

Operating Instruction 1B.3.1.1 Promoting Nondiscrimination Based on Sex**Part 1. Purpose**

To provide instructions for Title IX Coordinators, deputies, and other Title IX personnel designated at the colleges and universities of Minnesota State. These operating instructions are established and revised by the Title IX Coordinators and compliance staff within Minnesota State and updated as needed. This information includes specifications for ensuring compliance with federal, state, and local civil rights laws and regulations specific to sex, and that support the related board policies and system procedures that provide a prompt, equitable, and impartial resolution of allegations of sexual misconduct or retaliation.

Part 2. Definitions**Campus security authority**

A term that encompasses groups of individuals and organizations associated with a college or university who are officials with authority and have a duty to take action or respond to students and campus activities on behalf of the institution. Campus security authority includes:

1. A college or university security department;
2. Any individual who has 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.

Title IX personnel

Employees who are responsible for the investigation and resolution processes under the scope of the related System Procedures 1B.1.1 Investigation and Resolution and 1B.3.1 Response to Sexual Misconduct. This includes Title IX Coordinators, investigators, decision-makers, and designated individuals who facilitate any informal resolution process.

Part 3. Required Notices and Distribution

Each college or university shall provide notice and distribute the sexual misconduct and retaliation policy and procedure, which must include the notice provisions in this part. In addition, there must be access to the Title IX Personnel training materials.

Subpart A. Required notices

- 1. Notice of Title IX Coordinator.** Each college and university must notify applicants for admission and employment, students, employees, and all unions holding collective bargaining agreements with Minnesota State of the name or title, office address, email address, and telephone number of the employee or employees designated as the Title IX Coordinator.
- 2. Notice of non-discrimination.** Each college and university must notify applicants for admission and employment, students, employees, and all unions holding collective bargaining agreements with Minnesota State that the college or university does not discriminate on the basis of sex in their education programs or activities as required by Title IX. Inquiries about the application of Title IX may be referred to the Title IX Coordinator and/or to the United States Department of Education.
- 3. Notice of complainant options**
Following a report of sexual misconduct, the complainant must 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 also be informed that they may report incidents of sexual misconduct at any time.
 - b. Where and how to report incidents of sexual misconduct to local law enforcement officials, and/or appropriate college, university, or system contacts for employees, students, and others. Such contacts should be identified by name, location, and phone number for 24-hour availability, as applicable.
 - c. Resources for where and how complainants may obtain on- or off-campus counseling, mental health, or other support services.

Subpart B. Distribution of policy to students

Each college or university shall, at a minimum, during registration make information available to each student about its sexual misconduct and retaliation policy and procedure, including its online reporting system that allows for anonymous reporting. An annual notice must be provided to all students, which may be sent via email with a hyperlink to the policy and procedure and the option of a printed copy upon request, and continuous notice must be prominently posted on the websites of each college and university. The policy and procedure must be posted at appropriate locations on campus and in appropriate handbooks at all times.

Subpart C. Distribution of policy to employees

Colleges, universities, and the system office shall make available to all employees a copy of the sexual misconduct policy and procedure. Distribution may be accomplished by posting on an Internet or Intranet website, provided all employees are directly notified of the weblink as well as the option of receiving a paper copy upon request.

Part 4. Administrative Process Considerations

Subpart A. Relationship to parallel proceedings

In general, college, university, and system office investigations and disciplinary procedures for allegations of sexual misconduct will proceed independent of any action taken in criminal or civil courts. A college or university need not, and in most cases should not, delay its proceedings while a parallel legal action is ongoing. If a college or university 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 college, university, and system office procedures.

Subpart B. Memorandum of Understanding (MOU) with local law enforcement

Each college or university shall enter into an MOU with the primary law enforcement agencies that serve their campus(es). Prior to the start of each academic year, each college or university shall distribute an electronic copy of the MOU to all employees on the campus who are subject to the memorandum. Colleges and universities are exempt from the MOU requirement if they and local or county law enforcement agencies establish a sexual assault protocol team to facilitate effective cooperation and collaboration between the college or university and law enforcement.

Subpart C. Mandatory reporting of abuse or neglect of children or vulnerable adults

Minnesota law provides special protection for children under 18 and vulnerable adults. Minnesota Statutes sections 626.556 and 626.557 identify those who are mandated to report neglect or abuse of children under 18 and maltreatment of vulnerable adults. Faculty, student teachers or clinical participants, day care personnel, and others involved in education or services to children or vulnerable adults may be considered mandated reporters. These individuals must make reports of abuse or neglect of a child or vulnerable adult to law enforcement or state or county social service agencies. Reports must also be made to the Title IX Coordinator.

Subpart D. Statistical reporting obligations

Campus security authorities have a duty to report federal statistical reporting purposes (Clery Act), including but not limited to Violence Against Women Act (VAWA-based crimes), which include Sexual Assault, Domestic Violence, Dating Violence, and Stalking. All personally identifiable information is kept private, but statistical information regarding the type of incident and its general location (on or off campus or in the surrounding area, but no addresses are given) must be shared with the Clery coordinator on campus for publication in the annual security report and daily campus crime log.

In addition, Title IX coordinators or their designees are responsible to annually report statistics on sexual assault to the Minnesota Office of Higher Education (OHE), which adheres to current federal and state data privacy laws and best practices to protect the privacy of individual students. Reports and data required by state statute are prepared and published as summary data and are consistent with federal and state laws governing access to educational data and student privacy.

Furthermore, the college or university is responsible for filing a complaint disposition to the system office within 30 days of final disposition. The dispositions for complaints against employees are reported annually to the Commissioner of Minnesota Management and Budget.

Part 5. Procedure Implementation

Subpart A. Assistance in reporting

When informed of an alleged incident of sexual misconduct or retaliation, all Minnesota State students and employees are urged to encourage and assist complainants, as needed, to report the incident to local law enforcement, victim advocacy services, campus Title IX coordinator, or campus security authorities.

Campus security authorities, when informed of an alleged incident of sexual misconduct or retaliation, shall promptly assist the complainant, as requested, including providing guidance in filing complaints with outside agencies, such as law enforcement; obtaining appropriate assistance from victim advocacy services or medical treatment professionals; and filing a complaint with the Title IX 137 Coordinator.

When appropriate, Minnesota State colleges and universities 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. A college or university may take actions it deems necessary or appropriate in response to all protection, restraining, or no-contact orders.

Minnesota State students may engage in experiential learning activities, including but not limited to internships, externships, student teaching, clinicals, and practicums. If a student experiences sexual misconduct while participating in experiential learning in relation to a college or university program, the coordinator of the experience at the college or university will assist the student upon the student's request in making a complaint to the appropriate site coordinator or supervisor or to local law enforcement.

Subpart B. Support measures

Non-disciplinary, non-punitive individualized services designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the college's or

university's educational environment, or to deter sexual harassment. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Subpart C. Confidential resources

Each institution offering student health or counseling services must designate an existing staff member or existing staff members as confidential resources for complainants or individuals who have experienced sexual misconduct. Confidential resources must be trained in all aspects of responding to incidents of sexual misconduct, including but not limited to best practices for interacting with victims of trauma, preserving evidence, campus disciplinary and local legal processes, and locally available resources for victims. The confidential resource must be available to meet with these individuals. The confidential resource must provide individuals with information about locally available resources and advocacy services, including but not limited to mental health services and legal assistance.

The confidential resource must provide individuals with information about the process for reporting an incident of sexual misconduct to campus authorities and local law enforcement. The individuals shall decide whether to report an incident of sexual misconduct to campus authorities or local law enforcement. Data shared with a confidential resource is classified as sexual assault communication data, which is considered private data, as defined by Minnesota law.

Subpart D. Advisors role

The complainant and respondent may have an advisor of choice present with them during the formal resolution process. Parties have the right to choose not to have an advisor in the initial stages of the formal resolution process, prior to the hearing. Each must have an advisor during the live hearing process.

Each college and university may train employees who are interested and available to volunteer as an advisor for a complainant or respondent. The Title IX personnel cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not, or cannot afford an attorney, the college or university is not obligated to provide an attorney to advise that party. However, any training provided to employees who volunteer to serve as an advisor will be shared with non-employee advisors.

Advisors are expected to maintain confidentiality with materials and information shared with them by the complainant, respondent, and Title IX personnel. Advisors are entitled to the same opportunity as their advisee to receive access to directly related evidence and the draft and final investigation reports. Parties will be asked to sign releases for the Title IX personnel to share materials with an Advisor. Advisors should help the parties prepare for each meeting or hearing and are expected to advise ethically, with integrity, and in good faith. Advisors may not provide testimony or speak on behalf of their advisee unless given specific permission to do so. The Title IX personnel generally expect an advisor to adjust

their schedule to allow them to attend meetings, interviews, and hearings when planned. Advisors are expected to advise without disrupting proceedings.

The live hearing includes a form of indirect questioning, which must be conducted by the parties' advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an advisor for a hearing, the Title IX Coordinator will appoint a trained advisor for the limited purpose of conducting any questioning of the parties and witnesses.

Subpart E. Investigation

All investigations are impartial, prompt, and fair. They involve interviewing all available, relevant parties and witnesses, obtaining relevant evidence, and identifying sources of information, as necessary. Individuals are interviewed by the investigator in-person, via online video platforms, and, in limited circumstances, by telephone. The Title IX personnel will take appropriate steps to ensure the security and privacy of remote interviews.

After an interview, parties and witnesses will be asked to verify the accuracy of the recording, transcript, or summary of their interview. They may submit changes, edits, or clarifications. If the parties or witnesses do not respond within the time period designated for verification, challenges to the accuracy of the recording, transcript, or summary will be deemed to have been waived, and no changes will be permitted.

Title IX personnel may consolidate complaints against more than one respondent, or by more than one complainant against one or more respondent(s), when the allegations arise from the same facts or circumstances or implicate a pattern, collusion, and/or other shared or similar actions.

Subpart F. Privacy and confidentiality

Title IX personnel will make every effort to preserve the parties' privacy. Parties and advisors are expected to maintain the confidentiality of all information created by or shared with them by Title IX personnel during any investigation and/or resolution process. Parties are entitled to share their own accounts and experiences but are encouraged to consider the sensitivity of the matter if they do so and should consult with their advisors on any potential implications of doing so. Title IX personnel may restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by the campus confidentiality expectations.

Part 6. Education and Training

The college, university or system office shall provide education and training programs to promote awareness and prevent discrimination/harassment, such as educational seminars, peer-to-peer counseling, operation of hotlines, self-defense courses, and informational resources. Education and training programs should include education about Board Policy 1B.3 and System Procedure 1B.3.1. All colleges, universities, and the system office shall promote

awareness of Board Policy 1B.3 and System Procedure 1B.3.1, and shall publicly identify the Title IX Coordinator.

A college or university must ensure that Title IX Personnel receive training for Title IX sexual misconduct complaints. Any materials used to train Title IX personnel must be made publicly available on the college or university's website.

Subpart A. Campus-wide training

Colleges, universities, and the system office shall:

1. Include in their sexual misconduct policy notices and distribution activities a description of educational programs that they offer to students and employees to promote awareness of sexual misconduct offenses, including sexual misconduct prevention measures and procedures for responding to incidents;
2. Provide training on awareness of sexual misconduct prevention measures and procedures for responding to incidents of sexual misconduct. At a minimum, all incoming students and new employees must be provided with this training;
3. Emphasize in their educational programs the importance of preserving evidence for proof of a criminal offense, safe and positive options for bystander intervention, and information on risk reduction to recognize warning signs of abusive behavior and risks associated with the perpetration of sexual misconduct.

Subpart B. Other training and education

Colleges, universities, and affiliated student organizations are encouraged to develop educational programs, brochures, posters, and other means of information to decrease the incidence of sexual misconduct and retaliation and advise individuals of the legal and other options available if they are the complainants of an incident or if they learn of such an incident.

Subpart C. Training for individuals with process responsibilities

Prior to serving as an investigator or decision-maker for complaints of sexual misconduct, sexual harassment, and related retaliation under System Procedure 1B.3.1 System Procedure 1B.1.1, administrators shall complete annual investigator or decision-maker training provided by the system office.

Campus security authorities and Title IX personnel must receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking, as well as preventing sexual misconduct, responding to incidents of sexual misconduct, the dynamics of sexual assault, neurobiological responses to trauma, and compliance with state and federal laws on sexual misconduct. In addition, training regarding best practices for responding to tech-related misconduct, including cyberstalking and image-based abuse, will be included.

For campuses with student health services and counseling staff on campus, these individuals must receive training regarding the process for making a formal complaint to the college or university per the System Procedure 1B.3.1.

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