

# P-013 SEXUAL VIOLENCE POLICY

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Approved: David .Danahar

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Approved: Connie J. Gores

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## Southwest Minnesota State University Policy Sexual Violence Policy

This policy and procedure is intended to further implement MnSCU Board Policy 1B.3 and Procedure 1B.3.1 and provides a process through which Southwest Minnesota State University (SMSU) students, employees and others, as appropriate, alleging sexual violence may pursue a complaint.

### Part 1. Policy Statement.

Sexual violence is an intolerable intrusion into the most personal and private rights of an individual, and is prohibited at SMSU. SMSU 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, SMSU provides reporting options, an investigative and disciplinary process, and prevention training or other related services as appropriate.

#### Subpart A. Application of Policy to Students, Employees, and Others.

This policy applies to all SMSU students and employees and to others, as appropriate, where incidents of sexual violence on University property have been reported. Reports of sexual violence committed by a student at a location other than on University property are covered by this policy pursuant to the factors listed in Board Policy 3.6, Part 2. Reports of sexual violence committed by a University employee at a location other than University property are covered by this policy.

Reports of sexual violence committed on University property by individuals who are not students or employees are subject to appropriate actions by SMSU, 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.

#### 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 a 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 Colleges and Universities 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. Intentional and unwelcome touching, or coercing, forcing, or attempting to coerce or force another to touch a 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. Dating and Relationship Violence.

Dating and relationship violence includes physical harm or abuse, and threats of physical harm or abuse, arising out of a personal intimate relationship. This violence also may be called domestic abuse or spousal/partner abuse and may be subject to criminal prosecution under Minnesota state law.

#### Subpart D. Stalking.

Stalking is conduct directed at a specific person that is unwanted, unwelcome, or unreciprocated and that would cause a reasonable person to fear for her or his safety or the safety of others or to suffer substantial emotional distress.

#### Subpart E. 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, there is no consent; this includes conditions due to alcohol or drug consumption, or being asleep or unconscious. Silence does not necessarily constitute consent, and past consent of sexual activities does not imply ongoing future consent. Whether the respondent has taken advantage of a position of influence over the complainant may be a factor in determining consent.

#### Subpart F. 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 G. System Property.

"System property" means the facilities and land owned, leased, or under the primary control of Minnesota State Colleges and Universities, its Board of Trustees, system office, colleges and universities.

**Subpart H. Employee.**

"Employee" means any individual employed by Minnesota State Colleges and Universities, its colleges and universities and system office, including student workers.

**Subpart I. Student.**

The term "student" includes all persons who:

1. Are enrolled in one or more courses, either credit or non-credit, through a college or university;
2. Withdraw, transfer or graduate, after an alleged violation of the student conduct code;
3. Are not officially enrolled for a particular term but who have a continuing relationship with the college or university; or
4. Have been notified of their acceptance for admission or have initiated the process of application for admission or financial aid; or
5. Are not college or university employees and are not enrolled in the institution but live in a college or university residence hall.

**Subpart J. Campus Security Authority.**

Campus security authority includes the following categories of individuals at a college or university:

1. A college or university security department;
2. Other individuals who have campus security responsibilities in addition to a college or university security department;
3. Any individual or organization identified in a college or university security policy as an individual or organization to which students and employees should report criminal offenses;
4. An official of a college or university who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings; advisors to recognized student organizations, and 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.**

The University urges victims of sexual violence to report incidents as soon as possible so that authorities can take whatever action is necessary to preserve evidence, pursue the assailant, or take other appropriate action. A medical examination within 72 hours is critical in preserving evidence of sexual assault and proving a criminal or civil case against a perpetrator. However, an incident of sexual violence can be reported at any time.

**Subpart B. Reporting Incidents of Sexual Violence.**

Complainants are strongly encouraged to report incidents of sexual violence to local law enforcement officials for the location where the incident occurred (911) and to the University Public Safety Office.

- Emergency  
911
- Marshall Police  
537-7000  
611 W Main St.  
Marshall, MN
- University Public Safety  
537-7252

Founders Hall, First Floor

- Avera Marshall Regional Medical Center  
532-9661  
300 S Bruce St.  
Marshall, MN
- SMSU Title IX Coordinator  
537-6544  
BA 257

Incidents of sexual violence can also be reported to any Campus Security Authority as described in Part 2, Subpart H. above.

**Subpart C. Assistance in Reporting.**

When informed of an alleged incident of sexual violence, all SMSU 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.

SMSU 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, SMSU 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. SMSU may take actions it deems necessary or appropriate in response to all protection, restraining or no contact orders.

**Subpart D. Support Resources.**

Complainants are also encouraged to contact the local victim/survivor services office and counseling and health care providers. There are a number of resources available on the University campus or in the local area to assist a victim in recovering from and dealing with an incident of sexual violence.

- New Horizons Crisis Center – 532-5764
- SMSU Counseling – 537-7150
- Western Human Development – 532-3236

**Part 4. Notice of Complainant Rights**

Following a report of sexual violence, the complainant shall be notified of the following:

- a. The right to file criminal charges with local law enforcement officials.
- b. Victims of sexual violence have rights under the "Campus Sexual Assault Victims' Bill of Rights" part of the *Higher Education Amendments of 1992* (Public Law: 102-325, section 486(c)) and the Crime Victims Bill of Rights (Minnesota Statute 611A.01-06), including the right to assistance from the Crime Victims Reparation Board (651) 282-6256 or 800-247-0390, and the Minnesota Office of Crime Victims Ombudsman at 800-247-0390.
- c. University Public Safety staff, when informed of an alleged incident of violence, will 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 the University Community Expectations Program (UCEP) Coordinator and Affirmative Action Officer.

- d. University Public Safety personnel will assist in preserving materials related to an investigation.
- e. Complaints of incidents of sexual violence made to the University Public Safety Office will be promptly and appropriately investigated and resolved.
- f. The University may take interim action to prevent unwanted contact with the alleged assailant during any investigation including, but not limited to, reassigning or placing on administrative leave an employee 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.

The University 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 or Board Policy 3.

## Part 5. Complaint Procedure

- a. If the respondent is an employee, the investigation and disciplinary decision-making shall be conducted pursuant to the procedures outlined in MnSCU Board Procedure 1.B.1.1, except for the use of the optional "Personal Resolution" described in Part 3. The Designated Officer conducting the investigation will be Mike Munford, Director of University Public Safety, 507-537-7858
- b. If the respondent is a student, the investigation and disciplinary decision-making shall be conducted pursuant to the procedures outlined in MnSCU Board Procedure 1.B.1.1, except for the use of the optional "Personal Resolution" described in Part 3. The Designated Officer conducting the investigation will be Michael Kurowski, Coordinator of Student Judicial Affairs, 507-537-6018.
- c. If the respondent is both an employee and a student, the investigation shall be conducted pursuant to the procedures outlined in the MnSCU Board Procedure 1.B.1.1. The Designated Officer conducting the investigation will be Mike Munford, Director of University Public Safety, 507-537-7858. The results of the investigation will be submitted for review to both the decision maker appointed under Procedure 1.B.1.1, Part 2, Subpart B, concerning personnel action, and to the President or designee concerning the student action.
- d. If a complainant does not desire to pursue a complaint through the University's procedure, SMSU reserves the right to investigate and resolve the complaint as it deems appropriate.
- e. Mediation will not, under any circumstances, be used to resolve a complaint of sexual assault against another student or employee.
- f. 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.
- g. Employees shall have the right to representation consistent with the appropriate collective bargaining agreement or personnel plan.
- h. Proceed as prompt as possible, however a complete investigation of an incident of sexual assault may take up to 60 days, depending on the complexity of the investigation. Both the complainant and respondent may be given periodic status updates.
- i. Decision will be based on a preponderance of evidence standard, meaning that it is more likely than not that the policy or code has been violated. 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 the offense

may be considered to be an exacerbating rather than mitigating circumstance.

- j. The On-campus proceedings will be prompt, fair and impartial and conducted by officials who receive annual training on issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct investigation and hearing process that protects the safety of victims and promotes accountability.
- k. Both parties will simultaneously receive a response regarding the outcome of the complaint. Any appeal must be made to the Office of the President or designee within 10 days of receipt of the decision.

## Part 6. Confidentiality of Reporting

### Subpart A. Confidential Reports.

Because of laws concerning government data contained in Minnesota Statutes §13, the Minnesota Government Data Practices Act, colleges and universities 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 SMSU 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, SMSU will investigate and take appropriate action, taking care to protect the identity of the complainant and any other reporter in accordance with this procedure. However, the ability of the University to adequately respond to a complaint of sexual violence may be limited.

### Subpart C. Required Reports.

Any campus security authority or any SMSU employee with supervisory or student-advising responsibility who has been informed of an alleged incident of sexual violence must follow University 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 University Public Safety, Affirmative Action Office, the Student Judicial Affairs Office, 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 7. Investigation and Disciplinary Procedures

### Subpart A. Relationship to Parallel Proceedings.

In general, SMSU investigation and disciplinary procedures for allegations of sexual violence will proceed independent of any action taken in criminal or civil courts. SMSU need not, and in most cases should not, delay its proceedings while a parallel legal action is on-going. If SMSU is aware of a criminal proceeding involving the alleged incident, they may

contact the prosecuting authority to coordinate when feasible. Criminal or civil court proceedings are not a substitute for SMSU procedures.

#### **Subpart B. False Statements Prohibited.**

SMSU 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 C. Discretion to Deal with Policy Violations Disclosed in Investigation.**

SMSU reserves 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 SMSU administrators may choose to deal with violations of MnSCU or SMSU policies in a manner other than disciplinary action.

#### **Subpart D. 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 E. 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 8. Sexual Violence Prevention and Education**

SMSU conducts a number of programs aimed at preventing sexual violence and making the SMSU community aware of the potential of such crimes.

- These programs include nightly security patrols of the campus, providing escorts, inspecting the campus for potentially dangerous areas, and implementing programs to inspect campus lighting and shrubbery.
- Residence Hall staff, University Public Safety, Health Center, and Counseling Offices provide educational programs concerning sexual assault awareness.
- University Public Safety provides on-line training to Campus Security Authorities related to their requirements under the Clery Act.
- New Horizons provides training to all Residents Assistants on the protocol used when responding to individuals who have reported to have been a victim of sexual assault.
- New Horizons provides sexual assault awareness training to all new incoming students.
- A Sexual violence awareness training program through D2L is provided to all new incoming students and new faculty and staff.
- New Horizons sponsors several different activities and events to promote Sexual Assault Awareness during April of each year.

### **Part 9. 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 §13 (Minnesota Government Data Practices Act), and other applicable laws.

Information on reports of incidents of sexual violence that are made to 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.

### **Part 10. Resources**

A list of available institutional and community resources may be accessed at <https://www.smsu.edu/administration/affirmativeaction/sexual-assault-violence.html>