

SEXUAL MISCONDUCT POLICY & PROCEDURES

2017/18

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TITLE IX COORDINATOR & SEXUAL MISCONDUCT POLICY

TITLE IX COORDINATOR

In compliance with Title IX of the Education Amendment of 1972, McNally Smith College of Music prohibits discrimination on the basis of sex or gender in its programs or activities. The Title IX Coordinator organizes the college's efforts to comply with this law and its regulations, including the investigation of any noncompliance with or activity prohibited by Title IX. Prohibited activity includes sex discrimination, sexual harassment, and other sexual misconduct.

Any inquiries regarding compliance may be directed to the Title IX Coordinator for McNally Smith College of Music:

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SEXUAL MISCONDUCT POLICY

I. Sexual Misconduct Prohibited

Members of an educational community – students, faculty, staff and administration – must be able to work in an atmosphere of mutual respect and trust. Any violation of trust, any form of intimidation or exploitation, damages the institution's educational process by undermining the essential freedoms of inquiry and expression. Students, teachers, and staff must feel personally secure in order for real learning to take place. McNally Smith College of Music prohibits and will not tolerate discriminatory practices, sexual harassment, or sexual assault of any member of this college community.

II. Scope & Applicability

McNally Smith is committed to preventing and eliminating sexual misconduct in the college community. This policy applies to:

- All MSCM employees, including full-time and part-time staff, full-time and adjunct faculty, and temporary staff.
- All persons taking courses at MSCM, including full-time and part-time students, degree and non-degree students, and graduate or undergraduate students.
- All participants in a MSCM study abroad program, including school sponsored ensembles, KEI or AIFS programs, and short-term and long-term education opportunities.

- All persons residing in MSCM residential housing, whether or not currently enrolled or working at the college.
- All members of the MSCM Board of Directors.

The individuals listed above are referred to collectively as **Covered Persons**. This policy prohibits sexual misconduct by or against a Covered Person, both on and off the MSCM campus.

In addition, sexual misconduct is prohibited by certain **third parties** including all persons visiting MSCM, all persons volunteering at or volunteering for MSCM, and all persons or entities providing services to MSCM.

III. Sanctions

MSCM will take action to prevent sexual misconduct and anyone who engages in sexual misconduct prohibited by this policy will be subject to disciplinary action. The specific disciplinary action will depend on the particular facts and circumstances and may include sanctions up to and including expulsion from MSCM, termination of employment from MSCM, and prohibition from campus. Third parties subject to this policy are also subject to sanctions for violations of this policy.

IV. Formal Adjudication

Determinations of responsibility for violations of this policy and sanctions imposed are considered a formal adjudication by MSCM and are subject to the reporting and disclosure requirements and prohibitions under the Clery Act and the Family Educational Rights and Privacy Act (FERPA).

V. Behavior that Constitutes Prohibited Sexual Misconduct

For the purposes of this policy sexual misconduct includes sex discrimination, sexual harassment, actual or attempted sexual assault, non-consensual sexual contact or intercourse, sexual exploitation, dating or domestic violence, and stalking. All circumstances will be considered when determining whether conduct constitutes sexual misconduct. In reference to this policy, the following terms will be defined:

Consent – a verbal affirmation (say 'yes') that indicates a person freely agrees to engage in a sexual act at the time of the act, subject to the following:

- In order to give consent, one must be of legal age.
- Consent to one form of sexual activity does not imply consent to other forms of sexual activity.

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- Silence or failing to resist a sexual act does not constitute consent.
- Consent must be freely given and may be freely taken away at any time.
- A current or previous relationship does not imply consent.
- A person who is asleep, unconscious, impaired by drugs, alcohol, disability, or other means cannot consent to a sexual act, regardless whether the person consumed the drugs or alcohol voluntarily.
- Use of alcohol or drugs does not excuse behavior that violates this policy.
- Corroboration of a victim's testimony is not required to show lack of consent.

Force – the use of physical violence to gain sexual access, including threats, intimidation, and imposing on someone physically.

Academic Freedom – the college actively encourages and seeks to facilitate free expression, including the challenge and debate of diverse and widely held beliefs and opinions. In situations where academic freedom conflicts with sex discrimination or sexual harassment, the existence of this potential conflict will be considered in consultation with the Dean of Academics.

1. Sex Discrimination

Title IX of the Education Amendments of 1972 requires gender equity for students in every educational program that receives federal funding. No person in the United States shall, on the basis of sex or gender, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, including discrimination against pregnant or parenting students. As such, McNally Smith College does not include gender or sexual orientation when determining acceptance for admission to the college or throughout the student's matriculation toward a diploma or degree at the school.

In addition, McNally Smith College of Music is an Equal Opportunity Employer and, as such, pledges to provide equal employment opportunity for all applicants and employees with regard to recruitment, hiring, transfer, promotion, compensation, training, fringe benefits, and all other aspects of employment. All personnel actions will be administered without regard to race, color, creed, national origin, religion, age, gender, sexual orientation, political affiliation, military status, disability, or any other protected characteristic.

The College's Equal Employment Opportunity Policy shall be supported throughout the College. It is the

responsibility of all departments and all employees to ensure compliance with the College's policy. Any instances of sex discrimination at McNally Smith should be reported to the Title IX Coordinator or a Title IX Deputy immediately.

A complaint of discrimination can be filed by anyone who believes that a school that receives Federal financial assistance has discriminated against someone on the basis of race, color, national origin, sex, gender, disability, or age. The person or organization filing the complaint need not be a victim of the alleged discrimination, but may complain on behalf of another person or group. For information on how to file a complaint with US Department of Education Office of Civil Rights (OCR), visit:

<http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>

or contact OCR's Customer Service Team at 1-800-421-3481.

2. Sexual Harassment

McNally Smith is committed to preventing and eliminating sexual harassment in the college community. McNally Smith strictly prohibits any practice or behavior that constitutes sexual harassment of employees, students, visitors, or any other persons associated with the College. Anyone found to have engaged in such conduct shall be subject to disciplinary action, up to and including dismissal. Sexual harassment is a form of sex discrimination prohibited by Title VII of the Civil Rights Act of 1964, as amended, and by Title IX of the Education Amendments of 1972.

Sexual harassment in education includes any unwanted and unwelcome sexual behavior that interferes with a student's access to educational opportunities. The Supreme Court has confirmed that schools have an obligation under Title IX to prevent and address harassment against students, regardless of whether the harassment is perpetrated by peers, teachers, or other school officials. Sexual harassment involves unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical behaviors related to a person's gender, sexual identity, or sexuality when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's academic advancement or employment;
2. submission to or rejection of such conduct by an individual is used as the basis for employment decisions or academic decisions affecting such individual; or
3. such conduct has the purpose or effect of unreasonably interfering with an individual's work or

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academic performance or creating an intimidating, hostile, or offensive work or academic environment.

Items (1) and (2) above describe what is known as quid pro quo (this for that) harassment. This type of harassment involves promise of reward or threat of punishment, explicitly or implicitly, for sexual cooperation. In quid pro quo one incident is enough to constitute sexual harassment. Item (3) above describes what is known as “hostile environment” harassment. Though this type of harassment is not always recognized, and often goes unreported and unpunished, it is nevertheless an offense under Federal and College guidelines. Generally, a pattern of behavior is required to create a hostile environment, though such behavior may be so egregious that a single incident is enough to create such an environment.

Sexual harassment contains these two elements:

- Sexual harassment is behavior that is unwanted and unwelcome.
- Sexual harassment is behavior related to the sex or sexual identity, gender identity or expression, or sexual orientation of the person.

Because sexual conduct only becomes unlawful when it is unwelcome, most courts have not considered the intent of the alleged harasser relevant in determining whether sexual harassment has occurred. Silence is not evidence of consent. Acquiescence, especially to a person with authority to give or withdraw such things as employment or grades, or when the two individuals have unequal power, should not be considered evidence that the behavior is welcome. Sexual harassment often occurs in situations where one person is in a position of power or authority over another, but it can occur where there is no evident power differential. Both women and men can be harassed, and harassment can be same-sex harassment.

Gender harassment is sex-based behavior that is non-sexual in nature. Gender harassment does not involve sexual compliance but its effect is to dominate or degrade an individual or group of people. The Equal Employment Opportunity Commission guidelines recommend that the “totality of the circumstances” be considered in determining whether sexual harassment has occurred. Thus, the appropriateness or legitimacy of behavior or objects is largely determined by the context and purpose of their presence in a particular situation.

Harassment may be verbal, visual, or physical.

- **Verbal** harassment may include comments on one’s appearance or body; questions about one’s intimate relationships; graphic, obscene, degrading com-

ments or jokes. Suggestive sounds, ridicule, written or oral invitations and advances that are inappropriate and unwelcome may be harassment.

- **Visual** conduct that can be harassing includes such actions as leering, staring at certain body parts, and displaying sexual objects, offensive posters or pictures.
- **Physical** harassment includes, but is not limited to, any unwelcome hugging or touching, pinching, fondling, or kissing.

3. Sexual Assault

The following types of misconduct, which often are referred to generally as sexual assault, constitute criminal sexual misconduct under Minnesota Law and are prohibited by this policy:

- **Sexual Coercion** – unreasonable pressure for sexual activity applied through words or circumstances that cause a person to fear the other person will inflict bodily harm. May include confining a person or using physical size or strength to cause a person to submit to an unwanted sexual act. When a person makes clear that person does not want sex, wants to stop, or does not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
- **Non-Consensual Sexual Contact** – any intentional touching, however slight, by any person upon the breasts, buttock, groin, genital area, inner thigh of another person or any other body part, or of the other person’s clothing over these areas, with any body part or any object, seminal fluid, or sperm with sexual or aggressive intent without consent and/or by force.
- **Non-Consensual Sexual Intercourse (commonly referred to as rape)** – any sexual intercourse or penetration (vaginal, oral, or anal) by any body part or any object by any person upon any other person without consent and/or by force.

4. Sexual Exploitation

Sexual exploitation occurs when a person takes non-consensual or abusive sexual advantage of another person and it does not otherwise constitute one of the other sexual misconduct offenses. This can be for the perpetrator’s own advantage or benefit or the advantage or benefit of someone else. Examples include, but are not limited to:

- Exposing one’s genitals
- Knowingly transmitting a sexually transmitted

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disease

- Non-consensual video or audio taping of sexual activity
- Possession of child pornography
- Prostituting another person
- Voyeurism

5. Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim where the existence of such a relationship shall be determined by the length, type, and frequency of interactions between the persons involved. Dating violence is prohibited by Minnesota Law.

6. Domestic Violence

A felony or 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; or a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner. Domestic violence is prohibited by Minnesota Law.

7. Stalking

Engaging in a course of 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. Stalking is prohibited by Minnesota Law.

VI. Reporting or Raising Concerns about Sexual Misconduct

MSCM is committed to investigating, resolving, and preventing sexual misconduct and strongly encourages victims to tell someone about sexual misconduct. All employees will notify a Trained Responder when they become aware of sexual misconduct to ensure the victims will receive appropriate support and the school will fulfill its commitment to prevent and address sexual misconduct and comply with applicable law.

- **Complainant** - An individual who experiences or alleges sexual misconduct prohibited by this policy.
- **Respondent** - An Individual who is alleged to have engaged in sexual misconduct prohibited by this policy.
- **Bystander** - Any individual who becomes aware of an incident or allegation of sexual misconduct that is prohibited by this policy.

- **Trained Responders** - The Title IX Coordinator, Title IX Deputies, or Title IX Investigators are campus officials who have received training on how to handle situations involving sexual misconduct and will provide advice and assistance to Complainants and Bystanders and will help ensure that MSCM responds appropriately and in accordance with applicable law.
- **Confidential Resource** - An individual who provides confidential assistance and support to persons who have experienced or are otherwise involved in sexual misconduct. Confidential Resources are not required to notify a Trained Responder or law enforcement about sexual misconduct so long as the allegations do not involve the physical or sexual abuse of a child or vulnerable adult or an imminent threat to the life of any person. On the MSCM campus, only the Licensed Professional Counselors within the Office of Student Affairs are Confidential Resources.
- All other MSCM Employees, including student workers, are expected to contact a Trained Responder promptly after becoming aware of an incident or allegation of sexual misconduct. MSCM encourages, but does not require, all other persons (such as students) who become aware of an incident or allegation of sexual misconduct to contact a Trained Responder.

Reporting and Timing

Complainants or Bystanders are strongly urged by MSCM to report an incident or allegation of sexual misconduct to any MSCM Employee as soon as possible. Notifying a Trained Responder, Confidential Resource, law enforcement, or other support resource promptly after sexual misconduct occurs helps assure the preservation of evidence. Prompt notification within 24 hours after the incident makes it easier to investigate and respond appropriately to the situation.

Incidents should be reported within one calendar year after they occur in order assure an inquiry and response by MSCM. After that period, investigation is at the discretion of MSCM based upon the availability of witnesses, other evidence, and MSCM's interest in providing a safe, non-discriminatory learning and working environment. All Complainants will be referred to on-campus or off-campus support services.

Confidentiality

Complainants may discuss incidents of sexual misconduct with a Confidential Resource who can promise confidentiality. With the exception of Confidential Resources, all MSCM Employees, student workers, and Board Members who become aware of sexual misconduct have a responsibility to contact a Trained Responder, even if the Complainant requests confi-

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dentiality.

Trained Responders understand and seek to honor confidentiality requests to the extent possible. If a Complainant requests complete confidentiality or does not want MSCM to investigate or respond to the incident or allegation, MSCM will weigh the request against the seriousness of the alleged misconduct and MSCM commitment to address and prevent recurrence of sexual misconduct. This determination will be made by the Title IX Coordinator.

If MSCM determines it has an obligation to investigate the incident or allegations, MSCM will maintain confidentiality to the extent reasonably possible consistent with a thorough, fair, and effective investigation and response as required by applicable laws and MSCM policy. MSCM investigators will only share information about the incident, allegation, or investigation within and outside MSCM on a 'need-to-know' basis. Due to the legal obligation to respond, MSCM cannot promise complete confidentiality.

If a Complainant is not certain they wish to initiate an investigation, the Complainant should contact a Confidential Resource before sharing the information with a Trained Responder or other MSCM Employee.

Emergency Reporting

In all emergency situations, on-campus or off-campus, individuals in imminent danger should call 9-1-1 immediately for the quickest response from law enforcement.

Contacting a Trained Responder

The MSCM response and resolution process will be initiated promptly when a Trained Responder becomes aware of an incident or allegation of sexual misconduct. Complainants are strongly encouraged to contact the Trained Responder, but the response can be triggered by a report from a Bystander or MSCM Employee. Trained Responders will ensure Complainants receive support, guidance, and information about their options.

Reporting to the Police

MSCM strongly urges Complainants to report all sexual misconduct that may violate Minnesota Criminal Law. MSCM will assist a Complainant with notifying the police in such cases of criminal sexual contact, including sexual assault, dating violence, domestic violence, or stalking. Upon request from law enforcement, MSCM will assist the police in obtaining, securing, and maintaining evidence in connection with sexual misconduct allegations.

Clery Act Reporting by MSCM

Under the Clery Act, MSCM is required to track and publish information about certain types of sexual misconduct and to disclose certain information in the Annual Security Report. Personally identifiable information is kept confidential and will not be published.

MSCM is also required to issue a timely warning for incidents it becomes aware of that pose a substantial threat to members of the campus community. MSCM makes every effort to avoid disclosure of personally identifiable information of Complainants in such warnings, while providing enough information to allow other community members to make decisions to help ensure their safety.

VII. College Response & Resolution Process

When a Trained Responder becomes aware of an incident or allegation of sexual misconduct, the response and resolution process (described in the next section) will be initiated promptly. The Title IX Coordinator is responsible for ensuring the uniform and consistent application of this policy and the related procedures and for ensuring incidents and allegations are addressed in a timely and appropriate manner. The Title IX Coordinator along with other designated officials have authority to take reasonable steps to protect the MSCM community or any individual member of the MSCM community from sexual misconduct, regardless whether such steps are explicitly mentioned in this policy or related procedures.

In cases involving sexual assault, domestic violence, dating violence, stalking, or other cases involving safety concerns, the safety of the Complainant and the MSCM community is of primary importance. MSCM will consult with the Complainant and review the specifics of an incident to determine how to conduct the response and resolution procedures in a way that protects the safety of the Complainant and the MSCM community while promoting accountability for the prohibited sexual misconduct.

VIII. No Retaliation

MSCM, along with federal and state law, prohibit retaliation against individuals for raising concerns or making reports of sexual misconduct in good faith. No student, faculty, or staff member will be reprimanded or retaliated against for notifying MSCM about incidents or allegations of sexual misconduct in good faith or for participating in an investigation related to allegations of sexual misconduct.

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MSCM will take steps to prevent retaliation and will respond if retaliation occurs. Any conduct by a member of the MSCM community that constitutes retaliation is subject to disciplinary action up to and including termination of employment, expulsion, and prohibition from campus.

MSCM may impose sanctions if it determines an individual knowingly initiated in bad faith a claim of sexual misconduct, knowingly provided false information, or intentionally misled a MSCM representative during an investigation of sexual misconduct or related complaint.

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I. Definitions

The definitions used in the MSCM Sexual Misconduct Policy also apply to the Response & Resolution Procedures, along with additional definitions set forth in these procedures.

II. Scope & Application

The Response & Resolution Procedures will be initiated when a Trained Responder becomes aware of an incident or allegations of sexual misconduct where:

- the Complainant and Respondent are both members of the MSCM community; or
- the Respondent but not the Complainant is a member of the campus community and the alleged incident occurred on the MSCM campus or in connection with a MSCM activity.

In other situations where a member of the campus community, volunteer, service provider, or other third party is a Complainant or Respondent, the Title IX Coordinator may determine in their discretion whether these procedures or another process is the best way to address the alleged sexual misconduct.

If a Trained Responder becomes aware of allegations of sexual misconduct that, even if true, would not rise to the level of a policy violation, these procedures do not apply. The Trained Responder will handle the matter in their discretion, consistent with other applicable MSCM policies, and may refer the incident to the student or employee conduct system. Determinations of this kind will be made jointly by the Trained Responder and the Title IX Coordinator.

III. General Provisions

These provisions are intended to be flexible to allow

MSCM to meet its legal obligations while fulfilling its educational mission. The Title IX Coordinator may authorize departures from these provisions when warranted by the circumstances.

Timing

MSCM is committed to the prompt and equitable resolution of allegations of sexual misconduct. MSCM will strive to conclude the response and resolution process as soon as possible and within 60 days of a Trained Responder becoming aware of the sexual misconduct allegations. The time frame may vary depending on the circumstances of the incident or complexity of the investigation, and the Title IX Coordinator may authorize a temporary extension. In addition, the MSCM response and resolution process may be delayed by a law enforcement investigation.

Confidentiality

Complainants and Respondents have the right to speak or otherwise share information about sexual misconduct allegations and the response and resolution process. However, both parties must ensure their communications are consistent with the anti-retaliation provision of the policy.

Other individuals involved in the response and resolution process are expected to maintain the confidentiality of information related to the allegations and the response and resolution process to the greatest extent possible. Communication and information may be shared only with individuals who have a legitimate need to know the information.

IV. Initiation of Response & Resolution Process

Trained Responders are responsible for initiating the response and resolution process promptly upon receipt of an Assertion, Complaint, or Confidential Complaint of sexual misconduct that, if true, would violate this policy.

- An Assertion is an informal oral or written statement by a Complainant or Bystander that alleges sexual misconduct. An assertion may be resolved informally or may be converted to a complaint by the Complainant or the Title IX Coordinator.
- A Complaint is a formal written statement that clearly and thoroughly describes the incident of sexual misconduct, including the name of the Respondent if known, that is signed by the Complainant or Title IX Coordinator. A complaint is necessary to initiate the formal resolution process.
- A Confidential Complaint is a formal written statement that clearly and thoroughly describes an

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incident of sexual misconduct, including the name of the Respondent if known, that is submitted anonymously through the online MSCM Student Grievance process. Students may submit sexual misconduct related grievances anonymously online through the student portal or they may sign the grievance and identify themselves as the Complainant or a Bystander. The formal resolution process will be initiated.

The Title IX Coordinator or his or her designee will manage the response and resolution process for each individual complaint. The Title IX Coordinator (or designee) will consider interim action to protect the parties involved and the broader MSCM community, pending completion of the response and resolution process. New or different interim actions may be initiated at any time during the response and resolution process based on the determination of how best to protect the parties involved and the broader MSCM community. Examples of interim actions include, but are not limited to:

- No contact directives between Complainant and Respondent
- Suspension from class or school sponsored events
- Temporary leaves of absence for the respondent
- Changing a Complainant's or Respondent's work or class schedule
- Changing a Complainant's or Respondent's Residence Hall living arrangements or prohibiting a Respondent from residing in the Residence Hall
- Issuing timely warnings of any substantial threat or danger to the MSCM community
- Notifying or consulting with appropriate MSCM employees as warranted under the circumstances

Meeting with the Complainant

The Title IX Coordinator or designated investigator will meet with the Complainant and cover the following items:

- Review the allegations of sexual misconduct and obtain additional information about the allegations as necessary to appropriately advise or support the Complainant with respect to the Response and Resolution process
- Inform the Complainant about available on-campus and off-campus resources, including contact information for victim advocacy, counseling, health and mental health services, legal assistance, and restraining orders from a Minnesota court.

- Review the Sexual Misconduct policy and these procedures, noting:
 - The Complainant's options to pursue the formal or informal process
 - The Complainant's right to contact law enforcement and pursue criminal or civil remedies outside of MSCM
 - The options for interim action or other reasonable accommodations if the Complainant wishes to change academic, living, transportation, working, or other situations within MSCM control after an alleged incident
 - The timing and deadlines for taking action under this policy
 - The confidentiality provisions
 - The prohibition on retaliation for good faith reporting of sexual misconduct incidents and for participating in an investigation of sexual misconduct allegations
- Address any questions about this policy and ask how the Complainant wishes to proceed. Inform the Complainant that MSCM will consider whether to take action independently if the Complainant does not wish to initiate the formal or informal process.
- Set a time for follow up with the Complainant

After the initial meeting with the Complainant, the Title IX Coordinator will review the incident or allegations with necessary advisors. If the Complainant has chosen not to pursue the matter, the Title IX Coordinator will determine whether MSCM will initiate a formal or informal process, gather more information, or consider the matter closed. The decision may change if more information becomes available at a later time.

V. Informal Process

If the Complainant chooses to pursue the informal process and MSCM does not initiate the formal process, the Title IX Coordinator will meet with the Complainant to review and consider available options to address the alleged misconduct using informal mechanisms. These may include, but are not limited to:

- **Mediation** – discussion between Complainant and Respondent with appropriate involvement by MSCM
- A message to the Respondent
- A change in the Complainant's work, academic, living, or other situation within the control of MSCM and reasonably available and requested by the Complainant

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The informal process will not result in a disciplinary sanction for the Respondent unless the Respondent is given an opportunity to review and respond to the allegations. The disciplinary sanction in such situations may not include expulsion or termination of employment. For employees, the maximum discipline available through the informal process is a termination warning or disciplinary letter.

At any time, both the Complainant and the Respondent have the right to end the informal process and begin the formal process by notifying the Title IX Coordinator.

VI. Formal Process

In the formal process, the Complainant and Respondent are entitled to:

- Prompt, fair, and impartial investigation and resolution conducted by officials who receive training on conduct prohibited by the policy
- Notice of the allegations and defenses and an opportunity to respond
- An equal opportunity to identify relevant witnesses and other evidence and to suggest possible questions to be asked of witnesses during the formal process
- Present information on their own behalf, including written and oral statements and physical evidence
- Similar and timely access to information, including a written summary of all allegations and defenses
- Have a support person of the individual's choice accompany them throughout the response and resolution process. The support person is allowed to consult with and advise the Complainant or Respondent, but is not otherwise permitted to participate in any proceedings.

Steps in the Formal Process

1. Submission of signed Complaint

Complainant must submit to the Title IX Coordinator or Title IX Deputy a signed Complaint that clearly describes the incident of sexual misconduct, including the name of the Respondent if known. If the Complainant does not wish to pursue the formal process and MSCM determines to initiate the formal process anyway, then the Complaint may be signed and submitted by the Title IX Coordinator.

2. Review of complaint with Title IX Coordinator and other designees

Each Complaint will be reviewed by the Title IX Coordinator and his or her designees, generally the Title

IX Deputies, Title IX Investigators, or other employees aware of the incident.

3. Assignment of Investigators

The Title IX Coordinator will assign a Title IX Investigator or other designee to conduct an investigation into the facts of the incident alleged to have occurred. In certain situations, such as allegations that involve force or non-consensual physical contact, MSCM may hire an experienced outside investigation service to assist with a Title IX investigation.

4. Notice to Complainant

The Title IX Coordinator will notify the Complainant in writing of the name of the investigator, an estimated timeline of the investigation, and any other relevant information.

5. Notice to Respondent

The Title IX Coordinator will notify the Respondent in writing to inform the individual of the Complaint, the allegations made against the Respondent, the Respondent's rights, the initiation of a formal investigation, the name of the investigator, an estimated timeline of the investigation, any conditions that may affect the Respondent's status as a student or employee, and any other relevant information.

6. Meeting with Respondent

The investigator will meet with the Respondent, covering the following items:

- Review the allegations of sexual misconduct and obtain any additional information from the Respondent as necessary to appropriately advise or support the Respondent regarding the response and resolution process.
- Inform the Respondent about available on-campus and off-campus resources
- Review the policies and procedures, noting the Respondent's rights, the timing and deadlines for actions under the policy, the confidentiality provisions, and the prohibition on retaliation.
- Address any questions about the policy and procedures and set up a time to follow up

After meeting with the Respondent, the investigator will update the Title IX Coordinator.

7. Investigation

The appointed investigator will conduct a thorough and impartial inquiry into the facts and circumstances surrounding the Complaint. The investigation will include interviews with the Complainant, Respondent, Bystanders, and any other key persons who may have

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information relevant to the incident. The investigator will seek to obtain all information, documentation, materials, or evidence deemed relevant to the investigation. Before the conclusion of the investigation, all parties involved receive a written summary of all allegations and defenses and have the opportunity to respond. Responses may include the opportunity to identify relevant witnesses, documentation, or other physical evidence; to identify questions that may be asked of witnesses; and to provide responsive written or oral statements.

The Title IX Investigator has the authority to request information, documentation, and materials from appropriate parties on a need-to-know basis. Only information disclosed to a Confidential Resource is exempt from investigation. In the event of a lengthy investigation, the Title IX Investigator will provide regular status updates to the Complainant, Respondent and Title IX Coordinator.

8. Determination of responsibility

Upon completion of the formal investigation, the Title IX Investigator will determine whether it is more likely than not (using the 'preponderance of the evidence' standard) the Respondent is responsible for the misconduct alleged. If the investigator determines it to be more likely than not the Respondent engaged in sexual misconduct, then the investigator will determine that the sexual misconduct policy has been violated.

9. Investigation report

The Title IX Investigator will document and summarize the findings of fact and submit it to the Title IX Coordinator. The Title IX Coordinator will review the report to ensure it is consistent with MSCM policies and procedures. If any inconsistencies exist, the Title IX Coordinator has the discretion to take appropriate action.

10. Responsive action by MSCM

The Title IX Coordinator will submit the investigation report to the Student Conduct Board for review. The Student Conduct Board will determine what sanctions, if any, will be imposed or any other action taken by MSCM. Not all forms of sexual misconduct are deemed equally serious offenses, and MSCM may impose different sanctions depending on the severity of the offense and any prior conduct violations. The Student Conduct Board is authorized to apply any sanction or response determined to be fair and proportionate to the misconduct.

The Student Conduct Board for a formal process of sexual misconduct will generally consist of the Title

IX Coordinator, Human Resources Director, Senior Director of Student Affairs, and any other campus official (such as a Department Head or Faculty Advisor) deemed appropriate for the circumstance.

11. Notice of outcome to Complainant and Respondent

The Title IX Coordinator will notify the Complainant and Respondent in writing of the outcome of the investigation, any sanctions imposed by the Student Conduct Board, and procedure for appeals. Due to privacy regulations, each notification may vary some in the information that can be shared. For example, in many cases the Complainant notification will include whether the sexual misconduct policy was determined to be violated and any sanctions imposed that directly relate to the Complainant.

The Title IX Coordinator will also notify any appropriate MSCM administrators, faculty, or staff who have a need-to-know about the outcome of an investigation or the sanctions imposed. This may include a faculty advisor, school counselor, a Respondent's supervisor, or the President of the College.

Appeal Process

1. Grounds for appeal

Either the Complainant or Respondent may appeal the results of the formal process using one or more of the following reasons:

- That a procedural error occurred which substantially affected the outcome of the process.
- That the decision was arbitrary and capricious or violated academic freedom.
- That there has been the discovery of significant new factual material not available during the initial investigation that could have affected the original outcome (intentional omission of factual information by the appealing party during the initial investigation is not grounds for appeal).
- That the sanction or other response by MSCM under the formal process was excessively severe or grossly inadequate.

2. Submitting an appeal

A signed, written appeal must be submitted to the President's Office within 10 days following the date of notification of the outcome. In cases where the President may have a potential conflict of interest, the Title IX Coordinator may appoint an alternate college official to review the appeal.

RESOURCES & CONTACT INFORMATION

Appeals must be addressed to:

Harry Chalmiers

President

harry.chalmiers@mcnallysmith.edu

3. Consideration of appeal

The President (or other designated appeal officer):

- Will not rehear the case, but will consider whether it is likely or not that the grounds for appeal have been satisfied
- Will review the appeal, the investigation report, and consider any previously undiscovered evidence (if this was the grounds for appeal)
- May choose to meet with the parties involved and consider additional information

The President will issue a written decision to the appealing party and the Title IX Coordinator stating any findings and the final disposition of the appeal within 10 days following receipt of the initial appeal. Any additional notifications to administrators or faculty will be on a need-to-know basis.

4. No further appeal

Appeals arising out of alleged violations of this policy must be made under this appeal process and are not eligible for consideration under faculty, staff, or student grievance policies or processes. However, the President has discretion to modify a decision in exceptional circumstances.

VII. Recordkeeping

The Title IX Coordinator is responsible for maintaining the official MSCM records of sexual misconduct Assertions and Complaints. Records are maintained in accordance with MSCM record retention requirements and applicable law. Official records include:

- A summary of the Assertion of sexual misconduct and request for resolution for informal process and any responsive actions taken
- A copy of the complaint in formal cases
- Descriptions of any interim actions taken and the correspondence to the Complainant and Respondent relating to the interim action
- A copy of the Clery Act crime report for criminal offenses being reported in the institutional Annual Security Report
- Summary of any meetings or interviews with the Complainant and/or Respondent along with any notices delivered to either party
- The investigative report with any accompanying

documentation or summary of evidence relied upon in reaching conclusions

- Statements from Complainant, Respondent, or witnesses
- Documentation of the decision reached and sanctions imposed, if any, along with the notice of outcome provided to both parties
- Appeal statement, if any
- Decision of appeal, supporting documentation or summary of appeal review, and notices sent to all parties regarding the appeal
- A timeline of communication with all parties
- Any additional information deemed pertinent to the incident or allegation

Records related to sexual misconduct Assertions and Complaints are deemed confidential and shared only on a need-to-know basis or as required by law.

RESOURCES & CONTACT INFORMATION

EMERGENCY CONTACTS

Dial 9-1-1. In all emergency situations, on-campus or off-campus, individuals in imminent danger should call 9-1-1 immediately for the quickest response from law enforcement.

McNally Smith Security

security@mcnallysmith.edu

651-600-9382

ON-CAMPUS PLACES TO REPORT SEXUAL MISCONDUCT

Any incidents of sexual misconduct may be reported to the Title IX Coordinator or a Title IX deputy:

Jeff Aalbers

Title IX Coordinator

Senior Director of Administrative Services

jeff.aalbers@mcnallysmith.edu

651-361-3320

Col'Lette Gauvin

Title IX Deputy

Residence Hall Coordinator

collette.gauvin@mcnallysmith.edu

651-361-3429

RESOURCES & CONTACT INFORMATION

Cresta Hubert

Title IX Deputy
HR Specialist
cresta.hubert@mcnallysmith.edu
651-361-3375

The Title IX Coordinator, Title IX Deputies, a designee of the Title IX Coordinator, or the Title IX Investigator, will investigate sexual misconduct incidents for MSCM:

Jeff Tickle

Title IX Investigator
Director of Human Resources
jeff.tickle@mcnallysmith.edu
651-361-3376

Susan Brezny

Title IX Investigator
Senior Director of Student Affairs
susan.brezny@mcnallysmith.edu
651-361-3420

In certain situations, MSCM may hire an experienced outside investigation service to assist with a Title IX investigation.

ON-CAMPUS CONFIDENTIAL RESOURCES

Bryon M. McDonald, M.S.

Counselor, Office of Student Affairs
bryon.mcdonald@mcnallysmith.edu
651-361-3426

ON-CAMPUS SUPPORT SERVICES & OTHER RESOURCES

Office of Student Affairs

studentaffairs@mcnallysmith.edu
651-361-3425

OFF-CAMPUS PLACES TO REPORT SEXUAL MISCONDUCT

St Paul Police Department

Emergency 9-1-1
Non-emergency 651-291-1111

Sexual Assault Nurse Examiners (SANE) area hospitals

United Hospital Emergency Room
333 N Smith Ave
St Paul MN 55102
651-241-8755

Regions Hospital
640 Jackson St
St Paul MN 55101
651-254-3456

Additional sexual assault care facilities may be found here:

<http://www.allinahealth.org/Health-Conditions-and-Treatments/Sexual-assault-care-services/>

OFF-CAMPUS CONFIDENTIAL RESOURCES

Ramsey County Sexual Offense Services

• 24-HOUR HOTLINE, FREE AND CONFIDENTIAL

555 Cedar St
St Paul MN 55101
651-266-1000
<https://www.ramseycounty.us/residents/health-medical/clinics-services/sos-sexual-violence-services>

RAINN (Rape, Assault, and Incest National Network)

• 24-HOUR HOTLINE, FREE AND CONFIDENTIAL

800-656-HOPE
<https://ohl.rainn.org/online/>

OFF-CAMPUS SUPPORT SERVICES & OTHER RESOURCES

The National Domestic Violence Hotline

800-799-SAFE
<http://www.thehotline.org/>

US Department of Education Office of Civil Rights (OCR)

800-421-3481
<http://www2.ed.gov/about/offices/list/ocr/index.html>

SEX OFFENDER REGISTRATION

In accordance with the “Campus Sex Crimes Prevention Act” of 2000 (which amends the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, the Jeanne Clery Act, and the Family Educational Rights and Privacy Act of 1974), McNally Smith College of Music will provide a statement advising the campus community where law enforcement information provided by the state concerning registered sex offenders may be obtained. It also requires sex offenders already required to register in the state to provide notice of each institution of higher education in that state at which the person is employed, carries a vocation, or is a student. Registry information provided under this section shall be used for the purposes of the administration of criminal justice, screening of current or prospective employees, volunteers or otherwise for the protection of the public in general and children in particular. Unlawful use of the information for purposes of intimidating or harassing another is prohibited and willful violation shall be punishable as a Class 1 misdemeanor. The Minnesota Department of Corrections is responsible for maintaining this registry. Follow the link below to access the Minnesota Department of Corrections website:

<http://www.doc.state.mn.us/PAGES/index.php/supervision-community/reentry-resources/>



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t | 1.800.594.9500
651.291.0177

f | 651.291.0366
e | info@mcnallysmith.edu