Policy
Sexual and/or Relationship Misconduct

POLICY
SEXUAL AND/OR RELATIONSHIP MISCONDUCT
FOR MICHIGAN TECHNOLOGICAL UNIVERSITY STUDENTS

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Guiding Principles

Sexual and/or relationship misconduct have been identified as national problems that significantly impact college and university students. Federal and state laws place requirements upon colleges and universities to address issues of sexual and/or relationship misconduct. The University is committed to educating students, faculty, and staff about this topic; and to offering a variety of comprehensive services available on campus and in the surrounding community.

The University’s Student Code of Community Conduct expressly prohibits sexual and/or relationship misconduct. Sexual and/or relationship misconduct includes 1) sexual harassment 2) non-consensual sexual contact 3) non-consensual sexual intercourse 4) intimate partner violence 5) stalking 6) sexual exploitation. These terms are defined below under Prohibited Conduct.

Sexual and/or relationship misconduct can be carried out by University employees, fellow students, students from other schools, or third parties. When an allegation of sexual and/or relationship misconduct is brought forward, the University will take thorough, reliable, impartial, and fair steps to investigate in a prompt, effective, and equitable manner. If found to have occurred, the University will take steps to remedy the sexual misconduct, prevent its recurrence, and address its effects, regardless of whether or not the sexual misconduct is the subject of a criminal investigation.

Retaliation against a Reporting Party, Responding Party, or any individual or group of individuals involved in the complaint, investigation, and/or resolution of an allegation of a violation of University policy is strictly prohibited. Any complaint regarding retaliation should be reported to the Title IX Coordinator, Office of Academic and Community Conduct and/or Public Safety and Police Services.

This policy is supported by the Sexual and/or Relationship Misconduct Procedures for Addressing Allegations against Michigan Technological University Students.
Prohibited Conduct

Sexual Harassment
Unwelcomed sexual, sex-based, and/or gender-based verbal, written, online and or physical conduct. It includes two types of sex discrimination: Quid Pro Quo and Hostile Environment Harassment.

Non-Consensual Sexual Contact
Any intentional or reckless sexual touching, however slight, with any object or body part, by a person upon another person, without consent and/or by force. Sexual contact is any intentional or reckless contact with the breasts, buttocks, groin, mouth, or genitals of another person, or intentional or reckless touching of another person with any of these body parts, making another person touch you or themselves with or on any of these body parts, or any other intentional or reckless bodily contact in a sexual manner. This includes sexual assault.

Non-Consensual Sexual Intercourse
Any sexual intercourse, however slight, with any object, by a person upon another person that is without consent and/or by force. Intercourse includes vaginal or anal penetration by a penis, object, tongue, finger or other body part; and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact. This includes sexual assault.

Intimate Partner Violence
Defined as any instance of violence or abuse (verbal, physical, or psychological) that occurs between those who are in or have been in an intimate relationship with each other. This includes dating violence and domestic violence.

Stalking
Engaging in a menacing course of conduct directed at a specific person that would cause a reasonable person to: (A) Fear for their safety or the safety of others; or (B) Suffer substantial emotional distress.

Sexual Exploitation
Taking nonconsensual, unjust or abusive advantage of another in a sexual or intimate context for the responding party’s own advantage or benefit OR to
benefit/advantage anyone other than the individual being exploited AND that does not constitute any other sexual and/or relationship misconduct offense addressed in the University’s policy, including without limitation: prostituting another person, engaging in, permitting or facilitating non-consensual viewing, photographing, videotaping, audio taping, or posting to the internet sexual or intimate activity (such as dressing, showering and similar activity of oneself or others), knowingly infecting another person with HIV or other sexually transmitted diseases and/or inducing incapacitation of another person with the intent to facilitate nonconsensual sexual intercourse or contact with that person.
Definitions

Consent
Clear, knowing, and voluntary words or actions that give permission for specific sexual activity. Consent is active not passive. Silence in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding willingness to engage in (and the conditions of) sexual activity. Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity. Previous relationships or prior consent cannot imply consent to future sexual acts. Consent can be withdrawn once given, as long as that withdrawal is clearly communicated. Once consent is withdrawn, sexual activity must stop reasonably immediately. In order to give consent, one must be of legal age, not mentally disabled, and/or, not physically incapacitated.

Course of conduct
Two or more acts, including but not limited to, acts in which the alleged responding party directly, indirectly, or through third parties, undertakes action, method, device, or means to commit sexual and/or relationship misconduct.

Emotional/Psychological Abuse
A persistent pattern or prolonged climate of dominating or controlling behavior, often involving some type of power imbalance. The behavior is intended to terrorize, intimidate, isolate, or exclude an intimate partner. This does not include isolating/excluding oneself from a former intimate partner.

Force
The use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation and coercion that overcomes free will or resistance or that produces consent.

Group violation
A violation where a student group/organization and its officers and/or membership may be held collectively and individually responsible when such violations of the Code: take place at organization-sponsored or co-sponsored events, whether sponsorship is formal or tacit; have received the consent or encouragement of the
organization or of the organization’s leaders or officers; or were known or should have been known to the membership or its officers.

Hostile environment sexual harassment
When sexual harassment is severe, persistent or pervasive, and subjectively and objectively offensive, such that it unreasonably interferes with, denies, or limits someone’s ability to participate in or benefit from the institution’s education or employment programs.

Incapacitation
A state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent. Sexual activity with someone you know to be or should know to be incapacitated constitutes a violation of this policy. Incapacitation can occur mentally or physically, from developmental disability, by alcohol or other drug use, or blackout. The question of what the responding party should have known is objectively based on what a reasonable person in the place of the responding party – sober and exercising good judgement – would have known about the condition of the reporting party. Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent. Incapacity may also result from mental disability, sleep, unconsciousness, involuntary physical restraint, or from taking of rape drugs.

Intimate relationship
A relationship that includes some romantic, sexual and/or domestic element.

Menacing
Conduct intended to control someone, restore a relationship at any cost, or obtain some other desired end for which an individual is willing to, or threatens to, cause harm if they don’t get what they want.

Physical violence or abuse
Intentionally or recklessly (1) causing another bodily harm; (2) attempting to cause another bodily harm; or (3) putting another in fear of imminent bodily harm.

Quid pro quo (meaning “this for that”) sexual harassment
Unwelcome sexual advances, requests for sexual favors, and/or other verbal or physical conduct of a sexual nature by a person having power or authority over another when submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual’s education or employment progress, development or performance. This includes when submission to such conduct would be, or under the circumstances would reasonably be understood to be, a condition for access to receiving the benefits of any educational or employment program.

**Reasonable person**: a person who behaves in a way that is legally appropriate. Such person exercises average care, skill and judgement in conduct.

**Retaliation**
Engaging in an adverse action or threat of an adverse action against a reporting party, responding party, or any individual or group of individuals involved in the complaint, investigation, and/or resolution of an allegation of a violation of University policy; including adverse action and/or threat of adverse action against any individual who attempts to intervene or prevent behavior prohibited by this policy. Retaliation can be committed by an individual or group of individuals, not just a reporting party or responding party. Retaliation can take many forms including threats, intimidation, pressuring, continued harassment, violence, physical, emotional or other forms of harm to others.

**Sexual coercion**
The act of using pressure, alcohol or drugs, or force to have sexual contact or sexual intercourse with someone against their will.

**Student**
Any individual who is an admitted applicant, is currently enrolled, or was enrolled at the time of the incident regardless of their age or status in regard to parental dependency. Student status is maintained during semester breaks.

**Substantial emotional distress**
Anxiety, sorrow or pain that is not mild or brief, and is so substantial or long lasting that a reasonable person would not be expected to allow its continuance.


**Verbal abuse**

Extreme/excessive use of language designed to mock, shame, embarrass or humiliate the other intimate partner. The language must be sufficiently severe, persistent or pervasive, and objectively and subjectively offensive.
Interpretive Rules for Sexual and/or Relationship Misconduct Charges

1. The person who is the object of sexual and/or relationship misconduct is not required to physically or otherwise resist a sexual aggressor.

2. Silence, previous sexual relationships, and/or current relationship with the alleged perpetrator (or anyone else) may not, in themselves, be taken to imply consent. Consent cannot be implied by attire, or inferred from the buying of dinner or the spending of money on a date.

3. Intentional use of alcohol/drugs by the student accused of sexual and/or relationship misconduct is not an excuse for violation of the sexual and/or relationship misconduct policy.

4. A student who deliberately drugs or attempts to persuade another to consume alcohol or drugs for the purpose of rendering that person incapacitated or sexually submissive/passive commits a violation of the sexual and/or relationship misconduct policy.

5. An "intent to rape" is not required under this policy. The requisite intent for rape is demonstrated by engaging in the act of intercourse intentionally, without the other person’s consent.

6. Consent has an expiration date. Consent lasts for a reasonable time, depending on the circumstances. Consent must be contemporaneous with the sexual activity involved.

7. Nonconsensual sexual contact/intercourse or sexual exploitation is not limited to strangers and can include acquaintances.
**Jurisdiction**

The jurisdiction of the University over sexual and/or relationship misconduct incidents involving a student(s) is broad. The University will investigate and remedy, using the Procedures for Sexual and/or Relationship Misconduct, complaints of sexual and/or relationship misconduct:

- Regardless of the location of the incident.
- Regardless of the incident occurring during the course of a semester or during a semester break.
- As long as the alleged responding party is a current enrolled student, or was at the time of the incident.
- Regardless of the enrollment status of the alleged reporting party.
- If the impact of the sexual and/or relationship misconduct incident is likely to have a substantial effect on campus life or activities of the alleged student reporting party or alleged student responding party.
- If the incident poses a threat of danger to members of the University community.
- If alleged responding party is an inactive student and/or not currently enrolled, interim action(s) may be taken, i.e. place a hold on the student’s account and/or issue a campus ban.
- When allegations arise after a student has graduated regarding incidents that occurred before the student graduated, the University maintains the right to investigate and remedy such complaints. If found to be responsible, a student could face revocation of their degree and/or other sanctions.
**Good Samaritan Provision: Intent Regarding Medical Emergency**

Student welfare is the University’s primary concern. When students and other individuals need emergency medical help, the University encourages students to offer assistance to others in need and to seek assistance for themselves. Sometimes students may be hesitant to seek or offer assistance due to concerns that their conduct violates University rules, or that a student in a medical emergency will be charged with a rule violation. This provision is included to address that concern.

Any situation where a reasonable person would believe an individual’s physical and/or psychological health is at serious risk and immediate action must be taken to protect the individual or others is defined as a medical emergency. In cases of medical emergency, the University will use considerable discretion to avoid a finding of responsibility under the provisions of the Code.

This statement of intent is broadly defined to allow for generous interpretation and consideration of individual circumstances and the intent of those involved. It applies to the student(s) providing, as well as receiving medical assistance. Educational conditions may be imposed rather than conduct sanctions, if appropriate, based on the professional judgment of the Dean of Students or designee. This statement of intent applies only to administrative enforcement of the Code and does not provide immunity/amnesty from arrest or criminal prosecution.
**Attempts and Enhancements**

1. Attempts to commit prohibited conduct may be punished to the same extent as completed violations.

2. Repeated or aggravated acts of prohibited conduct may result in enhanced sanctions.

3. Repeated or intentional failure to comply with imposed sanctions may result in enhanced sanctions.

4. Conduct violations that are motivated by the offender's bias due to race, religion, color, national origin, age, sex, sexual orientation, gender identity, height, weight, genetic information, marital status, disabled veteran status, veteran status, or disability may result in enhanced sanctions.
Interpretation

The list of prohibited conduct is neither complete nor all-inclusive. The University reserves the right to impose necessary and appropriate interim actions and the full range of sanctions in response to inappropriate student conduct which threatens the safety and security of the University community.
Process

The Sexual and/or Relationship Misconduct Procedures for Addressing Allegations against Michigan Technological University Students provide a detailed explanation of the process that will be followed for complaints filed under the Sexual and/or Relationship Misconduct Policy for Michigan Technological University Students. Under most circumstances, the investigation and final determination of a complaint will be completed within 60 days, not including semester and/or holiday breaks, from the date on which the University receives notice of an alleged incident. If not completed within that time all parties will be advised of the reason and of the expected completion date.

The possible sanctions under the Sexual and/or Relationship Misconduct Policy for Michigan Technological University Students are enumerated in the Sexual and/or Relationship Misconduct Procedures for Addressing Allegations against Michigan Technological University Students. In the final determination of an investigation of a case of sexual and/or relationship misconduct, the range of sanctions is from written warning to conduct expulsion.

History: Revised August 1, 2005; August 1, 2006; August 1, 2007; August 1, 2008; August 1, 2009; August 1, 2010; September 3, 2013; August 1, 2014; January 12, 2015; July 1, 2015; August 15, 2016; August 1, 2017; August 1, 2018.