

TITLE

Non-Discrimination, Anti-Harassment and Sexual Misconduct

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BASED ON POLICY NUMBER AND TITLE:Midlands Technical College
Policy 2.6 Non-Discrimination, Anti-Harassment and Sexual Misconduct**AUTHORIZATION**

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DISCLAIMER

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I. Purpose and Commitment

Midlands Technical College is committed to maintaining a work and educational environment that is free from all forms of discrimination, harassment and sexual misconduct. In keeping with this commitment, the college prohibits all forms of discrimination, harassment, including sexual harassment, misconduct, and abuse, with respect to employment or access to any educational benefit. To this end, the college will not tolerate discrimination, harassment, including sexual harassment or abuse of its employees or students by others, including any supervisor, co-worker, vendor, client, or students.

Reasonable accommodations will be provided for pregnancy and related medical conditions, including, without limitation, lactation. Accommodations of the same type will be provided in the manner it would for other employees or other employees or classes of employees requiring reasonable accommodation for non-pregnancy-related conditions.

II. Definition

Discrimination is conduct that includes unjust or prejudicial treatment based upon an individual's sex, race, color, religion, national origin, age, disability, service in the uniformed services (as defined in state and federal law),

veteran status, political ideas, marital or family status, pregnancy, childbirth, or related medical conditions including but not limited to lactation, genetic information, genetic identity, gender expression, gender identity, or sexual orientation that excludes an individual from participation in, denies the individual the benefits of, treats the individual differently, or otherwise adversely affects a term or condition of a person's working or learning environment. This includes failing to provide reasonable accommodation, consistent with state and federal law, to persons with disabilities.

Examples of Unlawful Employment Practices Related to Pregnancy and Childbirth may include but are not limited to the following:

- Fail or refuse to make reasonable accommodations for medical needs arising from pregnancy, childbirth or related medical conditions for applicants or employees
- Deny employment or opportunities to an employee or applicant if the denial is based on the employee's or applicant's need for a reasonable accommodation
- Require a pregnant employee or applicant to accept an accommodation not of her choosing, if the applicant or employee does not have a known limitation related to pregnancy or the accommodation is unnecessary for her to perform essential job functions
- Require the employee to take leave under any leave law or policy if another reasonable accommodation can be provided
- Take adverse action against an applicant for requesting or using a reasonable accommodation for a medical need arising from or related to pregnancy, childbirth, or related medical condition

Harassment is conduct based upon an individual's sex, race, color, religion, national origin, age, disability, service in the uniformed services (as defined in state and federal law), veteran status, political ideas, marital or family status, pregnancy, childbirth, or related medical conditions including but not limited to lactation, genetic information, genetic identity, gender expression, gender identity, or sexual orientation that excludes an individual from participation in, denies the individual the benefits of, treats the individual differently, or otherwise adversely affects a term or condition of a person's working or learning environment. Harassing conduct may take various forms, including name-calling, graphic or written statements (including the use of cell phones or the Internet), or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Sex-based harassment includes sexual harassment, which is further defined below, and non-sexual harassment based on stereotypical notions of what is female/feminine v. male/masculine or a failure to conform to those gender stereotypes.

The following are three (3) types of harassment:

1. **Stalking** - a pattern of words, whether verbal, written, or electronic, or a course of conduct consisting of two or more acts directed at a specific person that serves no legitimate purpose and would cause a reasonable person to fear for her, his, or others' safety, to fear damage to his or her property or property belonging to a member of his or her family, or to suffer substantial emotional distress.
2. **Bullying and cyber-bullying** - repeated and/or severe aggressive behaviors that intimidate or intentionally harm or control another person physically or emotionally [and are not protected by freedom of expression].
3. **Sexual harassment** - unwelcome, gender-based verbal or physical conduct that is sufficiently, severe, persistent or pervasive, unreasonably interferes with, denies or limits an individual's ability to participate in or benefit from the college working or learning environment, educational program and/or activities, and is based on the creation of a hostile environment, power differentials (*quid pro quo*), or retaliation, including:

- a. **Hostile Environment** includes any situation in which there is harassing conduct that is sufficiently severe, pervasive, and objectively offensive that it alters the conditions of employment or limits, interferes with, or denies employment or educational benefits or opportunities, from both subjective (the alleged victim's) and an objective (reasonable person's) viewpoint.
- b. **Quid pro quo** exists when there are unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature; and submission to or rejection of such conduct is an implicit or explicit term/condition of employment or educational program, or is used as a basis for a decision affecting an individual's participation in a complaint or investigation of discrimination, harassment, or sexual misconduct.
- c. **Retaliation** is any adverse employment or educational action taken against an individual because of the individual's participation in a complaint or investigation of discrimination, harassment, or sexual misconduct.

Examples of sexual harassment may include, but are not limited, to the following:

- Submission to prohibited conduct is made, either explicitly or implicitly, a term or condition of an individual's employment or access to an employment or educational benefit.
- Submission to or rejection of such conduct by an individual is used as the basis for decisions affecting that individual's employment, academic standing, or other decisions regarding educational benefits.
- Explicit sexual propositions, foul or obscene language or gestures, displays of foul or obscene printed or visual material, and physical contact, such as patting, pinching, rubbing, or intentionally brushing against another's body. Sexual innuendo, suggestive comments, sexually oriented "kidding" or "teasing," "practical jokes," jokes about gender-specific traits, may amount to harassment.
- Offering or implying an employment-related reward or an education-related reward in exchange for sexual favors or submission to sexual conduct.
- Threatening or taking a negative employment action or negative educational action or intentionally making the individual's job or academic work more difficult because sexual conduct is rejected.
- Using or displaying in the classroom or workplace sexually harassing materials such as posters, photos, cartoons or graffiti without pedagogical justification.
- Making unwelcome sexual advances, repeated propositions or requests for a sexual relationship to an individual who has previously indicated that such conduct is unwelcome, or sexual gestures, noises, remarks, jokes, questions, or comments about a person's sexuality or sexual experience.

The determination of whether the severity of the conduct arises to sexual harassment can be subjective and will be made on a case by case basis.

The victim as well as the harasser may be male, female, or nonbinary. The victim does not have to be of the opposite sex. The victim does not have to be the person harassed but could be a bystander who witnessed and was offended by the conduct.

4. **Sexual Misconduct** encompasses a range of behavior used to obtain sexual gratification against another's will or at the expense of another. Sexual misconduct includes sexual harassment, sexual assault, and any conduct

of a sexual nature that is without consent or has the effect of threatening or intimidating the individual against whom such conduct is directed. Acts of sexual misconduct may be committed by any individual upon any individual, regardless of the sex, gender, sexual orientation, and/or gender identity of those involved. Sexual misconduct includes, but is not limited to, the following prohibited forms:

- a. **Non-consensual Sexual Contact** includes any intentional sexual touching, however slight, with any object, by one individual upon another individual that is without consent. Sexual contact includes: intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or any intentional bodily contact in a sexual manner, though not involving contact with breasts, buttocks, groin, genitals, mouth or other orifice.
 - b. **Non-consensual Sexual Intercourse** includes any sexual intercourse, however slight, or with any object, by one individual upon another individual that is without consent. Intercourse includes: vaginal penetration by a penis, object, tongue or finger; anal penetration by a penis, object, tongue, or finger; and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight penetration or contact.
 - c. **Sexual Exploitation** occurs when an individual takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to: invasion of sexual privacy, prostituting another student or employee, non-consensual video or audio-taping of sexual activity, going beyond the boundaries of consent, engaging in voyeurism, knowingly transmitting an STD or HIV to another student or employee, exposing one's genitals in non-consensual circumstances, inducing another to expose their genitals, or sexually-based stalking and/or bullying.
5. **Sexual Assault** – an actual or attempted sexual contact with another individual without the individual's consent. Sexual assault includes, but is not limited to: involvement in any sexual contact when the victim is unable to consent; intentional and unwelcome touching of, coercing, forcing, or attempting to coerce or force another to touch an individual's intimate parts, or disrobing or exposure of another without consent; or sexual intercourse without consent, including acts commonly referred to as "rape." Intimate parts may include genitalia, groin, breast, or buttocks, or any other body part that is touched in a sexual manner.
6. **Relationship Violence** – encompasses a broad range of behaviors including sexual assault, physical abuse and other acts, threats, or a pattern of abusive behavior of a physical or sexual nature by one individual intended to control, intimidate, manipulate, humiliate, frighten, coerce or injure the other. These acts may be directed towards a spouse, an ex-spouse (also referred to as "domestic violence"), or by a current or former intimate partner (also referred to as "dating violence").
- a. **Domestic Violence** includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, persons who have a child in common, or anyone else protected under domestic or family violence law.
 - b. **Dating violence** means violence committed by an individual (1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - a) The length of the relationship.
 - b) The type of the relationship.
 - c) The frequency of interaction between the persons involved in the relationship.

7. **Stalking** – a pattern of words, whether verbal, written, or electronic, or a course of conduct consisting of two or more acts directed at a specific person that serves no legitimate purpose and would cause a reasonable person to fear for her, his, or others’ safety, to fear damage to his or her property or property belonging to a member of his or her family, or to suffer substantial emotional distress.
8. **Bullying and cyber-bullying** – repeated and/or severe aggressive behaviors that intimidate or intentionally harm or control another person physically or emotionally [and are not protected by freedom of expression].

Additional applicable definitions:

Consent – clear, knowing, and voluntary agreement. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity. Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity. Previous relationships or prior consent cannot imply consent to future sexual acts.

Force – the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent (i.e. “Have sex with me or I’ll hit you. Okay, don’t hit me, I’ll do what you want.”)

III. Retaliation

Midlands Technical College strictly prohibits retaliation against any victim or witness who has reported discrimination and/or harassment in good faith or otherwise participated in an investigation of discrimination and/or harassment.

No individual involved in the complaint process shall suffer retaliation because of his/her filing of, or participation in, the complaint process. The SBTCE/Midlands Technical College employee disciplinary procedures will be used to address any case of alleged retaliation. (Reference SBTCE Procedure 8-5-100.1 Disciplinary Action – employees and MTC Procedure 2.7.1 Disciplinary Actions – employees; and SBTCE Procedure 3-2-106.1 Student Code of Conduct and MTC Procedure 5.1.1 Student Code).

IV. Filing a Complaint

If an employee believes he/she has been subject to discrimination or harassment, the employee is encouraged to file a formal complaint with the Human Resource Management (HRM) office by submitting a Harassment/Discrimination Complaint Form (available on HRM’s webpage located on MyMTC).

V. Mandatory Employee Reporting of Discrimination, Harassment and Sexual Misconduct

All employees are responsible for helping to eliminate discrimination, harassment, and/or sexual misconduct. If any employee believes that he/she received information, experienced, or possibly witnessed discrimination, harassment, and/or sexual misconduct, the employee should immediately notify his/her supervisor, a human resource representative, Title IX Coordinator, or any other appropriate official.

Employees who are statutorily prohibited from reporting such information, such as licensed-health care professionals or pastoral staff who provide health or counseling services to students and/or staff as a part of their job duties, are exempt from these reporting requirements unless they receive the report in a context outside of direct patient care, such as while acting in a teaching capacity.

A responsible employee includes any employee who: has authority to take action to redress discrimination, harassment, and sexual misconduct; who has the duty to report discrimination, harassment, and sexual misconduct or other types of misconduct to the Title IX Coordinator or any other appropriate official; or whom an employee or student could reasonably believe has this authority or responsibility.

VI. Off-Campus Incidents or Conduct

Conduct that occurs off-campus can be the subject of a complaint or report and will be evaluated to determine whether it violates this policy/procedure (i.e. if off-campus harassment has continuing effects that create a hostile environment on campus). Allegations of off-campus sexual misconduct are of particular concern and should be brought to the college's attention.

VII. Investigation Procedure

Discrimination, harassment, and/or sexual misconduct complaints should be investigated as promptly and thoroughly as possible. An appropriate Midlands Technical College official will normally conduct the investigation, but in certain circumstances, another impartial, outside investigator may be designated. If the investigation reveals that the complaint is valid and that discrimination, harassment, and/or sexual misconduct has occurred, the college will immediately take action within its control to protect the victim from discrimination, harassment, and/or sexual misconduct and make every effort within its control to prevent it from occurring in the future. Persons found to be in violation of the Non-Discrimination, Anti-Harassment, and Sexual Misconduct policy/procedure will be subject to immediate and appropriate disciplinary action proportionate to the seriousness of the offense.

VIII. Corrective Action

In accordance with SBTCE Disciplinary Action Procedure 8-5-100.1 and MTC Disciplinary Actions Procedure 2.7.1, a finding of discrimination, harassment, and/or sexual misconduct will be addressed on a case by case basis. Consequences for violating this policy will depend upon the facts and circumstances of each particular situation. The severity of the corrective action will depend on the frequency and/or severity of the offense and any history of past discriminatory, harassing and/or sexual misconduct. A finding of discrimination, harassment, and/or sexual misconduct that creates a hostile environment or interferes with a tangible employment benefit or educational benefit, may be cause for disciplinary action, up to including termination of employment.

IX. Confidentiality

Midlands Technical College wishes to create a safe environment in which individuals are unafraid to discuss concerns. Therefore, the college will always maintain confidentiality to the fullest extent possible. However, confidentiality of the allegation and identity of the complainant cannot be guaranteed because the college must also consider fairness to the individual accused, as well as the safety and welfare of all members of the college community. These considerations may require the college to disclose the allegation and identity of the complainant to the accused and to other college officials.

X. Dissemination of the Policy/Procedure, Educational Programs, and Training

The college has the responsibility to conduct periodic training for employees and supervisors on all aspects of the non-discrimination, anti-harassment, and sexual misconduct policy/procedure. The college shall:

1. Offer non-discrimination, anti-harassment, and sexual misconduct prevention, training, and education to the college community; provide nondiscrimination, anti-harassment and sexual misconduct prevention training and education to each supervisory employee;
2. Offer prevention educational programs to incoming students and new employees to promote awareness of rape and acquaintance rape, domestic violence, dating violence, sexual assault, and stalking, including the definition of consent, option for bystander intervention, and risk reduction awareness information;
3. Offer annual training on issues related to sexual violence for individuals conducting formal investigations of reports and conducting hearings;
4. Provide all members of the college community with a process for reporting sexual harassment or sexual violence in accordance with the policy;
5. Identify on-and-off campus resources for reporting sexual harassment or sexual violence, including law enforcement, medical and victim support services;
6. Provide prompt and effective responses of reports of sexual harassment, sexual violence, or reports of retaliation related to reports of sexual harassment or sexual violence in accordance with the Midlands Technical College policy;
7. Provide written notification for reports of sexual violence to campus law enforcement for publication in the annual Campus Security Report;
8. Designate trained individuals to serve as resources for members of the College community who have questions or concerns regarding behavior that may be sexual harassment or sexual violence.

XI. College Title IX Coordinator Roles and Responsibilities

The College Title IX Coordinator, is appointed by the College President and is charged with administering, monitoring, and oversight of the overall implementation of Title IX compliance at the college, including coordination of education programs and training regarding discrimination, harassment and sexual misconduct and/or of all complaints related to Title IX issues for all students, faculty, staff, and other members of the community.

In accordance with Title IX regulations, it is the responsibility of the college to notify all students and employees of the name or title and contact information of the person designated to coordinate the college compliance with Title IX. Should the college designate more than one Title IX Coordinator, the notice should describe each coordinator's responsibilities (i.e., who will handle complaints by students, faculty, and other employees).