

**MINNESOTA STATE COLLEGES AND UNIVERSITIES
BOARD OF TRUSTEES**

Agenda Item Summary Sheet

Committee: Diversity and Multiculturalism

Date of Meeting: November 15, 2011

Agenda Item: Proposed Amendment to Board Policy 1B.3 Sexual Violence Policy
(Second Reading)

Proposed
Policy Change

Approvals
Required by
Policy

Other
Approvals

Monitoring

Information

Cite policy requirement, or explain why item is on the Board agenda:

Amendment to Board policy requires approval of the Board.

Scheduled Presenter(s):

Renée Hogoboom, Associate Director for Diversity and Multiculturalism

Outline of Key Points/Policy Issues:

The amendment is slightly modified to reflect guidance received in a “Dear Colleague” letter, dated April 4, 2011, from U. S. Department of Education Office for Civil Rights.

Background Information:

The proposed policy is a second reading to amend Policy 1B.3 Sexual Violence Policy.

**BOARD OF TRUSTEES
MINNESOTA STATE COLLEGES AND UNIVERSITIES**

BOARD ACTION

**PROPOSED AMENDMENT TO BOARD POLICY
1B.3 SEXUAL VIOLENCE POLICY(SECOND READING)**

INTRODUCTION

The Office of the Chancellor is submitting an amendment to Policy 1B.3 Sexual Violence Policy.

BACKGROUND

The Board of Trustees approved this policy in 2004. During the cyclical review of this policy, the language was amended to reflect the definition of student in the student conduct code.

There have been no significant changes to the policy.

CONSULTATION

Consultation has occurred as follows:

The policy has been broadly distributed to allow for review and comment by as many stakeholders as possible. A draft of the proposed policy was electronically distributed to the following group Listservs on May 20, 2011, and on September 8, 2011 for review and comment.

- Presidents
- Cabinet
- Chief Academic Officers
- Chief Diversity Officers
- Chief Human Resources Officers
- Affirmative Action Officers
- Chief Student Affairs Officers
- Academic Deans
- Inter Faculty Organization State Leadership
- Minnesota State College Faculty State Leadership
- Minnesota State University Association of Administrative and Service Faculty State Leadership
- Minnesota State College Student Association State Leadership
- Minnesota State University Student Association State Leadership
- Minnesota Association of Professional Employees State Leadership
- Middle Management Association State Leadership
- American Federation of State, County and Municipal Employees State Leadership

RECOMMENDED COMMITTEE ACTION

The Diversity and Multiculturalism Committee recommends that the Board of Trustees adopt the following motion:

RECOMMENDED MOTION

The Board of Trustees approves the proposed amendment to Policy 1B.3 Sexual Violence Policy.

BOARD OF TRUSTEES
MINNESOTA STATE COLLEGES & UNIVERSITIES

BOARD POLICY		1B.3
Chapter	1B.	SYSTEM ORGANIZATION AND ADMINISTRATION EQUAL EDUCATION AND EMPLOYMENT OPPORTUNITY
Section	3.	Sexual Violence Policy

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1B.3 Sexual Violence Policy

Part 1. Policy statement.

Sexual violence is an intolerable intrusion into the most personal and private rights of an individual, and is prohibited at Minnesota State Colleges and Universities. Minnesota State Colleges and Universities 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 Colleges and Universities provides reporting options, an investigative and disciplinary process, ~~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 Colleges and Universities students and employees and to others, as appropriate, where ~~alleged~~ incidents of sexual violence ~~have occurred~~ on ~~s~~System property have been reported. ~~Reports~~ ~~Incidents~~ of sexual violence ~~alleged to have been~~ committed by a student at a location other than on ~~s~~System property are covered by this policy pursuant to the factors listed in ~~Minnesota State Colleges and Universities~~ Board Policy 3.6, Part 25. ~~Reports~~ ~~Incidents~~ of sexual violence ~~alleged to have been~~ committed by a system ~~Minnesota State Colleges and Universities~~ employee at a location other than ~~S~~system property are covered by this policy.

Reports ~~Individuals~~ ~~alleged to have committed~~ acts of sexual violence committed on ~~s~~System property by individuals who are not students or employees are subject to appropriate actions by Minnesota State Colleges and Universities, including, but not limited to, pursuing criminal or civil action against them.

Allegations of discrimination or harassment are governed by Board Policy 1B.1.

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Subpart B. College and university policies. Each Minnesota State Colleges and Universities college and university shall adopt a clear, understandable written policy on sexual violence that applies to its campus community, including, but not limited to, its students and employees. The policy content and implementation shall be consistent with the standards in this Policy and Procedure 1B.3.1.

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 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. ~~The~~ Intentional and unwelcome 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. 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.

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

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87 **Subpart E. System property.** “System property” means the facilities and land
88 owned, leased, or under the primary control of Minnesota State Colleges and
89 Universities, its Board of Trustees, Office of the Chancellor, colleges and
90 universities.

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92 **Subpart F. Employee.** “Employee” means any individual employed by
93 Minnesota State Colleges and Universities, its colleges and universities and
94 Office of the Chancellor, including student workers.

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96 **Subpart G. Student.** The term “student” includes all persons who:

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

108 ~~“Student” means an individual who is:~~
109 ~~1. admitted, enrolled, registered to take or is taking one or more courses, classes,~~
110 ~~or seminars, credit or noncredit, at any System college or university; or~~
111 ~~2. between terms of a continuing course of study at the college or university,~~
112 ~~such as summer break between spring and fall academic terms; or~~
113 ~~3. expelled or suspended from enrollment as a student at the college or university,~~
114 ~~—during the pendency of any adjudication of the student disciplinary action.~~

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116 *Date of Adoption:* 04/21/04
117 *Date of Implementation:* 04/21/04
118 *Subject and Date of Revision XX/XX/XXXX The changes made are to clarify policy and*
119 *to reflect the definition of “student” in other Board policies*