



POLICY

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SEXUAL VIOLENCE RESPONSE

MTC 117

I. Purpose of this Policy

Mitchell Technical College is committed to providing a safe educational and working environment for its students, faculty, staff and other members of the MTC community. The College prohibits sexual violence and sexual assault, (which, along with sexual harassment, prohibited by MTC Policy 115, are forms of “sexual misconduct”), domestic violence and dating violence (collectively, “relationship violence”), and stalking. This conduct is disruptive to the learning and working environment and will not be tolerated by the College. The College is committed to preventing sexual misconduct, relationship violence, and stalking, as well as addressing its effects on the College community. MTC has adopted this Policy in order to inform students, faculty, staff and other members of the MTC community of their rights and responsibilities in the event they are or have knowledge of someone involved in an incident of sexual misconduct, relationship violence or stalking, and of the services available to victims of sexual misconduct, relationship violence, and stalking.

II. Scope of this Policy

This Policy applies to all members of the MTC community, including, but not limited to, students, faculty and staff, and it covers prohibited conduct that: occurs on campus; occurs in connection with MTC programs or activities, including academic, educational, extracurricular, or other programs and activities; or otherwise affects the MTC community. In certain instances, this Policy applies to third parties (e.g., visitors, volunteers, vendors, and contractors while on MTC property, participating in an MTC-sponsored activity, or providing services to the College, or applicants for admission to or employment with the College). This Policy applies equally to all regardless of an individual’s sex, gender, sexual orientation, gender identity or gender expression. All academic and administrative units of the College must comply with this Policy.

III. Definition of Affirmative Consent

Sexual activity of any kind requires affirmative consent, which is defined as a clear, unambiguous, knowing, informed, and voluntary agreement between all participants to engage in sexual activity. Consent is active, not passive. Silence or lack of resistance cannot be interpreted as consent. Seeking and having consent accepted is the responsibility of the person(s) initiating each specific sexual act

regardless of whether the person initiating the act is under the influence of drugs and/or alcohol. Consent to any sexual act or prior consensual sexual activity between or with any party does not constitute consent to any other sexual act. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression. Consent may be initially given but withdrawn at any time. When consent is withdrawn or cannot be given, sexual activity must stop. Consent cannot be given when a person is incapacitated. Incapacitation occurs when an individual lacks the ability to fully, knowingly choose to participate in sexual activity. Incapacitation includes impairment due to drugs or alcohol (whether such use is voluntary or involuntary), the lack of consciousness or being asleep, being involuntarily restrained, if any of the parties are under the age of 17, or if an individual otherwise cannot consent. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.

IV. Definitions of Prohibited Conduct

A. Sexual Violence

Sexual violence encompasses sexual assault and is a form of sexual harassment. Sexual harassment, which is a form of discrimination, violates federal and state law and MTC Policy 115.

Sexual violence includes physical sexual acts that are performed against a person's will or where a person cannot give consent. Physical resistance need not occur to fulfill the definition of sexual violence. Examples of sexual violence include, but are not limited to:

- Sexual intercourse or other sexual acts in the absence of consent;
- Rape (including "date rape") or attempted rape;
- Any unwanted sexual contact with another person's body;
- Nonconsensual oral sex; and
- Sexual assault (defined below), sexual battery, or sexual coercion.

B. Sexual Assault

Sexual assault includes non-consensual sexual intercourse and non-consensual sexual contact. Non-consensual sexual intercourse is any act of sexual intercourse with another individual without affirmative consent. Sexual intercourse includes vaginal or anal penetration, however slight, with any body part or object, or oral penetration involving mouth to genital contact. Non-consensual sexual contact is any intentional touching of the intimate parts of another person, causing another to touch one's intimate parts, or disrobing or exposure of another without consent. Intimate parts may include genitalia, groin, breast, or buttocks, or clothing covering them, or any other body part that is touched in a sexual manner. Sexual contact also includes attempted sexual intercourse.

C. Dating Violence

Dating violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

D. Domestic Violence

Domestic violence means “abuse” occurring between:

- current or former spouses or cohabitants;
- persons who have a child in common; or
- persons currently or formerly involved in a dating relationship,

where “abuse” means any of the following acts:

- an act that causes serious bodily harm;
- an act that places a person eligible for relief in fear of imminent serious bodily harm;
- assault in any degree;
- rape or sexual offense or attempted rape or sexual offense in any degree;
- false imprisonment; or
- stalking.

E. Stalking

Stalking means a malicious course of conduct that includes approaching or pursuing another where the person intends to place or knows or reasonably should have known the conduct would place another in reasonable fear:

- of serious bodily injury;
- of an assault in any degree;
- of rape or sexual offense or attempted rape or sexual offense in any degree;
- of false imprisonment;
- of death; or
- that a third person likely will suffer any of the acts listed above.

F. Prohibited Relationships by Persons in Authority

Sexual or other intimate relationships in which one party maintains a direct supervisory or evaluative role over the other party are prohibited. In general, this includes all sexual or other intimate relationships between students and their employers, supervisors, professors, coaches, advisors or other MTC employees. Similarly, MTC employees (faculty, staff, and students) who supervise or otherwise hold

positions of authority over others are prohibited from having a sexual or other intimate relationship with an individual under their direct supervision.

Sexual relations between persons occupying asymmetrical positions of power, even when both consent, raise suspicions that the person in authority has violated standards of professional conduct and potentially subject the person in authority to charges of sexual harassment based on changes in the perspective of the individuals as to the consensual nature of the relationship. Similarly, these relationships may impact third parties based on perceived or actual favoritism or special treatment based on the relationship.

Therefore, persons with direct supervisory or evaluative responsibilities who contemplate beginning or are involved in such relationships are required to promptly: 1) discontinue any supervising role or relationship over the other person; and 2) report the circumstances to their own supervisor. Failure to fully or promptly comply with these requirements is a violation of this policy, and the person in authority could be subject to disciplinary action, up to and including dismissal from employment by the College.

V. Resources

MTC is committed to treating all members of the community with dignity, care and respect. The College recognizes that deciding whether or not to make a report of sexual violence, either to MTC or law enforcement, and choosing how to proceed can be difficult decisions. Making a report means telling someone in authority what happened, in person, by telephone, in writing, or by email. All individuals are encouraged to seek the support of campus and community resources. These trained professionals can provide guidance in making decisions, information about available resources and procedural options, and assistance to either party in the event that a report and/or resolution under this policy is pursued. Individuals are encouraged to use all available resources on and off campus, regardless of when or where the incident occurred.

There are many resources available on campus and in the surrounding community. As detailed below, there are Confidential Resources that by law cannot share information without the consent of the individual seeking assistance, except for extreme circumstances, such as a health and/or safety emergency.

A. On-campus Resources

On-campus options to obtain assistance and guidance confidentially include:

**MTC Student Services
Center for Student Success, Campus Center
(605) 995-3097 Option 4**

MTC Center for Student Success staff will maintain confidentiality except for extreme circumstances, such as a health and/or safety emergency. MTC is also bound by mandatory reporting laws in certain

situations, including the sexual abuse of a minor. **Any MTC employee who suspects that a child under 18 years of age has been neglected or physically abused (including sexual abuse and emotional abuse) by a parent or other person, will report orally or in writing this information to MTC administration. MTC administration, with the employee, will immediately report this information to the state's attorney; or the department of social services; or the county sheriff; or the city police.**

In all cases, MTC staff will maintain the privacy of an individual's information within the limited circle of those involved in the resolution of a complaint under this policy.

B. Off-campus Resources

Off-campus options to obtain assistance and guidance confidentially (These outside options do not provide any information to the campus.):

1. Crisis services offices will generally maintain confidentiality unless you request disclosure and sign a consent or waiver form. More information on an agency's policies on confidentiality may be obtained directly from the agency.

Mitchell Area Safe House
<http://mitchellareasafehouse.org/>
(605) 996-2765

2. Off-campus healthcare providers. (Medical office and insurance billing practices may reveal information to the insurance policyholder, including medication and/or examinations paid for or administered. Even individuals who can typically maintain confidentiality are subject to exceptions under the law, including when an individual is a threat to him or herself or others and the mandatory reporting of child abuse.)

Avera Queen of Peace Hospital
<http://www.avera.org/queen-of-peace>
(605) 995-2000

3. Assistance can also be obtained through:
 - a. SurvJustice: <https://survjustice.org>
 - b. Legal Momentum: <https://www.legalmomentum.org>
 - c. Pandora's Project: <https://pandys.org>
 - d. GLBTQ Domestic Violence Project: <http://www.glbtqdv.org>
 - e. RAINN: <https://www.rainn.org>
 - f. Safe Horizons: <http://www.safehorizon.org>

(Note that these resources are for crisis intervention, resources, and referrals, and are not reporting mechanisms, meaning that disclosure on a call to a hotline does not provide any information to

the campus. Victims/survivors are encouraged to additionally contact a campus confidential or private resource so that the campus can take appropriate action in these cases.)

VI. Reporting

MTC encourages all individuals to seek assistance from a medical provider and/or law enforcement immediately after an incident of sexual violence. This is the best option to ensure preservation of evidence and to begin a timely investigative response.

The College encourages all individuals to make a report to the College and to local law enforcement. Reporting options are not mutually exclusive. Both internal and criminal reports may be pursued simultaneously.

MTC has a strong interest in supporting victims and survivors of sexual violence or other forms of prohibited conduct and encourages all individuals or third-party witnesses to report any incident to the College.

Making a report means telling someone in authority what happened — in person, by telephone, in writing, or by email. At the time a report is made, a Complainant does not have to decide whether or not to request any particular course of action, nor does a Complainant need to know how to label what happened. Choosing to make a report, and deciding how to proceed after making the report, can be a process that unfolds over time.

MTC provides support that can assist each individual in making these important decisions, and to the extent legally possible will respect an individual's autonomy in deciding how to proceed. In this process, MTC officials will balance the individual's interest with its obligation to provide a safe and non-discriminatory environment for all members of the MTC community.

Any individual who reports sexual violence or other forms of prohibited conduct can be assured that all reports will be investigated and resolved in a fair and impartial manner. A Complainant, a Respondent, and all individuals involved can expect to be treated with dignity and respect. In every report under this policy, the College will make an immediate assessment of any risk of harm to the Complainant or to the broader campus community and will take reasonable steps necessary to address those risks. These steps will include interim measures to provide for the safety of the individual and the campus community.

A. Emergency and External Reporting Options

The College will help any MTC community member to get to a safe place and will provide transportation to the hospital, coordination with law enforcement, and information about on- and off-campus resources and options for resolution.

1. To file a criminal complaint with local law enforcement:
 - a. Mitchell Public Safety, (605) 995-8400 at 201 West 1st Ave.

- b. Davison County Sheriff, (605) 995-8630 at 1015 South Miller Ave.
2. To disclose confidentially the incident and obtain services from the State of South Dakota, City of Mitchell, and Davison County:
 - a. HOTLINE (605) 996-4440
 - b. Additional disclosure and assistance options are catalogued by the South Dakota Coalition Ending Domestic and Sexual Violence: <http://www.sdcedsv.org/> or by calling (605) 945-0869

B. Campus Reporting Options

MTC encourages all individuals to report misconduct to any College employee that they trust and with whom they feel comfortable. **In general, most MTC employees do not have legally protected confidentiality.** Under Title IX, MTC is required to take immediate and corrective action if a “responsible employee” knew or, in the exercise of reasonable care, should have known about sexual or gender-based harassment or violence that creates a hostile environment on the campus.

MTC requires that all “responsible employees” share a report of misconduct with the Title IX Coordinator. The Title IX Coordinator will conduct an initial assessment of the conduct, the Complainant’s expressed preferences, if any, as to course of action, and the necessity for any interim remedies or accommodations to protect the safety of the Complainant or the community.

All MTC community members, even those who are not obligated to do so by this policy, are strongly encouraged to report information regarding any incident of sexual harassment or other forms of prohibited conduct directly to the Title IX Coordinator. The College cannot take appropriate action unless an incident is reported to the College.

To report confidentially an incident to one of the following MTC officials, who by law may maintain confidentiality, and can assist in obtaining services:

**MTC Student Services
Center for Student Success, Campus Center
(605) 995-3097 Option 4**

or

**Title IX Coordinator/Vice President
Campus Center
(605) 995-3023**

Reports will be investigated in accordance with College policy. If a victim/survivor wishes to keep his/her identity private, he or she may call the Title IX Coordinator/Vice President at (605) 995-3023 anonymously to discuss the situation and available options.

When the accused is an employee of an affiliated entity or vendor of the College, MTC officials will, at the request of the victim/survivor, assist in reporting to the appropriate office of the vendor or affiliated entity and, if the response of the vendor or affiliated entity is not sufficient, assist in obtaining a persona non grata letter, subject to legal requirements and MTC policy.

You may withdraw your complaint or involvement from the MTC process at any time.

VII. Formal Procedures

At any time, an individual may choose to initiate a formal procedure by reporting it to the designated Title IX Coordinator.

A. Sexual Violence Report

A sexual violence report will be completed by the person filing the complaint or by the designated administrator. Information included in the report should include, but is not limited to, the following:

- Date report is filed;
- Complainant's name and address;
- Date(s) of the incident(s);
- Description of the incident(s);
- Name(s) of the person(s) involved in the incident(s);
- Name(s) of any witness(es) to the incident(s);
- What action, if any, has been taken;
- Requested resolution of the complaint; and
- Signature of the complainant will be requested, but not required.

MTC's online complaint form may also be used to report an incident of sexual violence. The form can be found at <https://www.mitchelltech.edu/about-MTC/informational-resources/complaints>.

B. Designated Title IX Coordinator

The school board hereby designates the Vice President as the designated administrator to receive reports or complaints of sexual violence from any individual, employee, or victim of sexual violence. If the complaint involves the designated administrator, the complaint shall be filed directly with the President of the College. If the complaint involves the President, the complaint shall be filed directly with the Superintendent of the Mitchell School District 17-2 as applicable. If the complaint involves the Superintendent, the complaint shall be filed with the Vice President of Mitchell Technical College as appropriate.

C. Submission of a Complaint or Report of Sexual Assault

Submission of a complaint or report of harassment will not affect the individual's employment or work assignments.

D. Confidentiality

The College will make attempts to respect the confidentiality of the complainant and the individual(s) against whom the complaint is filed as much as possible consistent with the College's legal obligations and the necessity to investigate allegations of sexual assault and take disciplinary action when the conduct has occurred.

E. Required Reporting

If the accusations include possible criminal activity such as molestation, sexual battery, or similar contact, the designated administrator shall comply with all mandatory state reporting requirements including, but not limited to, contact with the State Department of Social Services or police authorities.

F. Due Process

When formal proceedings involve accusations against a student or employee of MTC, the accused is entitled to due process provisions of the United States and South Dakota State constitutions, and as specified in MTC Policy #1044 Student Due Process Rights.

G. College Investigation and Action

1. The designated administrator will conduct an investigation to gather data regarding the alleged sexual violence, take appropriate action regarding the complaint, and render a decision in writing to the complainant, with a copy to the President and Superintendent, within fourteen (14) calendar days of receipt of the formal complaint. The date of receipt of the complaint will be that date when received in the office of the designated administrator.
2. In determining whether alleged conduct constitutes sexual violence, the following will be included in conducting the investigation: the surrounding circumstances, the nature of the advances, relationships between the parties involved, and the context in which the alleged incidents occurred.
3. The investigation may consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also consist of any other methods and documents deemed pertinent by the investigating party.
4. In addition, immediate steps may be taken at any point in the investigation to protect the complainant, students, and employees pending completion of an investigation of alleged incident.
5. During the investigation all parties directly involved in the complaint may have legal or other representation. If any party elects to be represented at any step of the complaint procedure,

the name of the representative must be declared in writing to the designated administrator along with the filing of the complaint, notification of any investigation, or the filing of any appeal.

6. If the complainant is not satisfied with the decision rendered by the designated administrator, s/he may appeal the decision to the President within seven (7) calendar days following receipt of the decision. The appeal must include the original complaint form, a copy of the decision from the designated administrator, and a written statement as to a reason for the appeal. The date of receipt of the appeal will be that date as stamped on the appeal when received in the office of the President.
7. The President or designee will review the materials submitted, may investigate the circumstances, and respond in writing within fourteen (14) calendar days from the date of the appeal. At the President's level, the appeal process may or may not include a conference with the parties involved.
8. If the complainant is not satisfied with the decision rendered by the President, s/he may appeal the decision to the Superintendent within seven (7) calendar days following receipt of the decision. The appeal must include the original complaint form, copies of the decisions from the designated administrator and the President, and a written statement as to a reason for the appeal. The date of receipt of the appeal will be that date as stamped on the appeal when received in the office of the Superintendent.
9. The Superintendent or designee will review the materials submitted, may investigate the circumstances, and respond in writing within fourteen (14) calendar days from the date of the appeal. At the Superintendent's level, the appeal process may or may not include a conference with the parties involved.

VIII. Options for Protection and Accommodations

When the accused is a student, victims may choose one of the following options for protection and/or accommodations:

- A. To have MTC issue a "No Contact Order," meaning that continuing to contact the protected individual is a violation of MTC policy subject to additional conduct charges; if the accused and a protected person observe each other in a public place, it is the responsibility of the accused to leave the area immediately and without directly contacting the protected person.
- B. To have assistance from MTC officials in obtaining an Order of Protection from local law enforcement.
- C. To receive a copy of the Order of Protection or equivalent and have an opportunity to meet or speak with an MTC official who can explain the order and answer questions about it, including

information from the Order about the accused's responsibility to stay away from the protected person(s); that burden does not rest on the protected person(s).

- D. To an explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension.
- E. To have assistance from MTC to call on and assist local law enforcement in effecting an arrest for violating such an order if it occurs on campus.
- F. When the accused is a student and presents a continuing threat to the health and safety of the community, to have the accused subject to interim suspension pending the outcome of a conduct process.
- G. When the accused is not a member of the MTC community, to have assistance from MTC officials and local law enforcement in obtaining a persona non grata letter, subject to legal requirements and MTC policy.
- H. To obtain reasonable and available interim measures that effect a change in academic, employment, or other applicable arrangements in order to ensure safety, prevent retaliation, and avoid an ongoing hostile environment. While victims/survivors may request accommodations through any of the offices referenced in this policy, the following office can serve as a point to assist with these measures: Center for Student Success, Campus Center, (605) 995-3097 Option 4.

IX. Institutional Crime Reporting

Reports of certain crimes occurring in certain geographic locations will be included in the MTC Clery Act Annual Security Report in an anonymized manner that neither identifies the specifics of the crime or the identity of the victim/survivor.

MTC is obligated to issue timely warnings of Clery Act crimes occurring within relevant geography that represent a serious or continuing threat to students and employees (subject to exceptions when potentially compromising law enforcement efforts and when the warning itself could potentially identify the victim/survivor). A victim/survivor will never be identified in a timely warning.

Mitchell Technical College does reserve the right to notify parents when there exists a substantial concern for the student's safety and well-being, pursuant to the provisions of the Federal Education Right to Privacy Act.

X. Campus Climate Assessment

Climate assessments afford institutions the opportunity to better understand their campus and to make informed decisions when it comes to providing a safe educational environment. MTC will biennially

conduct a uniform climate survey that analyzes prevalence and attitudes regarding sexual harassment, including sexual violence, and other related crimes.

The survey will address student and employee knowledge about:

- The Title IX Coordinator's role;
- Campus policies and procedures addressing sexual assault;
- How and where to report sexual violence as a victim/survivor or witness;
- The availability of resources on and off campus, such as counseling and academic assistance;
- The prevalence of victimization and perpetration of sexual assault, domestic violence, dating violence, and stalking on and off campus during the last year;
- Bystander attitudes and behavior; and
- Whether victims/survivors reported to the College and/or police, and reasons why they did or did not report.

This policy may be changed by the President or designee should federal and/or State legislation require a different process or duplicate efforts to assess campus climate via survey.

XI. Student Orientation and Ongoing Education

Mitchell Technical College believes that sexual violence prevention training and education cannot be accomplished via a single day or a single method of training. To that end, MTC will continue to educate all new and current students using a variety of best practices aimed at educating the entire MTC community in a way that decreases violence and maintaining a culture where sexual assault and acts of violence are not tolerated.

All new first-year students will, during the course of their first semester at MTC, receive training on the following topics, using a method and manner appropriate to the institutional culture of the MTC campus:

- The institution prohibits sexual harassment, including sexual violence, other violence or threats of violence, and will offer resources to any victims/survivors of such violence while taking administrative action regarding any accused individual within the jurisdiction of the institution;
- Relevant definitions including, but not limited to, the definitions of sexual violence and consent;
- Policies apply equally to all students regardless of sexual orientation, gender identity, or gender expression;
- The role of the Title IX Coordinator and other relevant offices that address sexual violence prevention and response;
- Awareness of violence, its impact on victims/survivors and their friends and family, and its long-term impact;

- The Sexual Violence Response Policy;
- How to report sexual violence and other crimes to college officials and/or local law enforcement;
- How to obtain services and support;
- Bystander intervention and the importance of taking action, when one can safely do so, to prevent violence;
- Risk assessment and reduction including, but not limited to, steps that potential victims/survivors and potential assailants and bystanders to violence can take to lower the incidence of sexual violence; and
- Consequences and sanctions for individuals who commit these crimes.

The process is not limited to a single day of orientation but recognizes that students enroll at different times and gives MTC the flexibility to best educate students at a time and manner that can most effectively bring these points to light. Students at MTC shall receive general and specialized training in sexual violence prevention. MTC will conduct a campaign, compliant with the requirements of the Violence Against Women Act, to educate the student population. Further, the institution will, as appropriate, provide or expand specific training to include groups such leaders and officers of registered/recognized student organizations and online and distance education students.

Methods of training and educating students may include, but are not limited to:

- President's welcome message;
- Peer theater and peer educational programs;
- Online training;
- Social media outreach;
- First-year seminars and transitional courses;
- Course syllabi;
- Faculty teach-ins;
- Posters, bulletin boards, and other targeted print and email materials;
- Programming surrounding large recurring campus events;
- Partnering with neighboring colleges to offer training and education; and
- Partnering with state and local community organizations that provide outreach, support, crisis intervention, counseling and other resources to victims/survivors of crimes to offer training and education. Partnerships can also be used to educate community organizations about the resources and remedies available on campus for students and employees seeking services.

Legal Reference: Title IX of the Education Amendments of 1972
Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990
Violence Against Women Act of 1994