



Dean of Students/Office of Student Conduct

GUIDELINES FOR DEFINING AND ADJUDICATING SEXUAL ASSAULT CASES INVOLVING STUDENTS (Updated February 16, 2016)

These Guidelines for Defining and Adjudicating Sexual Assault Cases Involving Students* provide information related to **Section 4** of the **Southeast Missouri State University's Statement of Student Rights and Code of Student Conduct or Code**.

Southeast Missouri State University is committed to fostering a learning, living and working environment in which all members of the University community are safe, secure and free from sexual misconduct and sexual violence. University policy therefore prohibits and will not tolerate sexual misconduct /sexual violence in any form by or against students, faculty or staff.

This prohibition encompasses a range of behaviors, including, but not limited to, sexual harassment, sexual assault, nonconsensual and unwelcome sexual contact, stalking, relationship violence, voyeurism, and other forms of sexual misconduct/sexual violence. Such behaviors are not only in violation of this policy, but may also violate applicable state and Federal nondiscrimination laws, including, but not limited to, Title IX of the Educational Amendments Act of 1972. Title IX prohibits discrimination based on sex under any education program or activity receiving federal funds, and requires the University not to discriminate based on sex (including sexual harassment and sexual violence) in any of its education programs and activities. Sexual misconduct/sexual violence may also lead to separate criminal proceedings being initiated against the alleged perpetrator.

This policy, as well as Title IX and other applicable state and federal laws, also prohibits retaliation against anyone who has asserted a claim of sex discrimination, including sexual misconduct/sexual violence.

All members of the Southeast Missouri State University community are strongly encouraged to promptly report all incidents of sexual harassment/sexual misconduct/sexual violence, so they can be effectively addressed and appropriate action can be taken. The following information provides the definitions used by the University in the resolution of these types of cases; the rights and responsibilities of both the accused student and the complainant (sometimes referred to as the victim); reporting and resource options; as well as confidentiality information. These guidelines apply also apply to online behavior and information distributed through social media that may affect the students' educational experience. The guidelines also apply to all students, regardless of gender identity or sexual orientation. In the absence of a complainant (and/or if a complainant decides not to participate in the student conduct process, the University may initiate a complaint against an accused student if that is in the best interest of the health and safety of the University community as a whole. In that type of situation, the complaining student's (victim's) information will be maintained as private as long as it does not hinder the University's ability to intervene in the matter and provide reasonable interim measures.

SEXUAL MISCONDUCT

Definition: Any unwanted sexual exploitation, which may include, but is not limited to:

1. Nonconsensual sexual intercourse:

- a) Any sexual intercourse
- b) Anal, oral or vaginal
- c) However slight
- d) With any object
- e) By a man or a woman
- f) Upon a man or a woman
- g) Without effective consent

2. Nonconsensual sexual contact:

- a) Any sexual touching
- b) However slight
- c) With any object
- d) By a man or a woman
- e) Upon a man or a woman
- f) Without effective consent

CONSENT AND INCAPACITATION

1. Consent is an affirmative decision to engage in mutually acceptable sexual activity given by clear actions or words.
2. Students should understand that consent may not be inferred from silence, passivity, or lack of active resistance alone. Furthermore, a current or previous dating or sexual relationship is not sufficient to constitute consent, and consent to one form of sexual activity does not imply consent to other forms of sexual activity.
3. **Conduct will be considered “without consent” if no clear consent, verbal or nonverbal, is given.** The perspective of a reasonable person will be the basis for determining whether an accused student knew, or reasonably should have known, whether consent was given. However, being intoxicated or incapacitated does not diminish one's responsibility to obtain consent and will not be an excuse for sexual misconduct.
4. Incapacitation (mutually incapacitated sexual contact) means being in a state where a person:
 - Lacks the capacity to appreciate the fact that the situation is sexual
 - Cannot appreciate (rationally or reasonably) the nature and/or extent of that situation

NOTE: A physically incapacitated person is one who is physically incapacitated as a result of alcohol or other drug consumption (voluntary or involuntary), or who is unconscious, unaware, or otherwise physically helpless and incapable of giving consent. One may not engage in sexual activity with another person who one knows or should reasonably have known that person to be physically incapacitated.

SEXUAL HARASSMENT

According to the Equal Employment Opportunity Commission (EEOC), Federal Government Title VII and IX, sexual harassment is any unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- Submission to such conduct is made a term or condition of employment (explicitly or implicitly);
- Submission or rejection to such conduct is used as a basis for employment decisions; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment

SEXUAL EXPLOITATION

- When a person takes nonconsensual, unjust or abusive 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 nonconsensual sexual intercourse, sexual assault or sexual harassment

STATEMENT OF INTENT

Southeast Missouri State University is a community of trust whose very existence depends on strict adherence to standards of conduct set forth by its members. Sexual misconduct is a crime punishable by both civil and criminal legal action and a serious violation of Code of Student Conduct. It will not be tolerated within our University community. Students at Southeast Missouri State University are charged with the responsibility of being familiar with and abiding by the standards of conduct outlined in this and all University publications.

UNIVERSITY'S STATUTE OF LIMITATIONS

As long as the accused student maintains a relationship with Southeast Missouri State University charges may be brought against them under this policy regardless of the date of the incident. If an alleged event is reported after an accused student has left the institution, the University will place a Dean of Students Office Hold on the student's account with the Registrar. This will prevent future enrollment unless the case is resolved appropriately by the Office of



Student Conduct.

The University encourages a student to report the incident quickly in order to maximize the institution's ability to respond and investigate. There is no time frame for reporting an incident.

AMNESTY CLAUSE

A person will have limited immunity if sexual misconduct is reported. Example: Amy reports that she is a victim of a sexual assault and she did not consent. During the investigation, it is

learned that Amy had been drinking. Amy would not be charged with violating the University's alcohol policy.

Also, the student's immigration or visa status has no bearing on his/her ability to report. This means that any student, regardless of that student's country of origin may report without fear of repercussions.

JURISDICTION

Reports of sexual misconduct will be considered to have a substantial impact on the campus community and will be investigated fully regardless of whether the incident occurs on or off campus.

Students can report allegations of sexual harassment/sexual misconduct/sexual assault carried out by other students, third parties (non-students), and/or employees. These guidelines are not a substitute for the law or the criminal process. The allegation may also represent a situation that involves a possible violation of criminal law. The University supports the students in reporting criminal activity to the appropriate law enforcement entities.

Reports involving sexual misconduct and sexual assault which are filed with law enforcement entities may involve a criminal proceeding that is separate from the University's process. They are independent of each other, meaning that even if charges are dropped off-campus or never filed, the University's case will continue at the discretion of the Office of Student Conduct or Dean of Students.

Information may be shared between the University (Office of Student Conduct/Dean of Students) and the appropriate law enforcement entities. Students are able to make complaints to on-campus and off-campus agencies at the same time.

STUDENT GROUP OR ORGANIZATION INFRACTION

A student group or organization may be held responsible for the action(s) of its members. The group or organization may be subject to judicial action under the University's Code of Student Conduct.

STATEMENT OF COMPLAINANT'S RIGHTS

Individuals who have filed a complaint (victim) of sexual misconduct have the following rights:

- The right to be treated with respect by University officials;
- The right to have others present (in support or advisory roles) during a campus disciplinary hearing;
- The right not to be discouraged from reporting sexual misconduct by University officials;
- The right to be informed of the outcome and any sanction(s) of a campus disciplinary hearing involving sexual assault;
- The right to appeal the outcome of the campus disciplinary hearing involving sexual assault;

- The right to be informed of his/her option to notify proper law enforcement authorities, including campus and local police agencies, as well as the option to be assisted by University officials in notifying such authorities, if the victim so chooses;
- The right to be notified of available counseling or student services for victims of sexual assault, both on campus and in the community;
- The right to notification of, options for, and available assistance in changing academic and living situations after an alleged sexual assault incident, if the victim so chooses and if such changes are reasonably available;
- The right not to have prior sexual history admitted during a campus disciplinary hearing;
- The right not to have incidents of sexual misconduct mediated by University officials;
- The right to make a victim-impact statement to the hearing board and to have that statement considered by the hearing board in determining its sanction(s);
- The right to a campus restraining order or notice against trespass against another individual or individuals who have engaged in or threaten to engage in stalking, threatening, harassing or other improper behavior that presents a danger to the welfare of the victim who has initiated the allegation; and
- The right to have a complaint of sexual misconduct responded to quickly and with sensitivity by campus police and members of the Office of Student Conduct;

THE RIGHTS OF THE ACCUSED*

Persons accused of possible violation of this policy on sexual misconduct have certain rights, which include the following:

- Protection under the Family Educational Rights and Privacy Act (1974) regarding release of information to outside or uninterested parties;
- The right to receive written notice of specific charges and procedural information;
- The right to contact and call witnesses;
- The right to have access to and examine all records of evidence to be used against the accused;

- The right to have access to University health services including physical health services and counseling services (while the accused maintains an active, continuing relationship with the University);
 - The right to challenge the impartiality of persons hearing the charges;
 - The right to maintain academic work while charges are pending although special arrangements, including reasonable accommodations for either the victim or the accused may be necessary;
 - The right to refuse to answer self-incriminating questions;
 - The right to rebut the testimony of adversarial witnesses;
 - The right to have an advisor present at all administrative proceedings. This may include legal counsel if civil or criminal charges are pending and/or Suspension is a likely outcome;
 - Advisors (lay or counsel) are restricted from presenting evidence or otherwise presenting the case but may communicate with the accused during the proceeding by giving advice and counsel;
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- The right to written notice of the outcome of the proceedings and of all requirements for fulfilling any prescribed sanction(s); and
 - The right to appeal the outcome of the hearing

***BEGINNING SPRING OF 2015, FOR OFFICE OF STUDENT CONDUCT CASES INVOLVING SEXUAL ASSAULT AND SEXUAL MISCONDUCT, THE ACCUSED STUDENT WILL HAVE A HEARING WITH AN ADMINISTRATIVE HEARING PANEL. THE PANEL WILL BE MADE UP OF SOUTHEAST FACULTY, STAFF, AND/OR STUDENTS FROM THE ALL UNIVERSITY JUDICIAL BOARD.**

SANCTIONS

WARNING – Written notification from the University that the student has been involved in a violation of University policies and that repetition of this or any other violation may be expected to result in a more serious sanction.

PROBATION – A written reprimand for violation of specified regulations. Probation indicates that the student is no longer in good standing with the University. If during the length of the probation the student is found in violation of any further violations of the University's Code of Student Conduct, a more severe disciplinary sanction may be imposed including suspension or dismissal.

SUSPENSION FROM THE UNIVERSITY (LIKELY SANCTION) – Suspension involves separation from the University for a specified period of time or until certain conditions are met. Suspension involves denial of enrollment, attendance of classes, and other student privileges; the student must leave the campus.

DISMISSAL FROM THE UNIVERSITY - Separation from the University for an indefinite period of time. Readmission is possible but not guaranteed, based on meeting all readmission criteria and obtaining clearance from the Dean of Students or designee.



EXPULSION (AUTOMATIC SANCTION) – This sanction will apply if a student is found to have committed a forcible sexual offense. Expulsion is separation from the University without the possibility of readmission.

Suspension, Dismissal and Expulsion carry an automatic issuance of a **NOTICE AGAINST TRESPASS**, which is notice that the student will be arrested if he/she is found on specified University premises.

For a more exhaustive list of possible sanctions, please consult the University's Code of Student Conduct.

REPORTING OPTIONS

Campus Violence Prevention Program

(<http://www.semo.edu/ucs/violenceprevention/index.html>) - 573-986-6191

The Campus Violence Prevention Program (located within Counseling and Disability Services in Dearmont B1 Wing) raises awareness and promotes the primary prevention of interpersonal violence to create a safe campus environment. The Campus Violence Prevention Program Education and Outreach Coordinator plans and coordinates programs (i.e., trainings, workshops) to educate students, faculty, and staff on the realities of violence, sexual assault, and stalking. The Education and Outreach Coordinator participates in a variety of directed activities to provide direct support to students who experience sexual assault and interpersonal violence.

The program informs students and employees of their rights regarding reporting instances of violence and ensures access to counseling, victim advocacy, legal assistance, and supportive services available on campus and in the community. The program serves a vital role in promoting bystander intervention and educating the campus to prevent interpersonal violence.

There are a number of places that you can report an incident of dating or domestic violence, sexual assault, and/or stalking, whether the incident occurred on or off campus. The Campus Violence Prevention Program partners with both on and off campus locations that allow reporting. There is also a third party reporting option available to those who wish to report on someone else's behalf. Also, a student may report confidentially to a member of the Counseling and Disability Services staff. Other reporting options will be explained to the reporting student. They include the following:

- Dean of Students Office – (573) 651-2264
- Department of Public Safety – (573) 651-2215 (911)
- Office of Student Conduct – (573) 651-2264
- Counseling and Disability Services – (573) 986-6191
- Office of Residence Life – (573) 651-2274
- Towers Front Desk – (573) 651-2306

It is important to note that if a student reports an incident involving sexual harassment/sexual misconduct/sexual assault to a University employee, including administrators, faculty, staff, student employees (including Resident Assistants and Graduate Assistants not working in the



Counseling and Disability Services office), those individuals are obligated to report information to Dean of Students/Office of Student Conduct/Title IX Coordinator (defined later).

As previously noted, confidential reports can be made at Counseling and Disability Services on campus and/or to one of the off-campus agencies listed below. **THE UNIVERSITY'S ABILITY TO RESPOND TO AN ALLEGATION MAY BE LIMITED WHEN ANONYMOUS OR THIRD PARTY REPORTS ARE MADE.**

COMMUNITY RESOURCES

- Beacon Health Center – (573) 332-1900
- Sexual Assault and Rape Crisis Hotline – (877) 820-6278
- Safe House for Women, Inc. – (573) 651-1614 or 335-7745
- Safe House 24-hour Crisis Hotline – (800) 341-1830

HOSPITALS

- Saint Francis Medical Center – 331-3000 (331-5110 Emergency Number)
- Southeast Health – 334-4822 (651-5555 Emergency Number)

SAFETY

Assess the safety of where you are. Do you feel safe? Is there a chance he/she may return? Is there anyone you could call for support? Is there a safer place that you can think of? (ex: Friend's room, Neighbor's home, Safe House for Women, Inc., etc)

MEDICAL CARE

Beacon Health Center or the hospital can help with treating injuries, pregnancy and Sexually Transmitted Infection (STI) assessment, possible prevention if it has been within 72 hours, and evidence collection. An evidence exam is often described like a gynecological visit. This procedure may go on your insurance if you have it, but Beacon Health Center may be able to help if this is not an option. If possible, do not shower, brush your teeth, or destroy/throw away evidence (such as condoms, underwear, etc.) before the exam. Beacon Health Center recommends placing any clothing items or other evidence in paper rather than plastic bags to help preserve the evidence. You have the right to decide whether you want the evidence collected in a evidence exam to be used for criminal prosecution.

SUPPORT

A relative, friend, counselor, or advocate from either the Safe House for Women or Beacon Health Center can accompany you through this.

LEGAL OPTIONS

A police report may be filed. This would be through the Department of Public Safety (DPS) if it happened on campus or through Cape Girardeau Police Department if it happened off campus. Do not be afraid to ask questions before you report the incident or throughout. You may consult with the police officers about pressing charges and continuing forward with a criminal suit.

If the assailant is a student at Southeast, restrictions can be placed upon him/her through the Office of Student Conduct. These include “Letters of No Contact”, moves within the residence halls, Notices Against Trespass, changes in class schedule, Interim Suspension, etc. Adjudication is based on a preponderance of evidence (more likely than not), rather than reasonable doubt.

A Letter of No Contact is not the same as an Ex Parte Order that is filed through the legal system. A Letter of No Contact is a University related document that prohibits students from having any contact whatsoever during the time the guideline is in place. Violating that restriction is not a criminal offense, but it is a violation of the Code of Student Conduct. Information can be provided through the Campus Violence Prevention Program for completing a civil order of protection (Ex Parte Order). The violation of a civil order of protection is a criminal offense.

Students who are found "In Violation" of Section 4 of the Code related to the **GUIDELINES FOR DEFINING AND ADJUCATING SEXUAL ASSAULT CASES INVOLVING STUDENTS (formerly called the Sexual Assault Policy Statement)** face sanctions up to and including Suspension, Dismissal, or Expulsion from the University. Depending on the severity of the sexual misconduct, the student may receive Probation, Suspension Held in Abeyance, a mental health evaluation and subsequent treatment plan, judicial fines, removal from residence halls, restrictions from entering certain campus areas, parental notification, a no contact order, class schedule changes, etc. Victims in these types of cases (also including cases with domestic/relationship violence) are provided information related to the results of the student conduct hearing from their case and are given the same opportunity to appeal the results.

A civil suit may also be filed. Survivors of sexual assault have successfully sued for emotional distress, hospital fees, etc. Legal representation will need to be found and consulted. Any option or combination of these legal options may be pursued by you. Again, it is important to know that whatever you decide, you don't have to do it alone.

LAW ENFORCEMENT AGENCIES

- Cape Girardeau Police Department – 573-335-6621 (911 Emergency Number)
- Cape County Sheriff's Department – 573-243-3551 (911 Emergency Number)
- University Police (Department of Public Safety) – 573-651-2215 (573-651-2911 Emergency Number)

REPORTING TO THE OFFICE OF STUDENT CONDUCT

The Office of Student Conducts is obligated to investigate all reports of sexual misconduct, assault, or harassment as required by law, and to investigate to the extent that the information is available. Please know that if the Office of Student Conduct were to become aware of independent corroborating information of the misconduct that is alleged, and/or that there may be a danger to the community, it may be necessary for that office to proceed with the investigation process without involvement of the complainant, or implement other appropriate remedies. Although if a student reports that he/she does not wish to participate in the investigatory process, he/she will be notified if the Office of Student Conduct needs to take such action. In addition, the Office of Student Conduct is required to document any reports (anonymous reports included) for general CLERY Act statistics (<http://www.semo.edu/dps/statistics.htm>). There will be no personally identifiable information about students shared in this report. If an incident is reported which occurs on-campus or adjacent to campus and no perpetrator is identified or arrested, a timely warning may be issued on campus to notify the campus community of the possible risk of another occurrence or further criminal violation. Timely warnings are also issued for other criminal situations like armed robbery, physical assault, and indecent exposure.

If a report is received by the Office of Student Conduct, the following steps will be followed in the process of the investigation:

1. Complaint is received by the Office of Student Conduct. Title IX Coordinator is notified. DPS is notified.
2. Determine if available resources (mental health/medical) resources have been made available to the reporting party (complainant).
3. Determine if a law enforcement investigation is occurring.
4. If the complainant intends to remain anonymous, then a "Reluctant Witness Letter" is provided to the student (through Counseling and Disability Services or other office if necessary). If the complainant wishes to pursue a University and/or criminal case, explain the process and again make sure that the complainant is briefed on available resources.
5. (When given permission by law enforcement) Contact accused student and initiate "Letter of No Contact" and make any other necessary modifications in his/her living, classroom, or campus circumstances. If a Notice Against Trespass is needed for parts of campus, the accused student will be notified of the requirements at that time. Complete any other interim measures that are necessary and explain the student conduct process to the accused student.
6. Receive report from law enforcement (if applicable) and interview complainant, accused student, and any other witnesses.
7. Contact Title IX Coordinator via e-mail and provide summary of fact finding – determination is made about Official Charge Letter.

8. (If applicable) Charge letter is sent to accused student(s) and judicial conference is arranged. Case reports and information are read, explained, and/or discussed with accused student and complainant.
9. Hearing is scheduled and completed with the Administrative Panel for sexual assault and sexual misconduct cases. (Please refer to the Code of Conduct for other types of cases.) Complainant may appear in person, via speaker phone, or he/she may choose not to appear. Complainant may provide a victim impact statement to be read by hearing panel prior to sanctions being given.
10. Results of hearing are given in writing to accused student as hearing concludes – accused student has five school days to appeal to the Dean of Students if he/she chooses.
11. Results of hearing are provided to complainant in writing via e-mail – he/she has five school days to appeal to the Dean of Students. (If sanctions are modified by Dean of Students through appeal by accused student, the complainant is given one other opportunity to appeal.
12. If necessary, the completion of sanctions and other follow-up is coordinated by the Office of Student Conduct.

It is important to note that direct questioning/cross examination of complainants or accused students is not allowed in student conduct hearings. All questions are asked through the hearing panel. In sexual harassment/sexual assault/sexual misconduct type cases, complainants may appear in person or via speaker phone or other electronic media.

The goal is to complete the process within 30 to 60 working days, although delays may occur if law enforcement investigations or a change in semesters delay the process.

TITLE IX COORDINATOR

As was noted earlier, sexual harassment/sexual misconduct/sexual assault cases fall under a Title IX of the Educational Amendments Act of 1972. If at any point in the process the complainant (victim) or accused student wants to report a concern about the process we use for handling these cases, please contact our Title IX Coordinator, Ms. Sonia Rucker, at 651-2206.

For cases involving sexual harassment (including sexual misconduct and sexual assault), they fall under a federal law (Title IX), so Mr. Rucker is in charge of making sure that the process is

followed appropriately and that both the rights of the complainant and the accused student are protected in the process.

REASONS FOR APPEAL

Appeals are possible when one or more of the following circumstances apply:

1. Student received an excessive sanction when compared to previous sanctions for similar violations under similar circumstances.
2. Discovery of significant new information relevant to the case.
3. Procedural error regarding the student's rights involving error in the administration of judicial procedures by the hearing body/officer or the Office of Student Conduct.
4. The complainant (victim) can also appeal if he/she feels the outcome of the hearing was arrived at improperly.

If an appeal is filed by either party, the other party will be notified in writing (via e-mail) by the Office of Student Conduct. The accused student and the complainant will also be notified in writing of any changes or revisions during the appeal process.

APPEALS MUST BE SUBMITTED BY 4:00 P.M. ON THE FIFTH SCHOOL DAY AFTER THE INITIAL DECISION IS RENDERED.

Appeals are to be submitted to the Dean of Students Office in the University Center, 422. If there is a basis for appeal, the Dean of Students will review the case and make recommendations based on his/her findings.

An appealed case merits being considered based on the conditions outlined on the reverse side. The process of appeal is not for retrying or rehearing a case. Decisions made by the Dean of Students can result in one of the following: to lessen the consequence(s) based on a finding that the decision/sanction(s) were excessive or not in line with past practice; to modify the sanction(s) or decision based on the case review; or in very limited situations to grant a new hearing based on new information or failure to follow the due process.

PROHIBITION AGAINST RETALIATION

Reprisal or retaliation against an individual for making a complaint of sexual harassment, for participating in a sexual harassment investigation, or using or participating in the informal or formal complaint process, is prohibited by University policy and by law. Any member of the University community has the right to raise good faith concerns about sexual harassment without fear of retaliation. Retaliation is also prohibited against anyone who in good faith opposes, in a reasonable manner, an act believed to constitute a violation of this policy. Retaliation shall be considered a serious violation of this policy independent of whether a complaint of sexual harassment, formal or informal, is substantiated. Encouraging others to retaliate also violates this policy.