



STUDENT SUPPORT POLICIES-SECTION 600

NUMBER: 613

SUBJECT: SEXUAL MISCONDUCT

LAST REVIEWED: 8/15/2015, 8/15/2017, 3/8/2018

EXECUTIVE COMMITTEE APPROVAL: 7/27/2005; 11/13/2017

FACULTY REVIEW: 3/1/2018

BOARD APPROVAL: 8/19/2015; 1/31/2018; 5/16/2018

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613.1 PURPOSE

- 1.1 The purpose of this policy is to provide standards regarding Sexual Misconduct and provide a clear path for students and employees to report complaints of sexual discrimination, sexual harassment, sexual violence, relationship violence, stalking, and retaliation.

613.2 POLICY

- 2.1 MTECH prohibits Sexual Misconduct in all education programs, employment, and activities. This includes:
 - A. Discrimination on the basis of sex;
 - B. Sexual Harassment; and
 - C. Sexual Violence, including rape, sexual assault, sexual battery, and sexual coercion
- 2.2 MTECH will endeavor to address sexual misconduct. It will also endeavor to respond promptly and effectively in investigating complaints of this nature.

613.3 SCOPE

- 3.1 MTECH prohibits sexual misconduct at all College operated facilities, programs, or College related activities by any student, college employee or third party. Sexual Misconduct in any form shall be grounds for immediate and appropriate disciplinary action. The College complies with all federal, state and local laws in regards to Sexual Misconduct.
- 3.2 This policy applies to all students and employees, regardless of sexual orientation or gender identity, and extends to third parties.

613.4-5 DEFINITIONS

4.1 **Sexual Discrimination**: This involves treating someone (a student, employee, applicant, etc.) unfavorably because of that person's sex. Sexual discrimination can also involve treating someone less favorably because of his/her connection with an organization or group that is generally associated with people of a certain sex or treating someone unfavorably because they are transgender or in non-conformance with sex stereotypes.

4.2 **Sexual Harassment**: Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. Sexual harassment has two forms:

- *Quid pro quo*
- Hostile work environment

Quid pro quo is a Latin term for "This for that." It means, "You give me this, and I'll give you that." In terms of sexual harassment, it means promotion for sexual favors, or a better assignment for sexual favors. It may also be threatening: "Unless you do this, I'll fire you" or "I'll transfer you."

Quid pro quo damages individuals and organizations. It is illegal in all states and a federal crime - a violation of Title VII of the 1964 Civil Rights Act. It is equally wrong, and illegal, whether the victim resists and suffers the harm, or submits and avoids the harm.

Hostile work environment- A hostile work environment exists when one's behavior within a workplace creates an environment that is difficult for another person to work in, including but not limited to fondling, suggestive remarks, sexually suggestive photos displayed in the work place, use of sexual language or off color jokes.

- A. Harassment does not have to be of a sexual nature and can include offensive remarks about a person's sex.
- B. Both victim and harasser can be either a woman or a man, and the victim and harasser can be the same sex.
- C. Teasing, comments or incidents of a sexual nature that are frequent or severe and create a hostile, offensive environment or result in adverse educational or employment decisions are harassment.
- D. Discrimination on the basis of sex can also include sexual violence, such as rape, sexual assault, sexual battery, and sexual coercion or intimidation.
- E. The harasser can be another student, teacher, staff member, employer, etc.

4.3 **Sexual Violence**: Sexual Violence is defined as a sexual act committed against someone without that person's freely given consent. Sexual violence is divided into the following types:

- A. Completed or attempted forced penetration of a victim

- B. Completed or attempted alcohol/drug-facilitated penetration of a victim
 - C. Completed or attempted forced acts in which a victim is made to penetrate a perpetrator or someone else
 - D. Completed or attempted alcohol/drug facilitated acts in which a victim is made to penetrate a perpetrator or someone else
 - E. Non-physically forced penetration which occurs after a person is pressured verbally or through intimidation or misuse of authority to consent or acquiesce
 - F. Unwanted sexual contact
 - G. Non-contact unwanted sexual experiences
 - H. Sexual Exploitation
- 4.4 **Rape**: Rape is generally defined by states as forced sexual intercourse. It may also include situations where the victim is incapable of giving consent due to incapacitation by means or disability, alcohol, or other drugs. Many rapes are committed by someone the victim knows, such as a date or friend.
- 4.5 **Relationship/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.
- 4.6 **Domestic Violence**: Crimes of violence committed against a victim by a current or former spouse or intimate partner.
- 4.7 **Sexual Exploitation**: Sexual exploitation is the sexual abuse of children and youth through the exchange of sex or sexual acts for drugs, food, shelter, protection, other basics of life, and/or money. Sexual exploitation includes involving children and youth in creating pornography and sexually explicit websites.
- 4.8 **Stalking**: Criminal activity consisting of the repeated following and harassing of another person, with intent to instill fear or injury.
- 4.9 **Intimidation**: To force into or deter from some action by inducing fear.
- 5.0 **Retaliation**: Any adverse action taken by a member of the College faculty, staff or student body against any individual on the basis of a Good Faith Report made by such an individual, or on the basis of such individual's participation in an investigation by the college.
- 5.1 **Consent**: Consent is a voluntary agreement to engage in sexual activity.
- A. It is clear, unambiguous assent to a sexual interaction, given through words or conduct
 - B. Past consent does not imply future consent
 - C. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another
 - D. Consent can be withdrawn at any time
 - E. Someone who is incapacitated cannot consent. This incapacitation can be due

to drugs, alcohol, when a person is asleep or unconscious, or because of an intellectual or other disability that prevents the person from having the capacity to give consent

F. Coercion, force or threat of either invalidates consent

5.2 **Clery Act:** A federal statute that requires all higher education entities participating in federal financial aid programs to keep records about crimes in and around their respective campuses. The full name of the Clery Act is: Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act.

5.3 **Title IX:** The Education Amendment of 1972, which requires a prompt and equitable resolution of a sexual discrimination complaint.

613.6 OPTIONS FOR ASSISTANCE-FOLLOWING AN INCIDENT OF SEXUAL MISCONDUCT

6.1 Immediate Assistance: MTECH procedures will endeavor to provide immediate assistance for victims. Counselors on each campus can help obtain needed resources, explain reporting options, and help navigate the reporting process.

6.2 Ongoing Assistance: MTECH procedures provide counseling advocacy and support both on and off campus, and provide academic accommodations and interim measures.

613.7 TITLE IX COORDINATOR

7.1 Justin Browning is the College's Title IX Coordinator and can be reached in person at:

Justin Browning
MTECH Lehi Campus, 230E
2301 W Ashton Blvd.
Lehi, UT 84043
801-753-4137
jbrowning@mtc.edu

7.2 Role: Pursuant to Title IX of the Education Amendments of 1972 and the U.S. Department of Education's implementing regulations at 34 C.F.R. Part 106, the College's Title IX Coordinator has primary responsibility for coordinating the College's efforts to comply with, and carry out, its responsibilities under Title IX, which prohibits sexual discrimination in all the operations of this College, as well as retaliation for the purpose of interfering with any right or privilege secured by Title IX.

7.3 A student or employee should contact the Title IX Coordinator in order to:

A. Seek information or training about rights and courses of action available to

- resolve reports or complaints that involve potential sexual discrimination, including sexual misconduct,
- B. File a complaint or make a report of sexual discrimination, including sexual misconduct,
 - C. Notify the College of any incident or policy or procedure that may raise potential Title IX concerns,
 - D. Get information about available resources (including confidential resources) and support services relating to sexual discrimination, including sexual misconduct, and
 - E. Ask questions about the College's policies and procedures related to sex discrimination, including sexual misconduct

613.8 REPORTING

- 8.1 MTECH has procedures for students and employees to file complaints of sexual discrimination.
 - A. Grievance procedures are widely published on the website and other MTECH publications.
 - B. Normal grievance procedures can be used to file complaints of sexual discrimination.
 - C. Complaints may be filed directly with the Title IX Coordinator. If an investigation reveals evidence of criminal misconduct, the Title IX Coordinator may refer the matter to law enforcement, Utah State Risk Management, and/or the Attorney General's Office.

613.9 ADJUDICATION

- 9.1 MTECH will endeavor to perform an investigation of the complaint, regardless of whether there is a criminal investigation.
 - A. Adjudicators will be individuals who have been trained in investigating Sexual Misconduct.
 - B. Response to the complaint will endeavor to be prompt and equitable.
 - C. Complainants will not be required to confront the accused or participate in mediation.
 - D. Notice of hearings will be given to both parties. Every complainant has the right to present his/her case. The student has the right to present witnesses and other evidence, and the right to the same appeal process used in normal grievances. This applies to both the complainant and the accused.
 - E. Both parties will be allowed to present witnesses and other evidence. No questioning or evidence will be allowed about the complainant's prior sexual conduct with anyone other than the alleged perpetrator.
 - F. Evidence of prior consensual dating or sexual relationship between the parties, by itself, does not imply consent or preclude a finding of sexual misconduct.
 - G. College policy prohibits retaliation against those who file a complaint or third-

party report, or otherwise participate in the investigative and/or disciplinary process (e.g., as a witness). The College will endeavor to take strong responsive action if retaliation occurs.

H. Complainant will be notified of the time frame within which:

1. The school will conduct a full investigation of the complaint;
2. The parties will be notified of the outcome of the complaint, and
3. The parties may file an appeal, if applicable.

I. Decisions regarding complaints will be made using a clear and convincing standard of the evidence.

J. All complainants will be notified, in writing, simultaneously, of the outcome of the complaint. This includes disclosing information about the sanction imposed on the perpetrator when the sanction directly relates to the harassed individual. This could include expulsion, an order that the harasser stay away from the harassed student, or that the harasser is prohibited from attending school for a period of time, or transferred to another class or campus.

K. In compliance with the Clery Act, both parties must be informed of the outcome, including sanction information. MTECH will not require the complainant to abide by any verbal or written non-disclosure agreement regarding the complaint.

L. Voluntary informal methods (e.g. mediation) may be used in some sexual harassment complaints, but the complainant must be notified of their right to end the informal process at any time and begin the formal stage of the complaint process.

M. Mediation will not be used in cases involving allegations of sexual assault.

613.10 PREVENTION AND EDUCATION

10.1 The College works to prevent Sexual Misconduct through education of faculty and staff at annual Opening Institute meetings and other campus meetings throughout the school year.

10.2 MTECH students receive information regarding prevention and the College's Sexual Misconduct policies and procedures during orientation.

10.3 Faculty, administrators and staff receive information regarding prevention, and the College's Sexual Misconduct policies and procedures during new hire orientation. This is refreshed during regular trainings.

10.4 Educational and outreach activities occur in the way of posters, handouts, and seminars. This includes bystander intervention.

613.11 TRAINING

11.1 The College reviews Sexual Misconduct policies on a regular basis with faculty and

staff, and provides update training.

- 11.2 The Title IX Coordinator, Investigators, and Decision Makers receive training approved through the Association of Title IX Administrations (ATIXA) on responding to, investigating and adjudicating Sexual Misconduct.

613.12 ANNUAL SECURITY REPORT

- 12.1 An Annual Security Report (ASR) is published each year on MTECH's website for students, employees, and prospective students and employees. Paper copies are available on request. The report details three calendar years of crime statistics for each campus, including those for sex offenses, both forcible and non-forcible. It also documents security policies and procedures and basic rights guaranteed victims of sexual assault.

613.13 REFERENCES

- 13.1 Office of Civil (OCR) Website
- 13.2 Clery Act
- 13.3 ATIXA