

MINNESOTA STATE UNIVERSITY MOORHEAD

SEXUAL VIOLENCE POLICY & PROCEDURE

Sexual violence is an intolerable intrusion into the most personal and private rights of an individual, and is prohibited at Minnesota State University Moorhead. Minnesota State University Moorhead is committed to eliminating sexual violence in all forms and will take appropriate remedial action against any individual found responsible for acts in violation of this policy. Acts of sexual violence may also constitute violations of criminal or civil law, or other Board Policies that may require separate proceedings. To further its commitment against sexual violence, Minnesota State University Moorhead provides reporting options, internal mechanisms for dispute resolution, and prevention training or other related services as appropriate.

Subpart A. Application of policy to students, employees, and others.

This policy applies to all Minnesota State University Moorhead students and employees and to others, as appropriate, where alleged incidents of sexual violence have occurred on System property. Incidents of sexual violence alleged to have been committed by a student at a location other than on System property are covered by this policy pursuant to the factors listed in Minnesota State Colleges and Universities Board Policy 3.6, Part 5. Incidents of sexual violence alleged to have been committed by a Minnesota State University Moorhead employee at a location other than System property are covered by this policy.

Individuals alleged to have committed acts of sexual violence on System property who are not students or employees are subject to appropriate actions by Minnesota State University Moorhead, including, but not limited to, pursuing criminal or civil action against them. Allegations of discrimination or harassment are governed by Board Policy 1B.1.

Part 2. Definitions.

The following definitions apply to this Policy and Procedure 1B.3.1.

Subpart A. Sexual violence. Sexual violence includes a continuum of conduct that includes sexual assault, and non-forcible sex acts, as well as aiding acts of sexual violence.

Subpart B. Sexual assault. “Sexual assault” means an actual, attempted, or threatened sexual act with another person without that person’s consent. Sexual assault is often a criminal act that can be prosecuted under Minnesota law, as well as form the basis for discipline under Minnesota State University Moorhead student conduct codes and employee disciplinary standards. Sexual assault includes but is not limited to:

1. Involvement without consent in any sexual act in which there is force, expressed or implied, or use of duress or deception upon the victim. Forced sexual intercourse is included in this definition, as are the acts commonly referred to as “date rape” or “acquaintance rape.” This definition also includes the coercing, forcing, or attempting to coerce or force sexual intercourse or a sexual act on another.
2. Involvement in any sexual act when the victim is unable to give consent.

3. The intentional touching or coercing, forcing, or attempting to coerce or force another to touch an unwilling person's intimate parts (defined as primary genital area, groin, inner thigh, buttocks, or breast).
4. Offensive sexual behavior that is directed at another such as indecent exposure or voyeurism.

Subpart C. Consent. Consent is informed, freely given and mutually understood. If coercion, intimidation, threats, and/or physical force are used, there is no consent. If the complainant is mentally or physically incapacitated or impaired so that the complainant cannot understand the fact, nature, or extent of the sexual situation, and the condition was known or would be known to a reasonable person, there is no consent; this includes conditions due to alcohol or drug consumption, or being asleep or unconscious. Whether the respondent has taken advantage of a position of influence over the complainant may be a factor in determining consent.

Subpart D. Non-forcible sex acts. Non-forcible acts include unlawful sexual acts where consent is not relevant, such as sexual contact with an individual under the statutory age of consent, as defined by Minnesota law, or between persons who are related to each other within degrees wherein marriage is prohibited by law.

Subpart E. System property. "System property" means the facilities and land owned, leased, or under the primary control of the Minnesota State Colleges and Universities System that includes Minnesota State University Moorhead, its Board of Trustees, Office of the Chancellor.

Subpart F. Employee. "Employee" means any individual employed by the Minnesota State Colleges and Universities System that includes Minnesota State University Moorhead, and Office of the Chancellor, including student workers.

Subpart G. Student. "Student" means an individual who is:

1. admitted, enrolled, registered to take or is taking one or more courses, classes, or seminars, credit or noncredit, at any System college or university; or
2. between terms of a continuing course of study at the college or university, such as summer break between spring and fall academic terms; or
3. expelled or suspended from enrollment as a student at the college or university, during the pendency of any adjudication of the student disciplinary action.

Sexual Violence Procedure

Procedure objective.

This procedure is designed to further implement Minnesota State University Moorhead's policy prohibiting sexual violence. This procedure provides a process through which individuals alleging sexual violence may pursue a complaint. This procedure is intended to protect the rights and privacy of both the complainant and respondent and other involved individuals, as well as to prevent retaliation and reprisal.

Part 2. Definitions.

Subpart A. Policy definitions. The definitions in MNSCU's 1B.3 policy also apply to this procedure.

Subpart B. Campus Security authority. Campus Security authority includes the following categories of individuals at Minnesota State University Moorhead:

1. The Campus Security Department.
2. Other individuals who have campus security responsibilities in addition to Campus Security.
3. Any individual or organization identified in Minnesota State University Moorhead policy as an individual or organization to which students and employees should report criminal offenses;
4. An official of Minnesota State University Moorhead who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, campus judicial proceedings; advisors to recognized student organizations, athletic coaches. Professional counselors, whose official responsibilities include providing mental health counseling, and who are functioning within the scope of their license or certification are not included in this definition.

Part 3. Reporting incidents of sexual violence.

Subpart A. Prompt reporting encouraged. Complainants of sexual violence may report incidents at any time, but are strongly encouraged to make reports promptly in order to best preserve evidence for a potential legal or disciplinary proceeding.

Complainants are strongly encouraged to report incidents of sexual violence to law enforcement for the location where the incident occurred. Complainants are also encouraged to contact the local victim/survivor services office, counseling and health care providers, and Minnesota State University Moorhead Campus Security authorities for appropriate action.

Subpart B. Assistance in reporting. When informed of an alleged incident of sexual violence, all Minnesota State University Moorhead students and employees are urged to encourage and assist complainants, as needed, to report the incident to local law enforcement, local victim/survivor services and campus security authorities.

Minnesota State University Moorhead Campus Security authorities, when informed of an alleged incident of sexual violence, shall promptly assist the complainant, including providing guidance in filing complaints with outside agencies including law enforcement; obtaining appropriate assistance from victim/survivor services or medical treatment professionals; and filing a complaint with campus officials responsible for enforcing the student conduct code or employee conduct standards.

When appropriate, Minnesota State University Moorhead may pursue legal action against a respondent, including, but not limited to, trespass or restraining orders, in addition to disciplinary action under the applicable student or employee conduct standard.

Part 4. Confidentiality of Reporting.

Subpart A. Confidential reports. Because of laws concerning government data contained in Minnesota Statutes chapter 13, the Minnesota Government Data Practices Act, Minnesota State University Moorhead cannot guarantee confidentiality to those who report incidents of sexual violence except where those reports are privileged communications with licensed health care professionals. Some off-campus reports also may be legally privileged by law, such as reports to clergy, private legal counsel, or health care professionals.

Subpart B. Reports to Campus Security authorities. Complainants of sexual violence may contact any Campus Security authority for appropriate assistance or to report incidents. Absolute confidentiality of reports made to Campus Security authorities cannot be promised. However, Campus Security authorities shall not disclose personally identifiable information about a complainant of sexual violence without the complainant's consent except as may be required or permitted by law. There may be instances in which Minnesota State University Moorhead determines it needs to act regardless of whether the parties have reached a personal resolution or if the complainant requests that no action be taken. In such instances, Minnesota State University Moorhead will investigate and take appropriate action, taking care to protect the identity of the complainant and any other reporter in accordance with this procedure.

Subpart C. Required Reports. Any Campus Security authority or any college or university employee with supervisory or student-advising responsibility who has been informed of an alleged incident of sexual violence must follow Minnesota State University Moorhead procedures for making a report for the annual crime statistics report. In addition, the Campus Security authority shall report to other school officials, as appropriate, such as the campus affirmative action office, the campus office responsible for administering the student conduct code, and/or the designated Title IX compliance coordinator, in order to initiate any applicable investigative or other resolution procedures.

Campus Security authorities may be obligated to report to law enforcement the fact that a sexual assault has occurred, but the name or other personally identifiable information about the complainant will be provided only with the consent of the complainant, except as may be required or permitted by law.

Part 5. Policy notices.

Subpart A. Distribution of policy to students. Minnesota State University Moorhead shall, at a minimum, at the time of registration make available to each student information about its sexual violence policy and procedure, and shall additionally post a copy of its policy and procedure at appropriate locations on campus at all times. Minnesota State University Moorhead may distribute its policy and procedure by posting on an Internet or Intranet Web site, provided all students are directly notified of how to access the policy by an exact address, and that they may request a paper copy.

Subpart B. Distribution of policy to employees. Minnesota State University Moorhead and the Office of the Chancellor shall make available to all employees a copy of its sexual violence policy and procedure. Distribution may be accomplished by posting on an Internet or Intranet Web site, provided all employees are directly notified of the exact address of the policy and procedure and that they may receive a paper copy upon request.

Subpart C. Required Notice. Minnesota State University Moorhead shall have a sexual violence policy, which shall include the notice provisions in this part.

1. **Notice of complainant options.** Following a report of sexual violence the complainant shall be promptly notified of:
 - a. Where and how to obtain immediate medical assistance; complainants should be informed that timely reporting and a medical examination within 72 hours are critical in preserving evidence of sexual assault and proving a criminal or civil case against a perpetrator. Complainants should be told, however, that they may report incidents of sexual violence at any time.
 - b. Where and how to report incidents of sexual violence to local law enforcement officials, and/or appropriate Minnesota State University Moorhead/MnSCU system contacts for employees, students and others. Such contacts should be identified by name, location and phone number for 24-hour availability.
 - c. Resources for where and how complainants may obtain on- or off-campus counseling, mental health or other support services.

2. **Notice of complainant rights.** Complainants shall be notified of the following:
 - a. Their right to file criminal charges with local law enforcement officials in sexual assault cases;
 - b. Rights under the crime victims bill of rights, Minnesota Statutes Sections 611A.01 – 611A.06, including the right to assistance from the Crime Victims Reparations Board and the commissioner of public safety;
 - c. Availability of prompt assistance from campus officials, upon request, in notifying the appropriate campus investigating authorities and law enforcement officials, and, at the direction of law enforcement authorities, assistance in obtaining, securing and maintaining evidence in connection with a sexual violence incident;
 - d. Assistance available from campus authorities in preserving for a sexual violence complainant materials relating to a campus disciplinary proceeding;
 - e. That complaints of incidents of sexual violence made to Campus Security authorities shall be promptly and appropriately investigated and resolved;
 - f. That, at a sexual assault complainant's request, the college, university or Office of the Chancellor may take action to prevent unwanted contact with the alleged assailant, including, but not limited to, transfer of the

complainant and/or the respondent to alternative classes, or a work site or to alternative college-owned housing, if such alternatives are available and feasible.

Part 6. Investigation and disciplinary procedures.

Subpart A. Immediate action. Minnesota State University Moorhead may, at any time during the report/complaint process, reassign or place on administrative leave/suspend an employee/student alleged to have violated this policy, in accordance with the procedures in System Procedure 1B.1.1. Such action must be consistent with the applicable collective bargaining agreement or personnel plan.

Minnesota State University Moorhead may summarily suspend or take other temporary measures against a student alleged to have committed a violation of this policy, in accordance with System Procedure 1B.1.1.

Subpart B. General principles. Procedures used in response to a complaint of sexual violence should avoid requiring complainants to follow any plan of action, to prevent the possibility of re-victimization. Mediation or other negotiated dispute resolution processes between the complainant and the respondent concerning allegations of sexual violence shall be used only if both parties voluntarily consent. No party shall be required to participate in mediation.

Minnesota State University Moorhead's investigation and disciplinary procedures concerning allegations of sexual violence against employees or students shall:

1. Be respectful of the needs and rights of individuals involved;
2. Proceed as promptly as possible;
3. Permit a student complainant and a student respondent to have the same opportunity to have an appropriate support person or advisor present at any interview or hearing, in a manner consistent with the governing procedures and applicable data practices law;
4. Employees shall have the right to representation consistent with the appropriate collective bargaining agreement or personnel plan;
5. Be conducted in accordance with applicable due process standards and privacy laws;
6. Inform both the complainant and respondent of the outcome in a timely manner, as permitted by applicable privacy law.

The past sexual history of the complainant and respondent shall be deemed irrelevant except as that history may directly relate to the incident being considered.

A respondent's use of any drug, including alcohol, judged to be related to an offense may be considered to be an exacerbating rather than mitigating circumstance.

Subpart C. Relationship to parallel proceedings. In general, Minnesota State University Moorhead investigation and disciplinary procedures for allegations of sexual violence will proceed independent of any action taken in criminal or civil courts. Minnesota State University Moorhead need not, and in most cases, should

not delay its proceedings while a parallel legal action is on-going. If Minnesota State University Moorhead is aware of a criminal proceeding involving the alleged incident, it may contact the prosecuting authority to coordinate when feasible. Criminal or civil court proceedings are not a substitute for Minnesota State University Moorhead procedures.

Subpart D. False statements prohibited. Minnesota State University Moorhead takes allegations of sexual violence very seriously and recognizes the consequences such allegations may have on a respondent as well as the complainant. Any individual who knowingly provides false information regarding the filing of a complaint or report of sexual violence or during the investigation of such a complaint or report may be subject to discipline or under certain circumstances, legal action. Complaints of conduct that are found not to violate policy are not assumed to be false.

Subpart E. Withdrawn complaint. If a complainant no longer desires to pursue a complaint through Minnesota State University Moorhead's proceeding, the University reserves the right to investigate and resolve the complaint as it deems appropriate.

Subpart F. Minnesota State University Moorhead & MnSCU's discretion to pursue certain allegations. Minnesota State University Moorhead and the MnSCU system reserve discretion whether to pursue alleged violations of policy under appropriate circumstances, including, but not limited to, a determination that an effective investigation is not feasible because of the passage of time, or because the respondent is no longer a student/employee of Minnesota State University Moorhead or another MnSCU institution.

Subpart G. Minnesota State University Moorhead & MnSCU's discretion to deal with policy violations disclosed in investigation. Minnesota State University Moorhead and MnSCU reserve the right to determine whether to pursue violations of policy by students or employees other than the respondent, including a complainant or witness, that come to light during the investigation of an incident of sexual violence. In order to encourage reporting of sexual violence, under appropriate circumstances Minnesota State University Moorhead administrators may choose to deal with violations of University and/or Minnesota State Colleges and Universities policy in a manner other than disciplinary action.

Subpart H. Procedure for employees, students and individuals who are both an employee and student.

Employees. If the respondent is an employee, the investigation and disciplinary decision-making shall be conducted pursuant to the procedures outlined in Board Procedure 1.B.1.1 except that use of the optional "Personal Resolution" described in Part 3. Subpart B. should not be encouraged in dealing with allegations of sexual violence due to the seriousness of the conduct.

Nothing in this procedure is intended to expand, diminish or alter in any manner any right or remedy available under a collective bargaining agreement, personnel plan or law. Any disciplinary action imposed as a result of an investigation conducted under this procedure will be processed in accordance with the applicable collective bargaining agreement or personnel plan.

Students. Minnesota State University Moorhead will process complaints against students under this procedure using the investigation and decisionmaking process of MnSCU's Procedure 1B.1.1. Minnesota State University Moorhead shall notify students of the process used as required by Part 6.

Individuals who are both an employee and a student. If the respondent is both a student and employee, the investigation shall be conducted by the designated officer, as defined by Board Procedure 1.B.1.1, Part 2, Subpart A. The results of the investigation shall be submitted for review to both the decision-maker appointed under Procedure 1.B.1.1 Part 2, Subpart B, concerning the personnel action, and to the President or designee concerning the student action.

Subpart I. Sanctions. Sanctions that may be imposed if a finding is made that sexual violence has occurred include, but are not limited to, suspension, expulsion of students or termination from employment. The appropriate sanction will be determined on a case-by-case basis taking into account the severity of the conduct, the student's or employee's previous disciplinary history, and other factors as appropriate.

Subpart J. Retaliation prohibited. Actions by a student or employee intended as retaliation, reprisal or intimidation against an individual for making a complaint or participating in any way in a report or investigation under this policy are prohibited and are subject to appropriate disciplinary action.

Part 7. Sexual violence prevention and education.

Subpart A. Campus-wide education and training. Minnesota State University Moorhead offers Rape/Abuse/Dating Violence counseling is free and available by appointment at Hendrix Health Center, this confidential counseling service is for students who are physical or emotional victims, or secondary victims of sexual assault, domestic abuse, or dating violence. The Counseling and Personal Growth Center offers a wide range of training/education opportunities from Personal Growth to Safe Zone sessions (MSUM Safe Zone seeks to form a network of students, faculty and staff committed and trained to provide safe, non-judgmental and supportive contacts for all MSUM community members who may be dealing with lesbian, gay, bisexual, transgender, and/or questioning issues). The Campus Security department has videos on the issue of sexual violence and provides training sessions to the campus community as needed/requested.

Subpart B. Training for individuals charged with decision-making authority. Minnesota State University Moorhead and the Office of the Chancellor provide appropriate training and other resources to individuals charged with decision making responsibilities under applicable procedures in order to facilitate a fair, respectful and confidential procedure on allegations of sexual violence in accordance with this and other applicable policies, procedures and laws.

Part 8. Maintenance of report/complaint procedure documentation.

Data that is collected, created, received, maintained or disseminated about incidents of sexual violence will be handled in accordance with the privacy requirements of the Minnesota Statutes chapter 13 (Minnesota Government Data Practices Act), and other applicable laws.

Information on reports of incidents of sexual violence that are made to the Campus Security authorities shall be documented in accordance with the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act, codified at 20 United States Code section 1092 (f). Such information will be used to report campus crime statistics on college and university campuses as required by that Act.

During and upon the completion of the complaint process, the complaint file shall be maintained in a secure location. Access to complaint file information shall be in accordance with the applicable collective bargaining agreement or personnel plan, the Minnesota Government Data Practices Act, the Family Educational Rights and Privacy Act and other applicable law and policy.

Where to go for assistance

University Resources: Persons at Minnesota State University Moorhead who have been the subject of violence or sexual discrimination/harassment or who have witnessed others being subjected to violence or sexual discrimination/harassment can contact any of the University resource persons listed below for assistance. These people can listen, answer your questions, and discuss your options.

CONTACTS REGARDING REPORTING SEXUAL VIOLENCE:

MICHAEL PARKS, Director of Campus Security, 1616 9th Ave. S., 218-477-2449 or Parks@mnstate.edu Employee Investigations (to include Student Employees).

Ashley Atteberry, Judicial Officer 218-477-2174 or aatteberry@mnstate.edu

CONTACTS REGARDING REPORTING SEXUAL DISCRIMINATION/HARASSMENT:

Barbara Seiler, Affirmative Action Officer/Title IX Coordinator, Owens Hall 214B, 477.2229 (Voice) – *Employee Investigations (to include Student Employees)*.

Ashley Atteberry, Judicial Officer 218-477-2174 or aatteberry@mnstate.edu

Owens Hall 206E (Student Investigations)

For TTY Communication, contact the Minnesota Relay Service at 1.800.627.3529

Minnesota State University Moorhead is committed to providing an environment free from sexual violence and sexual discrimination/harassment, and continues to seek ways to eliminate such behavior. You are strongly encouraged to talk with one of the people listed above about your experience or concerns.

Minnesota State University Moorhead is an equal opportunity educator and employer and a member of the Minnesota State Colleges and Universities System. This information will be made available in alternate format, such as Braille, large print or audio cassette tape upon request by contacting Disability Services at 218.477.2652/V or 218.477.2047/TTY.

Other University contacts include:

Hendrix Health Center	477.2211
Campus Security (24 hours)	477.2449
Counseling and Personal Growth Center	477.2227

Local Resources: The following local resources are also available to provide assistance:

Emergency (24 hour-service)

Innovis Health.....	364.8490
MeritCare Medical Center	234.5121
Hotline.....	235.7335
Police.....	911
Fargo	241.1437
Moorhead	299.5120
Rape and Abuse Crisis Line.....	293.7273
Suicide Line	232.4357