,” or “Liquid-G”). Possession, use

and/or distribution of any of these substances is prohibited, and administering one of these drugs to another student is a violation of this policy.

- Use of alcohol or other drugs will never function as a defense for any behavior that violates this policy.
- The sexual orientation and/or gender identity of individuals engaging in sexual activity is not relevant to allegations under this policy.

**Gender-based discrimination** is any detrimental action based on, or motivated by, an individual's actual or perceived gender, pregnancy status, sexual orientation, gender identity, or other protected status that is so severe, pervasive and objectively offensive that it interferes with or limits either a student's or an employee's ability to benefit from their participation in the university environment. In compliance with federal requirements, incidents of gender-based discrimination shall be reported as a "hate crime" for Clery Act reporting purposes.

**Activities with respect to social media, online conduct, and technology** are subject to this policy. Online activities and postings on websites and other Internet-related applications that are not part of the MSOE domain (e.g., Facebook) may still be implicated by this policy. For example, Facebook postings that constitute sexual harassment, sexual exploitation, stalking, bullying, or gender-based discrimination, may be subject to this policy. Even anonymous social media conduct or speech can also be implicated by this policy.

**Stalking** is a course of conduct directed at a specific person that would cause a reasonable person to— (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress. Gender-based and/or sexually-based stalking is subject to this policy.

**Dating violence** means violence committed by a person—

(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship.

(ii) The type of relationship.

(iii) The frequency of interaction between the persons involved in the relationship.

Dating violence is subject to this policy.

**Domestic violence** includes felony or misdemeanor crimes of violence committed by a current or former spouse 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, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, 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. Sexually-based domestic violence is subject to this policy.

### **3.2. Guidance in Violent Sexual Misconduct Situations**

In the event that you are the victim of violent sexual misconduct (i.e., sexual assault), you are strongly encouraged to seek immediate medical treatment at a hospital emergency room or at a sexual assault treatment center. Trained personnel will collect evidence, check for injuries, address pregnancy concerns, and address the possibility of exposure to sexually transmitted infections. If you have changed clothing since the assault, bring the clothing you had on at the time of the assault with you to the hospital in a clean, sanitary container such as a clean paper grocery bag or wrapped in a clean sheet (plastic containers do not breathe, and may render evidence useless). If you have not changed clothes, bring a change of clothes with you to the hospital, if possible, as they will likely keep the clothes you are wearing as evidence. Do not disturb a crime scene—leave all sheets, towels, and other items that may bear evidence of a crime. Victims are strongly encouraged to report the incident. See Section 4 for reporting options.

## **Section 4. Reporting**

If you believe that you are the victim of sexual misconduct, or if you are a third-party witness of such misconduct, you have a right – and you are strongly encouraged – to report the misconduct. Recognizing the sensitive nature of sexual misconduct situations, including a victim’s right to maintain confidentiality,<sup>1</sup> the University makes available a number of reporting options for victims and for third parties. These options include [1] confidential reporting, [2] non-confidential reporting that results in an immediate and official response by the University, and [3] other reporting options. Victims are encouraged to select a reporting option that they believe is most beneficial. Regardless of the option that you choose, you should be assured that you will be treated with respect and with a genuine concern for your well-being. You also have the right to choose more than one reporting option.

- MSOE recognizes that victims or third parties (including bystander witnesses) may be deterred from reporting sexual misconduct incidents if alcohol, drugs, or other violations of University rules were involved. MSOE endorses the view that the University’s primary concern is student safety, that any rules violations will be addressed separately from sexual misconduct allegations, and that use of alcohol or drugs never makes the victim at fault for sexual violence. Because MSOE is interested in encouraging the reporting of sexual misconduct violations, the University’s preferred procedure is to grant immunity with respect to other rules violations to those individuals who report alleged sexual misconduct incidents. MSOE may choose, however, to pursue educational or therapeutic remedies for those individuals.

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<sup>1</sup> “Confidentiality” in this context means that when a victim discusses a sexual misconduct incident with another person, that person will not share the information with anyone else.

#### 4.1. To Report Confidentially

To report an incident confidentially enables you to discuss the situation with an MSOE employee or other trained individual who will not share the information with anyone else. This individual will share options and advice, but will not tell anyone about the situation unless you want them to do so. At MSOE, if you choose this reporting option, you should speak with

- on-campus mental health counselors,
- the University's student health care coordinator, acting within a medical/patient relationship,
- or with an off-campus sexual assault treatment center that can maintain confidentiality.

The confidential MSOE employees will not report your situation to the University, unless you authorize them to do so.

- MSOE Counseling Services (Kern Center, Room 230) – 414-277-7590
- Sexual Assault Treatment Center (SATC), Aurora Sinai Medical Center, 945 N. 12th St., Milwaukee – 414-219-5555

#### 4.2. Mandated Reporters

With the exception of those employees who legally can maintain confidentiality, all MSOE employees are mandated reporters. Mandated reporters are individuals who must report a sexual misconduct incident to the University's Title IX Coordinator, including the date, time, location, and the names of alleged victims and other parties (if known). Mandated reporters are not required to investigate an alleged misconduct situation that they become aware of, but they are required to report the incident and as much information as they have about it, regardless of how they learned of it.

When the University's employees learn of an alleged sexual misconduct incident, it is useful to clarify the concepts of **constructive notice** and **actual notice**. *Constructive notice* refers to a situation in which the University (including its mandated reporters and its responsible employees) *knew, or should have known*, about the incident, and that such knowledge exists because the information about the incident was made available *in some manner* to the University, but not by means of an official oral or written report of misconduct. *Constructive notice* covers a wide range of communications. However, Title IX guidance from the Office for Civil Rights (OCR) indicates that the University is not required to investigate incidents that are shared by survivors during public awareness events and other preventive education programs. *Actual notice* refers to a situation in which the University officially has been notified of an incident, usually by means of a written or oral report submitted to a responsible employee (see Section 4.3) or to a mandated reporter.

MSOE's mandated reporters include:

- all faculty,
- all staff personnel,

- all other employees, including student employees (e.g., Resident Assistants).

Service providers who are not University employees are not mandated reporters.

Before a victim reveals any information to a mandated reporter, the mandated reporter needs to ensure that the victim understands that the reporter must report the incident, and all details, to the Title IX Coordinator. If the victim desires confidentiality, the mandated reporter should direct the victim to confidential resources.

If the victim informs the mandated reporter of the incident, but still requests confidentiality, the mandated reporter shall inform the Title IX Coordinator of the request. The victim should be informed that the University shall consider the request, but cannot guarantee that the request will be honored (see Section 5.2.2.).

#### **4.3. Non-Confidential, Formal Reporting of a Sexual Misconduct Complaint to a Responsible Employee**

This option enables you officially and formally to report a sexual misconduct incident to MSOE employees who will take immediate action when you report your complaint to them. This reporting option constitutes *actual notice* of a sexual misconduct incident to the University. After receiving your report (either verbally or in writing), these employees will notify the University's Title IX Coordinator to commence an official, prompt, adequate, and effective University-led investigation, adjudication, resolution, and remedying of the situation.

You are strongly encouraged to make a formal report of a sexual misconduct incident to University officials who have the authority to commence an official University investigation. These MSOE employees include

- the University's president,
- the University's vice presidents,
- Public Safety officers,
- Human Resources personnel,
- the Title IX Coordinator,
- and Deputy Title IX Coordinators.

A list of these personnel, including names and contact information, appears in Appendix A. MSOE considers these people to be "responsible employees" (as defined by Title IX law). Reporting a sexual misconduct violation to them is an official notice (also referred to as "actual notice") to the institution that initiates an investigation. You have the right and can expect to have incidents of sexual misconduct to be taken seriously by the institution when formally reported, and to have those incidents investigated and properly resolved through University administrative procedures. Formal reporting means that a University investigation will take place, and the information about the incident will be shared, but only people who need to know will be informed about the details, and information will be shared only as necessary.

In compliance with Title IX law, MSOE's designated Title IX Coordinator oversees all aspects of all Title IX complaints and reports (including actual and constructive notice), and identifies and addresses any patterns or systemic problems that arise during the review of such complaints and reports. In compliance with federal and state requirements, the Title IX Coordinator is responsible for ensuring that MSOE maintains current sexual misconduct policies and procedures, and that public notice about the policies and procedures is disseminated. The Title IX Coordinator is further responsible for monitoring MSOE's Title IX compliance efforts, and to make recommendations for any appropriate changes. The Title IX Coordinator must ensure that MSOE's Title IX compliance efforts address all aspects of the prevention, the investigation, and the remedying of sexual misconduct. The Title IX Coordinator and Deputy Title IX Coordinators are available to meet with students as needed. The Title IX Coordinator should not have other job responsibilities that may create a conflict of interest, and shall ensure that all investigative, adjudicative, and other individuals involved in a Title IX case do not have job responsibilities that create a substantial conflict of interest.

The Title IX Coordinator may serve as an investigator in a sexual misconduct complaint incident. Because the Title IX Coordinator has oversight of all Title IX-related activities at MSOE, the University recognizes that a Coordinator who also serves as an investigator can create a potential conflict of interest. Therefore, in the event that a Title IX Coordinator serves as an investigator in an investigation, a designated proxy shall be identified to serve as a proxy Title IX Coordinator for the investigation. The proxy Title IX Coordinator shall possess formal Coordinator training, as well as significant experience with MSOE's Title IX policy and processes.

#### **4.4. Other Reporting Options**

##### **4.4.1. Local Police Department**

In a sexual misconduct situation, a victim has the right to notify the local police department in order to report the alleged crime and to pursue legal prosecution. On the MSOE campus, if you wish to report an incident to the local police department you are advised to first contact MSOE Public Safety, and to ask them to contact the police. Reporting an alleged crime to the local police department will lead to a criminal investigation. In such situations, the University will also conduct its own sexual misconduct investigation in compliance with this policy.

MSOE Public Safety -- Margaret Lock Residence Hall, 324 E. Juneau Ave., Ground floor – 414-277-7159

##### **4.4.2. Office for Civil Rights**

A victim of sexual misconduct also has the right to file a formal Title IX complaint with the Office for Civil Rights (OCR) in the United States Department of Education.

Office for Civil Rights  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Hotline: 1-800-421-3481  
E-mail: OCR@ed.gov

#### **4.5. The University's Clery Act Reporting Obligation with Respect to Sexual Misconduct Incidents**

The Clery Act helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. All personally identifiable information is kept confidential, but statistical information must be passed along to Public Safety regarding the type of incident and its general location (on-campus or off-campus, in the surrounding area, but no addresses are given) for publication in MSOE's annual Safety and Fire Safety Report.

With respect to the Clery Act, mandated federal reporters on the MSOE campus include: student/conduct affairs personnel, Public Safety personnel, coaches, the athletic director, the residence life staff, the Student Activities staff, the Human Resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities. When a sexual misconduct incident is reported to these MSOE individuals, they are required to report its *occurrence* to the University's Public Safety Office for Clery Act purposes. (*Note: If any of these individuals are MSOE employees, they are first required to report all known details – not simply the occurrence of the incident – to the Title IX Coordinator.*) They are moreover required to notify the Public Safety Office of "reported offenses" from the "records of calls for service, complaints and investigations." The information to be shared includes the date, the location of the incident (using Clery location categories), and the Clery crime category. This reporting protects the identity of the victim. Not all sexual misconduct incidents meet the requirements for Clery Act sex offenses. As such, the Public Safety Office shall make the final determination concerning statistics associated with sex offenses.

If desired, the Title IX Coordinator or designated proxy may serve as a clearinghouse for statistics associated with sexual misconduct that must be reported for Clery Act purposes. At MSOE, when mandated reporters and responsible employees learn of a sexual misconduct incident, they must report the incident to the Title IX Coordinator. As such, therefore, the Title IX Coordinator shall serve as the clearinghouse for Clery Act purposes.

### **Section 5. The MSOE Sexual Misconduct Grievance Process**

MSOE recognizes an informal and a formal resolution process as part of the overall sexual misconduct grievance policy. Each of these processes is described in the following sections.

In compliance with Title IX law, MSOE will conduct a timely sexual misconduct grievance process: From the receipt of a complaint to the determination of a finding and the administration of remedies, a grievance process typically must be resolved in 60 calendar days. More time may be required in complex investigations, but all delays must be documented and explained in case files and in findings reports associated with such investigations. In compliance with recommendations by the Office for Civil Rights (OCR), both parties in an investigation shall be given periodic updates on the status of an investigation that exceeds 60 days.

MSOE will conduct an investigation concerning an incident, regardless of whether or not the incident is also the focus of a criminal investigation.

## 5.1. Informal Dispute Resolution Efforts with Respect to Gender-Based Harassment and Discrimination

MSOE recognizes that a limited number of sexual misconduct situations may be satisfactorily and more promptly resolved through informal dispute resolution. These sexual misconduct situations concern gender-based harassment and gender-based discrimination. These situations do *not* involve allegations of sexual assault and sexual violence.

In a situation in which a student believes that they are being subjected to gender-based harassment or discrimination by an employee, whenever reasonable and safe, the student is encouraged to discuss the matter with the individual involved *and with appropriate involvement by the University* (e.g., participation by a trained counselor, a teacher, or an administrator). If satisfactory resolution is not reached after discussion with the individual, the student should contact the individual's direct supervisor. If these efforts are unsuccessful, the formal complaint process may be initiated. The university does not require a student to contact the person involved if doing so is impractical, or if the student believes the conduct cannot be effectively addressed through informal means. In addition, at the discretion of either the student or the Title IX Coordinator (or designated proxy) or both, the Title IX Coordinator (or designated proxy) may resolve the situation on behalf of the student. The student, moreover, has the right to end the informal process at any time and to begin a formal complaint and grievance process.

## 5.2. Formal Sexual Misconduct Grievance Process

A formal report of a sexual misconduct complaint to MSOE constitutes "actual notice" of sexual misconduct to the institution, and as such, MSOE will initiate an immediate, thorough, and impartial University investigation of the matter. In a formal sexual misconduct complaint, the alleged victim is referred to as the "complainant." Other participants typically include the violator(s) of the policy, referred to as the "accused," and the Title IX Coordinator (or designated proxy), as well as MSOE employees associated with the investigation, the adjudication, and the remedying of the complaint.

MSOE also understands the importance of a "constructive notice" standard, which is defined in Title IX law, and which states that an institution that knows, *or reasonably should know*, about possible sexual misconduct, must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation. Therefore, "responsible employees" of the University (as defined by Title IX and this policy), who learn of a possible sexual misconduct incident from credible sources (and not vis-à-vis a formal complaint), additionally are obligated to initiate an investigation of the matter.

A University-led sexual misconduct investigation is designed to provide a fair, reliable, and timely finding with respect to whether or not the University's sexual misconduct policy has been violated. If MSOE finds that the policy has been violated, the University will implement a prompt and effective remedy designed to end the misconduct, to prevent its recurrence, and to address its effects.

### **5.2.1. An Immediate, Thorough, and Impartial Investigation**

The Title IX Coordinator (or designated proxy) will work with the Office of Student Life and the designated chief judicial officer of the University to conduct an investigation of a sexual misconduct incident. Upon receipt of a sexual misconduct complaint, the Title IX Coordinator (or designated proxy) will open a formal investigation. Accommodations for the alleged victim, or other necessary remedial short-term actions, will be implemented, and such accommodations will minimize the burden on the complainant. Accommodations include, but are not limited to, action items in Section 5.2.4.6. of this policy. The complainant will be notified of their Title IX rights and available resources. The MSOE Title IX process, including investigation procedures, shall be explained and clarified for the complainant. In compliance with the equity requirements associated with Title IX law, Title IX rights, available resources, as well as a limited number of accommodations (see Section 5.2.4.6.), and investigation procedures shall be explained and clarified for the accused. At MSOE, an investigative approach is employed that usually features two lead investigators. At their own discretion and in a confidential manner, lead investigators may ask other trained investigators to participate in an investigation, or may consult with members of MSOE's Title IX Steering Committee, who have received Title IX training. Complainants will be made aware of their right to notify local law enforcement. In compliance with Title IX law, MSOE will undertake a University-led investigation, regardless of whether or not a criminal investigation by the local police is initiated.

### **5.2.2. The Title IX Investigation Process**

With respect to an alleged sexual misconduct situation, the Title IX investigative process entails a number of activities, including the following items:

- In coordination with the campus Title IX Coordinator or designated proxy, any immediately necessary remedial actions shall be initiated, including any necessary steps to protect a complainant;
- The Title IX Coordinator or designated proxy shall inform the complainant about the need for the University to carry out an investigation and obtain consent from the complainant to participate in the investigation;
- The Title IX Coordinator or designated proxy shall inform the complainant about their right to retain the services of an advocate throughout an investigation and during any subsequent proceedings, such as a hearing. An advocate is usually defined as a professional who is trained to support victims of sexual misconduct. Advocates provide victims with information, emotional support, and help finding resources and filling out paperwork; advocates may also attend interviews of victims associated with an investigation, but may not represent nor speak for the victim. In compliance with the equity requirements associated with Title IX law, accused individuals also shall be informed of their right to retain the services of an advocate.
- If a complainant requests confidentiality or asks that the complaint not be pursued, the Title IX Coordinator or designated proxy, and any subsequently appointed investigator(s), shall take all

reasonable steps to investigate and to respond to the complaint consistent with the request for confidentiality or the request not to pursue the complaint. If a complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, the investigator should inform the complainant that the ability to respond may be limited. At the same time, MSOE reserves the right to weigh the request for confidentiality against a number of factors, including the seriousness of the alleged misconduct, whether there have been other sexual misconduct complaints about the accused, and the potential for harm to others in the MSOE community. If MSOE cannot take disciplinary action against the accused because of the complainant's insistence on confidentiality, the University will take other steps (as appropriate) to limit the effects of the alleged misconduct and to prevent its recurrence.

- The Title IX Coordinator or designated proxy shall identify the correct policies allegedly violated;
- The Title IX Coordinator or designated proxy shall assign a case number and appoint Title IX investigator(s). Investigators shall be selected after consideration of a number of factors, including but not limited to: availability; potential conflicts of interest; experience, knowledge, skills, and qualifications, particularly with respect to the characteristics associated with an incident; as well as other factors.
- The Title IX investigators shall conduct and document an immediate initial investigation to determine if there is reasonable cause to charge the accused individual, and what policy violations should be alleged as part of the complaint; on the basis of an initial investigation, the investigators shall clarify the specific charges against the accused;
- If there is insufficient evidence to support reasonable cause, the grievance should be closed; however, the University shall effect any necessary remedies, and the Title IX Coordinator or designated proxy shall maintain documentation associated with the case;
- If there is sufficient evidence to support reasonable cause, the Title IX investigator(s) shall commence and document a thorough, reliable and impartial investigation by determining an initial strategic investigation plan that may include a witness list, and intended timeframe; the investigator(s) should note relevant patterns of behavior;
- The Title IX investigator(s) shall complete the investigation promptly, and in an equitable manner, and without unreasonable deviation from the 60-day timeline;
- The Title IX investigator(s) shall make a finding, based on a preponderance of the evidence (whether a policy violation is more likely than not);
- The Title IX investigator(s) shall prepare a formal findings report that includes results and findings associated with the investigation, and present the report to the Title IX Coordinator or designated proxy, who shall consider and evaluate the report and make a final determination concerning findings, sanctions, and remedies. In order to ensure fundamental fairness in a final

determination of findings, sanctions, and remedies, the Title IX Coordinator (or designated proxy) may consult in a confidential manner with responsible employees (as designated by Title IX – see Appendix A), as well as with other personnel who are professionally trained in, or have experience with, handling sexual misconduct complaints, and who thoroughly understand the university’s Title IX policy and procedures. In consultation with the Title IX investigator(s), the Title IX Coordinator (or designated proxy) shall prepare a brief summary of the findings in writing, which includes a finding of responsibility, and any relevant sanctions and remedies. The Title IX Coordinator or designated proxy will share in writing and in person the brief summary with the accused individual, who may accept the findings and sanctions, accept the findings and sanctions in part and reject them in part, or reject all findings and sanctions (see Section 5.2.3.3.);

- The Title IX Coordinator or designated proxy will share in writing and in person the brief summary of findings with the complainant.
- In compliance with Federal privacy rules, the findings report shall be confidential. The report shall not be distributed, and findings shall not be publicly disclosed.
- All meetings and all correspondence must be documented and maintained in the case file. The Title IX Coordinator or designated proxy shall ensure proper documentation compliance. In compliance with Federal privacy rules, all documentation shall be confidential.

#### **5.2.2.1. False Testimony**

In a Title IX grievance process, any person who knowingly gives false testimony or information, or knowingly misrepresents the facts pertaining to a Title IX case, shall be subject to disciplinary action.

#### **5.2.3. Outcomes of the Title IX Investigation**

##### **5.2.3.1. If the Accused is not Responsible for a Violation**

If a Title IX Investigation determines that the accused individual is found not responsible for the alleged violation(s), the investigation should be closed. In this situation, the Title IX Coordinator, or designated proxy, may work with the accused to address any remedies that are necessary as a result of the investigation.

##### **5.2.3.2. False Reports**

If a Title IX Investigation determines that an intentional false report of a sexual misconduct incident has occurred, the Dean of Students will impose appropriate sanctions for the violation, after consultation with the Title IX Coordinator, and in compliance with the MSOE Student Conduct Code. MSOE will not tolerate intentional false reporting of sexual misconduct incidents. It is a violation of the MSOE Student Code of Conduct to make an intentionally false report, and it may also violate state criminal statutes, civil

defamation laws, as well as this MSOE Sexual Misconduct Policy if the false reporting is the result of gender-based harassment.

### **5.2.3.3. If the Accused is Responsible for a Violation**

If a Title IX investigation and the Title IX Coordinator or designated proxy determine that the accused is responsible for the alleged violation(s), the accused must elect to choose one of three adjudication paths. The accused individual

- (i) may elect to accept both the finding as to the responsibility for the alleged violation(s), and the sanctions imposed by the Title IX Coordinator or designated proxy (see Section 5.2.3.3.1.);
- (ii) may elect to accept the finding as to the responsibility for the alleged violation(s), and reject the sanctions imposed by the Title IX Coordinator or designated proxy, resulting in an appeal of the sanctions (see Section 5.5.3.3.2.);
- (iii) the accused individual may elect to reject both the finding and the sanction, resulting in an appeal of both the finding and the sanction (see Section 5.5.3.3.2.).

The accused shall have three business days to inform the University in writing of which adjudication path they select. After one of the adjudication options has been selected and implemented, the accused cannot later choose the other adjudication options. If the accused does not indicate his or her choice within three business days concerning an adjudication path, the University will elect to pursue adjudication by the Title IX Coordinator or designated proxy.

#### **5.2.3.3.1. Sanctions Imposed by the Title IX Coordinator**

MSOE considers sexual misconduct violations to be serious offenses, which may render a violator subject to suspension or expulsion. Unless otherwise stipulated, sanctions imposed by the Title IX Coordinator (or designated proxy) shall take effect immediately. Title IX sanctions range from disciplinary probation and requirements up to expulsion; counseling and educational requirements may also be enforced. A single sanction or a combination of sanctions may be employed. The determination of sanctions can implicate a number of factors, including but not limited to: (1) the offender's prior disciplinary history; (2) how the university has sanctioned similar offenses in the past; (3) the nature and violence of the offender's conduct in an incident; (4) the impact of the offender's conduct on the victim; (5) the impact of the offender's conduct on the MSOE community. In addition, (6) the merits of misconduct violations on a case-by-case basis shall be considered, as well as (7) input from responsible employees (as designated by Title IX – see Appendix A), in addition to other personnel who are professionally trained in, or have experience with, handling sexual misconduct complaints, and who thoroughly understand the university's Title IX policy and procedures.

### **5.2.3.3.2. Appeals to and/or Adjudication by a Title IX Hearing Board**

In the event that the accused is found responsible for a sexual misconduct policy violation, the accused may appeal the sanction(s), or both the finding and sanctions (see Section 5.2.2.3.). The written appeal must be based on one or more of the following contentions with respect to the original findings and sanctions issued by the Title IX Coordinator or designated proxy:

1. A substantial procedural error that seriously impaired due judicial process.
2. Insufficient evidence for the original decision with respect to guilt.
3. Inappropriate or excessive sanction in proportion to the violation committed.
4. Substantial bias on the part of the Title IX investigator(s), Title IX Coordinator or designated proxy.
5. New evidence of a substantive nature, in support of the accused, not available in the original Title IX investigation.

Filing a request for an appeal in accordance with these provisions shall not suspend the operation of any sanction or remedy previously imposed, except as directed by, and at the sole discretion of, the Title IX Coordinator or designated proxy.

A written appeal that complies with all requirements (including the three-business-days timeline indicated in Section 5.2.3.3.) shall result in the convening of a Title IX Hearing.

In compliance with the equity requirements associated with Title IX, a complainant may also appeal the findings and sanctions associated with a sexual misconduct violation. The complainant must comply with the same procedures for appeal that are available to the accused.

## **5.2.4. Title IX Hearing Requirements, Standards of Evidence, Sanctions, Notice of Outcome, and Remedies**

### **5.2.4.1. Title IX Hearing Requirements**

The Title IX Hearing shall feature a Title IX Hearing Board.

Title IX law imposes unique requirements with respect to Title IX Hearings, and as such, MSOE incorporates these requirements in its Title IX Hearing procedures when the Title IX Hearing Board adjudicates the appeal of a sexual misconduct case:

- All persons involved in a sexual misconduct grievance process, including a Title IX Hearing, must have training or experience in handling complaints of sexual harassment and sexual violence.

- The MSOE Title IX Hearing Board in a sexual misconduct hearing shall not feature a student representative member.
- At the Hearing, the findings of the investigation (including the formal findings report) will be admitted, but are not binding on the decider(s) of fact.
- The Title IX Investigator(s) may give evidence.
- The complainant and the accused must have an equal opportunity to present relevant witnesses and other evidence, and the complainant and accused must be afforded similar and timely access to any information that will be used at the Hearing.
- The complainant and the accused each have a right to have an advisor of their choice (including an attorney) present for consultation in a hearing.
- MSOE prohibits the complainant and the accused from personally questioning or cross-examining each other during the Hearing.
- Any real or perceived conflicts of interest between investigators and Title IX Hearing Board members and the parties in a sexual misconduct grievance process must be disclosed.
- The hearing shall be closed to the public.

The Hearing Board will address the nature of the appeal -- i.e., an appeal concerning the original sanctions, or an appeal concerning both the original finding and the original sanction(s) – and then issue in writing its final decision concerning the appeal. Mindful of the 60-day time limit for the resolution of Title IX cases, the Hearing Board, nonetheless, may carry out additional investigative work, if necessary, which can include, but is not limited to, the calling of witnesses.

In compliance with Title IX law, all proceedings will be documented. The Title IX Coordinator or designated proxy shall ensure proper documentation compliance. In compliance with Federal privacy rules, all documentation shall be confidential.

#### **5.2.4.2. Standard of Evidence**

The deciders-of-fact will employ a “preponderance of evidence” standard in making a determination. The goal of the hearing is to provide an equitable resolution via an equitable process, respecting the civil and legal rights of all participants.

### **5.2.4.3. Outcome of the Appeals to and/or Adjudication by a Title IX Hearing Board**

#### **5.2.4.3.1. Outcome of an Appealed Sanction**

In a situation in which the accused is appealing only the sanction(s) imposed by the Title IX Coordinator or designated proxy, the Title IX Hearing Board may uphold or reject the original sanctions, or may impose additional sanctions based on their finding.

MSOE considers sexual misconduct violations to be serious offenses, which may render a violator subject to suspension or expulsion.

The decision of the Title IX Hearing Board is final.

#### **5.2.4.3.2. Outcome of an Appealed Findings/Sanction**

In a situation in which the accused is appealing both the finding of responsibility and the sanction(s) imposed by the Title IX Coordinator or designated proxy, and assuming that the Hearing Board is in agreement with the original finding(s), the Title IX Hearing Board may uphold or reject the original sanctions, or may impose additional sanctions based on their finding.

In the event that the Hearing Board is not in agreement with the original finding(s), the Board may reverse the original findings and the original sanctions. In this situation, the Board shall work with the accused to identify and to implement appropriate remedies, and to take any other necessary steps as a result of the reversal.

MSOE considers sexual misconduct violations to be serious offenses, which may render a violator subject to suspension or expulsion.

The decision of the Title IX Hearing Board is final.

#### **5.2.4.5. Notice of Outcome**

MSOE will notify in writing both the complainant and the accused about the outcome of a Title IX investigation, as well as the outcome of an associated hearing board appeal (if an appeal is requested). The notice of outcome shall clearly state whether sexual misconduct was found to have occurred.

FERPA permits an institution to disclose to a victim the final results of a disciplinary proceeding if it determines that the accused student has committed a crime of violence or a non-forcible sex offense, and as such, has violated institutional sexual misconduct policies. In addition, if misconduct has occurred, in compliance with FERPA requirements, MSOE will disclose to the victim, information about the sanction imposed upon the harasser who was found to have engaged in misconduct, when the sanction directly relates to the victim. This disclosure includes, but is not limited to, an order that the harasser stay away from the victim, or that the harasser is prohibited from attending the University for a period of time, or that the harasser has been transferred to other classes or another residence hall.

Postsecondary institutions additionally are subject to Clery Act rules requiring “both the accuser and the accused” to “be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense.” Compliance with this requirement does not constitute a violation of FERPA. Furthermore, the FERPA limitations on re-disclosure of information do not apply to information that postsecondary schools are required to disclose under the Clery Act. Accordingly, postsecondary institutions may not require a victim to abide by a nondisclosure agreement, in writing or otherwise, that would prevent the re-disclosure of this information.

All documentation associated with an investigation, its appeal hearing (if any), and its outcome shall be retained by the University in a secure and confidential manner, including witness interview transcripts, investigator notes, evidence submitted by the parties, investigative reports and summaries, final disposition letters, disciplinary records, and documentation regarding appeals. In compliance with Federal privacy rules, MSOE will not share, distribute, or disclose to the public any documentation associated with a Title IX sexual misconduct investigation and subsequent proceedings.

#### **5.2.4.6. Remedies**

With respect to a Title IX investigation, the University will act to end the specific sexual misconduct, to prevent its recurrence, and to remedy its effects on the victim and the University community.

Depending on the specific nature of the sexual misconduct, MSOE recognizes a number of accommodations and remedies for the victim before, during, and following an investigation and associated hearing. These remedies might include, but are not limited to:

- providing an escort to ensure that the complainant can move safely between classes and activities;
- ensuring that the complainant and the accused do not attend the same classes;
- moving the complainant or the accused to a different residence hall;
- providing counseling services;
- providing an advocate through counseling services;
- providing medical services;
- providing academic support services, such as tutoring;
- arranging for the complainant to re-take a course or to withdraw from a class without penalty, including ensuring that any changes do not adversely affect the complainant’s academic record.

In compliance with equity requirements associated with Title IX, MSOE recognizes that accommodations and remedies may also be appropriate for the accused (including the accused who are found to be offenders) before, during, and following an investigation, including any subsequent proceedings. These accommodations and remedies include, but are not limited to:

- providing counseling services;
- providing academic support services, such as tutoring;
- providing support for offenders to safely reintegrate into the MSOE community after completion of a sanction.

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## Appendix A: MSOE “Responsible Employees” as Defined by Title IX Federal Law

**Scope Note:** A report of a sexual misconduct policy violation to an MSOE Title IX “Responsible Employee” constitutes an official notice to the University that initiates an investigation.

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