

TITLE

Student Code for Procedures for Addressing Alleged Acts of Sex Discrimination, Sexual Violence and Sexual Harassment

NUMBER

5.9.2

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Page 1 of 9

BASED ON POLICY NUMBER AND TITLE:

MTC Commission By-Laws and
SBTCE Policy 3-2-106

AUTHORIZATION

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The Student Code for Midlands Technical College sets forth the rights and responsibilities of the individual student; identifies behaviors that are not consistent with the values of college communities; and describes the procedures that will be followed to adjudicate cases of alleged misconduct. This Code applies to behavior or complaints alleging acts of sex discrimination, sexual violence or sexual harassment that occur on college property, and at college-sponsored activities and events, as well as off-campus behavior that adversely affects the college and/or the college community. The Code applies to students from the time of applying for admission through the awarding of a degree, diploma, or certificate. This procedure described in Midlands Technical College Procedure 9.1.2 will be followed to adjudicate alleged acts of sexual violence and sexual harassment.

Title IX of the Education Amendments of 1972 ("Title IX"), 20 U.S.C. §1681 et seq., is a Federal civil rights law that prohibits discrimination on the basis of sex in education programs, services or activities operated by recipients of Federal financial assistance. All public and private elementary and secondary schools, school districts, colleges, and universities (hereinafter "schools") receiving any Federal funds must comply with Title IX. Under Title IX, discrimination on the basis of sex can include sexual harassment or sexual violence, such as rape, sexual assault, sexual battery, and sexual coercion. Sexual harassment also may violate Title IV of the Civil Rights Act of 1964 (42

U.S.C. § 2000c), which prohibits public school districts and colleges from discriminating against students on the basis of sex, among other biases. Sexual harassment is a form of discrimination prohibited by law as well as by the Student Code for the South Carolina Technical College System, and the Student Code for Midlands Technical College. Sexual harassment of students, which includes acts of sexual violence, is

a form of sex discrimination prohibited by Title IX. Sexual harassment includes any advances, requests for sexual favors, sexual violence and other verbal or physical conduct of a sexual nature that interferes with a student's ability to participate in or benefit from the college's programs or services. It may include such conduct as offensive jokes, slurs, name calling, physical assaults, threats, intimidation, ridicule or mockery, insults or put downs, and/or offensive objects or pictures. Sexual harassment also includes verbal, written, electronic or other, stalking behaviors, or engaging in conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

Sexual assault is an extreme form of sexual harassment. It can be defined as a situation in which an individual is forced, threatened or coerced into sexual contact against his/her free will, or without his/her consent. Sexual assault may include, but is not limited to, sexual violence, date or acquaintance rape, sexual battery, sexual coercion, domestic violence, sexual molestation, unwanted sexual touching or having sexual contact with a person while knowing or having reason to know that the person is incapacitated in some way (i. e., due to drugs or alcohol.) "Domestic violence" is a felony misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim; a person with whom the victim shares a child in common; a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; a person similarly situated to a spouse of the victim under the domestic or family violence laws of jurisdiction; or any person against whom an adult or youth victim who is protected under that person's acts under the domestic or family violence laws of this jurisdiction. "Dating Violence" refers to violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on the consideration of the length of the relationship; type of relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship. Detailed definitions of sexual assault are provided in the South Carolina Code of Laws 816-3-600. Harassment and stalking definitions are provided in 16-3-1700. All such acts of sexual violence are forms of sexual harassment covered under Title IX.

Any student or any other member of the college community who believes that a student is or has been a victim of sexual harassment or sexual assault may file a report with the college's Chief Student Services Officer or designee, campus police, or the college's Title IX coordinator. The person contacted will work with the complaining student to mitigate any injury during the pendency of the investigation and proceedings. If a student is the victim of a sexual assault, the first action will be to protect the victim and to advise the victim on steps to take for his or her safety and steps to be taken for the preservation of evidence. The college, through the Vice President for Student Development Services, or designee, and in coordination with the Title IX coordinator and the college's victim's assistance officer, will provide this assistance, in addition to assistance in changing the victim's academic, transportation, working and living situations after an alleged sex offense and will discuss the options for those changes, if those changes are requested by the victim and are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement. The staff will also provide information about the victim's rights to notify or not to notify and seek assistance from campus and law enforcement authorities. Information on the victim's rights and institutional responsibilities regarding judicial no-contact, restraining and protective orders will also be provided in writing to the victim. The Title IX coordinator's office location and phone

number are printed in the college's catalog and appear on the college's website. Care will be taken to maintain confidentiality in regard to the victim in timely warning notices and college records. Information gathered will be maintained as confidential to the extent reasonably possible and permitted under law.

If the student (or complainant) asks that his or her name or other identifiable information not be revealed, the college will evaluate that request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. Thus, the school may weigh the request for confidentiality against the following factors: the seriousness of the alleged harassment; the student's (or complainant's) age; whether there have been other harassment complaints about the same individual; and the alleged harasser's rights to receive information about the allegations if the information is maintained by the school as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99.15.

The college will inform the student (or complainant) if it cannot ensure confidentiality. Even if the school cannot take disciplinary action against the alleged harasser because the complainant insists on confidentiality, it should pursue other steps to limit the effects of the alleged harassment and prevent its recurrence.

Any member of the college community who witnesses or believes a student has been subject to sexual harassment, sexual assault, domestic violence, or stalking has an obligation to report it. The student may also file a criminal report regarding the alleged conduct. In some cases, the conduct, may constitute both sexual harassment or sexual violence under Title IX and criminal activity. Police investigations may be useful for fact-gathering; but because the standards for criminal investigations are different, police investigations or reports are not determinative of whether sexual harassment or sexual violence violates Title IX. Conduct may constitute unlawful sexual harassment or sexual violence under Title IX even if the police do not have sufficient evidence of a criminal violation. In addition, a criminal investigation into allegations of sexual violence does not relieve the college of its duty under Title IX to resolve complaints promptly and equitably.

Pursuant to Title IX, the college prohibits retaliation and the college will not only take steps to prevent retaliation but also take strong responsive action if it occurs. When a student or employee reports sex discrimination, sexual harassment or assault, the student or employee will not be subjected to retaliation, intimidation, threats, coercion or any forms of discrimination for exercising their rights or responsibilities under any provision of the law.

Due to the seriousness of these issues, the college will provide educational programs to promote the prevention and awareness of sex discrimination, rape, acquaintance rape, domestic violence, and other forcible and non-forcible sex offenses, as well as sexual harassment primary prevention awareness programs to new students and employees, and to the larger campus community. These training programs will include a statement that the institution prohibits sex discrimination, sexual harassment, sexual assault, rape, acquaintance rape, domestic violence, dating violence and stalking. Definitions of these offenses within the college's jurisdiction will be provided, as well as, the definition of consent in the college's jurisdiction, "safe and positive" options for bystander intervention to prevent harm and intervene in risky situations; and ways to recognize signs of abusive behavior and to prevent potential attacks. The education programs also should include information aimed at encouraging

students to report incidents of sexual violence to the appropriate college and law enforcement authorities. The college's primary concern is student safety. Any other rules violations will be addressed separately from the sexual violence allegation, and use of alcohol or drugs never makes the victim at fault for sexual violence. The college will provide ongoing prevention and awareness for students, faculty on all or the above.

If the alleged harasser or violator named in in the report is an employee or third party, the case will be adjudicated through the Midlands Technical College Student Grievance Procedure 5.1.1 (students/employee) and/or the college's Anti-Harassment Procedure 2.6.1 (employee/employee). If the alleged harasser or violator of this policy is a student, the case may be adjudicated under Procedure 5.9.2, through the process that follows.

I. Preliminary Hearing

Within five (5) instructional weekdays after the charge has been filed, the Vice President for Student Development Services, or designee, shall complete a preliminary investigation of the charge and schedule a meeting with the alleged violator and, if needed, the victim. After discussing the alleged infraction with the accused student and reviewing available information, the Vice President for Student Development Services, or designee, will decide whether the information presented during the meeting indicates that the violation occurred as alleged. This decision will be based on the preponderance of evidence (i.e., it is more likely than not that sexual harassment or violence occurred). When the student cannot be reached to schedule an appointment, or when the student fails to attend the meeting, the Vice President for Student Development Services, or designee, will base the decision upon the available information. The college authority or authorities investigating the complaint and rendering a decision will be annually trained on issues related to dating violence, domestic violence, sexual assault and stalking and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability. If the available information indicates that the violation occurred as alleged, then one of the following sanctions will be imposed:

- A. Reprimand - A written warning documenting that the student violated a student conduct regulations and indicating that subsequent violations could result in more serious disciplinary sanctions.
- B. Restitution - Compensation for loss or damage to college property or the property of others while on the campus or at a college event or activity including, but not limited to, field trips, internships, and clinical settings.
- C. Special Conditions – Completion of a variety of educational activities, relating to the nature of the offense. Examples include, but are not limited to, the following; a formal apology, an essay or paper on a designated topic, or participation in a special project or activity, to include counseling services.
- D. Protective Measures—Changes in academic arrangements such as course/campus locations, transportation and living arrangements, as reasonably available, to protect the victim.
- E. Disciplinary Probation – A written reprimand documenting that the student violated the student code and is on disciplinary probation for a designated period of time and that subsequent violations could result in more serious disciplinary sanctions.

- F. Loss of Privileges – Suspension or termination of particular student privileges.
- G. Suspension from the College – Separation from the college for a specified period of time. Suspended students will not receive academic credit for the semester in which the suspension is imposed. During the suspension period, the student may not return to campus unless permission by the Vice President for Student Development Services, or designee, has been granted.
- H. Expulsion from the College – Permanent separation from the college. An expelled student may not return to the campus unless prior permission by the Vice President for Student Development Services, or designee, has been granted. An expelled student will not receive academic credit for the semester in which the expulsion was imposed.
- I. Any combination of the above

Within five (5) instructional weekdays of the preliminary hearing, Vice President for Student Development Services, or designee, will send a certified letter to the student charged with violating the Student Code and to the victim. This letter will confirm the date of the preliminary hearing, identify the specific regulation(s) that the student allegedly violated, identify the decision, summarize the rationale, and, if it is determined that the student violated the regulation(s), state the sanction that was imposed. This letter must also state that if the student charged with the violation or the victim disagrees with the decision or the sanction, either party may request a hearing before the Hearing Committee, that the request must be submitted no later than two (2) instructional weekdays after receiving the decision letter unless a request for an extension is made and approved by the Vice President for Student Development Services, or designee, and that any decision made and sanction imposed at the preliminary hearing may be held in abeyance pending the outcome of the Hearing Committee's meeting.

II. Hearing Committee

- A. The Hearing Committee shall be composed of the following members, and these members shall not have a conflict of interest or bias for or against the accuser or the accused:
 - 1. Three faculty members appointed by the Vice President for Academic Affairs and approved by the President.
 - 2. Three student members appointed by the Student Advisory Board and approved by the President.
 - 3. One member of the Student Services staff appointed by the Vice President for Student Development Services and approved by the President.
 - 4. Vice President for Student Development Services, or designee, who serves as an ex officio nonvoting member of the Committee and who presents the case.
 - 5. The chairperson of the Committee is appointed by the President from the membership of the Committee. Ex officio members of the Committee may not serve as the chair of the committee.
 - 6. The institutional officer who conducts the proceedings must be trained on how to investigate and conduct hearings in a manner that protects the safety of victims and promotes accountability.

- B. The Hearing Committee shall perform the following functions:
1. Hear cases of alleged violations of the Code of Student Conduct, as related to dating violence, domestic violence, sexual harassment, sexual violence/assault, or stalking.
 2. Insure that the student's procedural rights are met.
 3. Make decisions based on a preponderance of the evidence in regard to information presented at the hearing.
 4. Provide the student who has been charged and the victim , simultaneously in writing, with a statement of the committee's decision, including findings of fact and, if applicable, impose one or more of the following sanctions:
 - a. Reprimand - A written warning documenting that the student violated a student conduct regulation and indicating that subsequent violation could result in more serious disciplinary sanctions.
 - b. Special Conditions - Completion of a variety of educational activities, relating to the nature of the offense imposed. Examples include, but are not limited to, the following: a formal apology, an essay or paper on a designated to, or participation in a special project, to include counseling.
 - c. Protective Measures—Changes in academic arrangements, transportation, and living arrangements, as warranted and available, and instruction to desist contact with the victim.
 - d. Restitution – Compensation for loss or damage to college property or the property of others while on the campus or loss or damage to property at a college even or activity including but not limited to field trips, internships and clinical settings.
 - e. Disciplinary Probation – A written reprimand documenting that the student violated a student conduct regulation. Probation is for a specified period of time, and it serves as a warning that subsequent violations could result in more serious disciplinary sanctions.
 - f. Loss of Privileges – Suspended or termination of particular student privileges.
 - g. Suspension from the College – Separation from the college for a specified period of time. The suspended student will not receive academic credit for the semester in which the suspension was imposed. During the suspension period, the student may not return to the campus unless permission by the Vice President for Student Development Services, or designee, has been granted.
 - h. Expulsion from the College- Permanent separation from the college. An expelled student may not return to the campus unless prior permission by the Vice President for Student Development Services, or designee, has been granted. An expelled student will not receive academic credit for the semester in which the expulsion is imposed.
 - i. Any combination of the above.

III. Hearing Committee Procedures

- A. The Vice President for Student Development Services shall refer the matter to the Hearing Committee together with a report of the nature of the alleged misconduct, the name of the person(s) filing the complaint(s), the name of the student(s) against whom the charge(s) has (have) been filed, and a summary of the findings from the preliminary hearing.

- B. At least seven (7) instructional weekdays before the date set for the Hearing Committee's meeting, the Vice President for Student Development Services, or designee, shall send a certified letter to the charged student's last known address and to the victim's last known address. Each letter must contain the following information:
1. A statement of the charge(s).
 - a. A brief description of the incident that led to the charge.
 - b. The name of the person(s) submitting the incident report.
 - c. The date, time, and place of the scheduled hearing.
 - d. A list all witnesses who might be called to testify.
 2. A statement of each person's procedural rights. These rights follow:
 - a. The right to consult counsel. This role of the person acting as counsel is solely to advise the student. Counsel may not address the Hearing Committee or participate in any of the questioning. The student has the responsibility for paying any of that student's counsel's fees and other charges.
 - b. The right to present witnesses on one's behalf.
 - c. The right to know the names of any witnesses who may be called to testify at the hearing.
 - d. The right to review all available evidence, documents, exhibits, etc., that may be presented at the hearing.
 - e. The right to present evidence; however, the Hearing Committee will determine what evidence is admissible.
 - f. The right to know the identity of the person(s) bringing the charge(s).
 - g. The right to hear witnesses on behalf of the person bringing the charges.
 - h. The right to testify or to refuse to testify without such refusal being detrimental to the student.
 - i. The right to a fair and impartial decision.
 - j. The right to appeal the Hearing Committee's decision
 3. All committee members and parties involved in the hearing will be instructed regarding standards of confidentiality. The victim's confidentiality will be protected, and recordkeeping will exclude personally identifiable information on the victim.
 4. On written request of the charged student or the victim, the hearing may be held prior to the expiration of the seven day advance notification period if the Vice President for Student Development Services, or designee, concurs with this change.
 5. The chairperson of the Hearing Committee, at his/her discretion, may postpone the hearing due to circumstances beyond the control of the parties

III. Hearing Committee Meetings

- A. Committee hearings shall be closed to all persons except the students, the person(s) initiating the charge(s), counsel for any student involved as a primary party in the hearing and for the College, witnesses who will be invited into the hearing, hearing committee members and an external transcriptionist who will transcribe hearing testimony.
- B. All testimony will be transcribed. Deliberations and procedural instructions will not be transcribed. No other party in the hearing may record the proceedings, and no other party is entitled to a copy of the transcription. The transcription will be maintained in the office of the Vice President for Student Development for three (3) months. The student may review the

transcription under the supervision of the Vice President for Student Development Services, or designee.

- C. Witnesses shall be called in one at a time to make a statement and to respond to questions.
- D. After hearing all of the information, the Hearing Committee will begin its deliberations. Using the “preponderance of evidence” standard, which means that it is more likely than not that the violation occurred as alleged, the members will determine, by majority vote, whether the violation occurred. If it is determined that the violation occurred as alleged, the members will decide by majority vote, the appropriate sanction.
- E. The Chair of the Hearing Committee will send a certified letter to the alleged assailant and victim’s last known addresses, simultaneously, within two instructional weekdays of the Committee’s decision. The letter shall inform the alleged assailant and victim about the Committee’s decision, the date of the decision, and, if applicable the sanction(s) imposed. The letter will also inform each recipient about the appeal process.
- F. When the case results in a finding that the accused student has engaged in an act of sexual violence, the Chair’s letter to the victim will also include the sanction imposed by the Hearing Committee.
- G. When the case results in a finding that the student engaged in an act of non-violent sexual harassment, the Chair’s letter to the victim will only include the sanction imposed by the Hearing Committee if the sanction directly relates to the victim (e. g., the harasser has been directed to stay away from the victim while on the college’s campus).
- H. The Hearing Committee’s decision is considered the final decision. Both parties shall be notified, simultaneously, in writing, about the outcome.