

# St. Cloud Technical & Community College

## Policies and Procedures

### Chapter S1 – College Organization & Administration

#### S1.3 Sexual Violence Policy

*Update Revision Responsibility: Vice President for Student Affairs*

*On March 7, 2013, President Obama signed into law the Violence Against Women Reauthorization Act (VAWA). The campus Sexual Violence Elimination Act (SaVE) was added within the reauthorization and imposes new requirements on colleges. This policy has been amended to comply with the VAWA/SaVE Act.*

##### **Other related Policies**

MnSCU/SCTCC Policy 1B.1: *Report/Complaint of Harassment/Discrimination*

MnSCU/SCTCC Policy 3.6: *Student Code of Conduct.*

**Part 1. Policy statement.** Sexual violence is an intolerable intrusion into the most personal and private rights of an individual, and is prohibited at Minnesota State Colleges and Universities, including St. Cloud Technical and Community College. Both the College and Minnesota State Colleges and Universities are committed to eliminating sexual violence in all forms and will take appropriate remedial action against any individual found responsible for acts in violation of this policy. Acts of sexual violence may also constitute violations of criminal or civil law, or other College or Board Policies that may require separate proceedings. To further its commitment against sexual violence, Minnesota State Colleges and Universities and/or the College provides reporting options, an investigative and disciplinary process, and prevention training or other related services as appropriate.

**Subpart A. Application of policy to students, employees, and others.** This policy applies to all Minnesota State Colleges and Universities students and employees and to others, as appropriate, where incidents of sexual violence on system property have been reported. Reports of sexual violence committed by a student at a location other than on system property are covered by this policy pursuant to the factors listed in Board Policy 3.6, Part 2. Reports of sexual violence committed by a system employee at a location other than system property are covered by this policy.

Reports of sexual violence committed on system property by individuals who are not students or employees are subject to appropriate actions by Minnesota State Colleges and Universities, including, but not limited to, pursuing criminal or civil action against them. Allegations of discrimination or harassment are governed by Board Policy 1B.1.

**Subpart B. College and university policies.** Each Minnesota State Colleges and Universities college and university shall adopt a clear, understandable written policy on sexual violence that applies to its campus community, including, but not limited to, its students and employees. The policy content and implementation shall be consistent with the standards in this Policy and Procedure 1B.3.1. This policy and procedures outline St. Cloud Technical and Community College's compliance with MnSCU Policy and Procedures 1B.3.1.

**Part 2. Definitions.** The following definitions apply to this Policy and Procedure 1B.3.1.

**Subpart A. Sexual violence.** Sexual violence includes a continuum of conduct that includes sexual assault, non-forcible sex acts, dating and relationship violence, stalking, as well as aiding acts of sexual violence.

**Subpart B. Sexual assault.** “Sexual assault” means an actual, attempted, or threatened sexual act with another person without that person’s consent. Sexual assault is often a criminal act that can be prosecuted under Minnesota law, as well as form the basis for discipline under Minnesota State Colleges and Universities student conduct codes and employee disciplinary standards. Sexual assault includes but is not limited to:

1. Involvement without consent in any sexual act in which there is force, expressed or implied, or use of duress or deception upon the victim. Forced sexual intercourse is included in this definition, as are the acts commonly referred to as “date rape” or “acquaintance rape.” This definition also includes the coercing, forcing, or attempting to coerce or force sexual intercourse or a sexual act on another.
2. Involvement in any sexual act when the victim is unable to give consent.
3. Intentional and unwelcome touching, or coercing, forcing, or attempting to coerce or force another to touch a person’s intimate parts (defined as primary genital area, groin, inner thigh, buttocks, or breast).
4. Offensive sexual behavior that is directed at another such as indecent exposure or voyeurism.

**Subpart C. Dating and relationship violence.** Dating and relationship violence includes physical harm or abuse, and threats of physical harm or abuse, arising out of a personal intimate relationship. This violence also may be called domestic abuse or spousal/partner abuse and may be subject to criminal prosecution under Minnesota state law.

**Subpart D. Stalking.** Stalking is conduct directed at a specific person that is unwanted, unwelcome, or unreciprocated and that would cause a reasonable person to fear for her or his safety or the safety of others or to suffer substantial emotional distress.

**Subpart E. Affirmative Consent.** Consent is informed, freely given and mutually understood willingness to participate in sexual activity that is expressed by clear, unambiguous, and affirmative words or actions. It is the responsibility of the person who wants to engage in sexual activity to ensure that the other person has consented to engage in the sexual activity. Consent must be present throughout the entire sexual activity and can be revoked at any time. If coercion, intimidation, threats, and/or physical force are used, there is no consent. IF the complainant is mentally or physically incapacitated or impaired so that the complainant cannot understand the fact, nature, or extent of the sexual situation, there is no consent; this included conditions due to alcohol or drug consumption, or being asleep or unconscious. A lack of protest, absence or resistance, or silence alone does not constitute consent, and past consent of sexual activities does not imply ongoing future consent. The existence of a dating relationship between the people involved or the existence of a past sexual relationship does not prove the presence of. Or otherwise provide the basis for, an

assumption of consent. Whether the respondent has taken advantage of a position of influence over the complainant may be a factor in determining consent.

**Subpart F. Non-forcible sex acts.** Non-forcible acts include unlawful sexual acts where consent is not relevant, such as sexual contact with an individual under the statutory age of consent, as defined by Minnesota law, or between persons who are related to each other within degrees wherein marriage is prohibited by law.

**Subpart G. System property.** "System property" means the facilities and land owned, leased, or under the primary control of Minnesota State Colleges and Universities, its Board of Trustees, system office, colleges and universities.

**Subpart H. Employee.** "Employee" means any individual employed by Minnesota State Colleges and Universities, its colleges and universities and system office, including student workers.

**Subpart I. Student.** The term "student" includes all persons who:

1. Are enrolled in one or more courses, either credit or non-credit, through a college or university;
2. Withdraw, transfer or graduate, after an alleged violation of the student conduct code;
3. Are not officially enrolled for a particular term but who have a continuing relationship with the college or university; or
4. Have been notified of their acceptance for admission or have initiated the process of application for admission or financial aid; or
5. Are not college or university employees and are not enrolled in the institution but live in a college or university residence hall.

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College President: Jan Kloos Date: 5-17-78

Date of Adoption: \_\_\_\_\_

Date of Implementation: \_\_\_\_\_

Date repealed or replaced: \_\_\_\_\_

# **St. Cloud Technical & Community College**

## **Policies and Procedures**

### **Chapter S1 – College Organization & Administration**

#### **S1.3.1 Sexual Violence Procedure**

**Part 1. Procedure objective.** This procedure is designed to further implement Minnesota State Colleges and Universities Board Policy 1B.3 prohibiting sexual violence. This procedure provides a process through which individuals alleging sexual violence may pursue a complaint.

This procedure is intended to protect the rights and privacy of both the complainant and respondent and other involved individuals, as well as to prevent retaliation and reprisal.

#### **Part 2. Definitions.**

**Subpart A. Policy definitions.** The definitions in Policy 1B.3 also apply to this procedure.

**Subpart B. Campus security authority.** Campus security authority includes the following categories of individuals at a college or university:

1. A college or university security department;
2. Other individuals who have campus security responsibilities in addition to a college or university security department;
3. Any individual or organization identified in a college or university security policy as an individual or organization to which students and employees should report criminal offenses;
4. An official of a college or university who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings; advisors to recognized student organizations, and athletic coaches. Professional counselors, whose official responsibilities include providing mental health counseling, and who are functioning within the scope of their license or certification are not included in this definition.

#### **Part 3. Reporting incidents of sexual violence.**

**Subpart A. Prompt reporting encouraged.** Complainants of sexual violence may report incidents at any time, but are strongly encouraged to make reports promptly in order to best preserve evidence for a potential legal or disciplinary proceeding.

Complainants are strongly encouraged to report incidents of sexual violence to law enforcement for the location where the incident occurred. Complainants are also encouraged to contact the local victim/survivor services office, counseling and health care providers, campus designated officers or Minnesota State Colleges and Universities campus security authorities for appropriate action.

#### **Local reporting resources include:**

**911 for emergency services**

**Campus Security 320/308-3333**

**St. Cloud Police 320-251-1200 (available 24 hours)**

**Central Minnesota Sexual Assault Center 210-251-4357 (24 crisis hotline)**

**St. Cloud Hospital Emergency Trauma Center 320-255-5656**

**SCSU Women's Center 320-308-4958**

**SCSU Health Services 320-308-3191**

**Ana Marie's Alliance 320-253-6900 (services and safe housing)**

**SCTCC Designated Officers -Complaints or instances of sexual harassment and violence may be reported to the college's designated officers:**

**Student Complaints** -Missy Majerus, Director of Campus Life, office 1-401Y, mmajerus@sctcc.edu , phone: 320-308-5592

**Employee Complaints** -Deb Holstad, Human Resources Director, office 1-403C, dholstad@sctcc.edu, phone: 320-308-3227

**Subpart B. Assistance in reporting.** When informed of an alleged incident of sexual violence, all Minnesota State Colleges and Universities students and employees are urged to encourage and assist complainants, as needed, to report the incident to local law enforcement, local victim/survivor services, campus designated officers or campus security authorities.

Minnesota State Colleges and Universities campus security authorities, when informed of an alleged incident of sexual violence, shall promptly assist the complainant, as requested, including providing guidance in filing complaints with outside agencies including law enforcement; obtaining appropriate assistance from victim/survivor services or medical treatment professionals; and filing a complaint with campus officials responsible for enforcing the student conduct code or employee conduct standards.

When appropriate, Minnesota State Colleges and Universities may pursue legal action against a respondent, including, but not limited to, trespass or restraining orders, in addition to disciplinary action under the applicable student or employee conduct standard. A college or university may take actions it deems necessary or appropriate in response to all protection, restraining or no contact orders.

#### **Part 4. Confidentiality of reporting.**

**Subpart A. Confidential reports.** Because of laws concerning government data contained in Minnesota Statutes §13, the Minnesota Government Data Practices Act, colleges and universities cannot guarantee confidentiality to those who report incidents of sexual violence except where those reports are privileged communications with licensed health care professionals. Some off-campus reports also may be legally privileged by law, such as reports to clergy, private legal counsel, or health care professionals.

**Subpart B. Reports to campus security authorities.** Complainants of sexual violence may contact any campus security authority for appropriate assistance or to report incidents. Absolute confidentiality of reports made to campus security authorities cannot be promised. However, campus security authorities shall not disclose personally identifiable information about a complainant of sexual violence without the complainant's consent except as may be required or permitted by law. There may be instances in which Minnesota State Colleges and Universities determines it needs to act regardless of whether the parties have reached a personal resolution or if the complainant requests that no action be taken. In such instances, Minnesota State Colleges and Universities will investigate and take appropriate action, taking care to protect the identity of the complainant and any other reporter in accordance with this procedure.

**Subpart C. Required Reports.** Any campus security authority or any college or university employee with supervisory or student-advising responsibility who has been informed of an alleged incident of sexual violence must follow college or university procedures for making a report for the annual crime statistics report. In addition, the campus security authority shall report to other school officials, as appropriate, such as the campus affirmative action office, the campus office responsible for administering the student conduct code, and/or the designated Title IX compliance coordinator, in order to initiate any applicable investigative or other resolution procedures.

Campus security authorities may be obligated to report to law enforcement the fact that a sexual assault has occurred, but the name or other personally identifiable information about the complainant will be provided only with the consent of the complainant, except as may be required or permitted by law.

**Part 5. Policy notices.**

**Subpart A. Distribution of policy to students.** Each college or university shall, at a minimum, at the time of registration make available to each student information about its sexual violence policy and procedure, and shall additionally post a copy of its policy and procedure at appropriate locations on campus at all times. A college or university may distribute its policy and procedure by posting on an Internet or Intranet Web site, provided all students are directly notified of how to access the policy by an exact address, and that they may request a paper copy.

**Subpart B. Distribution of policy to employees.** All colleges, universities and the system office shall make available to all employees a copy of its sexual violence policy and procedure. Distribution may be accomplished by posting on an Internet or Intranet Web site, provided all employees are directly notified of the exact address of the policy and procedure and that they may receive a paper copy upon request.

**Subpart C. Required Notice.** Each college or university shall have a sexual violence policy, which shall include the notice provisions in this part.

**1. Notice of complainant options.** Following a report of sexual violence the complainant shall be promptly notified of:

- a. Where and how to obtain immediate medical assistance; complainants should be informed that timely reporting and a medical examination within 72 hours are critical in preserving evidence of sexual assault and proving a criminal or civil case against a perpetrator. Complainants should be told, however, that they may report incidents of sexual violence at any time.
- b. Where and how to report incidents of sexual violence to local law enforcement officials, and/or appropriate Minnesota State Colleges and Universities system contacts for employees, students and others. Such contacts should be identified by name, location and phone number for 24-hour availability, as applicable.
- c. Resources for where and how complainants may obtain on- or off-campus counseling, mental health or other support services.

**2. Notice of complainant rights.** Complainants shall be notified of the following:

- a. Their right to file criminal charges with local law enforcement officials in sexual assault cases;
- b. Rights under the crime victims bill of rights, Minnesota Statutes §611A.01 – 611A.06, including the right to assistance from the Crime Victims Reparations Board and the commissioner of public safety;
- c. Availability of prompt assistance from campus officials, upon request, in notifying the appropriate campus investigating authorities and law enforcement officials, and, at the direction of law enforcement authorities, assistance in obtaining, securing and maintaining evidence in connection with a sexual violence incident;
- d. Assistance available from campus authorities in preserving for a sexual violence complainant materials relating to a campus disciplinary proceeding;
- e. That complaints of incidents of sexual violence made to campus security authorities shall be promptly and appropriately investigated and resolved;
- f. That, at a sexual assault complainant's request, the college, university or system office may take action to prevent unwanted contact with the alleged assailant, including, but not

limited to, transfer of the complainant and/or the respondent to alternative classes, or a work site or to alternative college-owned housing, if such alternatives are available and feasible.

**Part 6. Investigation and disciplinary procedures.**

**Subpart A. Immediate action.** A college or university may, at any time during the report/complaint process, reassign or place on administrative leave an employee alleged to have violated this policy, in accordance with the procedures in System Procedure 1B.1.1. Such action must be consistent with the applicable collective bargaining agreement or personnel plan. A college or university may summarily suspend or take other temporary measures against a student alleged to have committed a violation of this policy, in accordance with System Procedure 1B.1.1 or Board Policy 3.6.

**Subpart B. General principles.** Colleges, universities and the system office shall use system procedure 1B.1.1 Report/Complaint of Discrimination/Harassment Investigations and Resolution when investigating complaints of sexual violence. Procedures used in response to a complaint of sexual violence should avoid requiring complainants to follow any plan of action, to prevent the possibility of re-victimization.

College and university investigation and disciplinary procedures concerning allegations of sexual violence against employees or students shall:

1. Be respectful of the needs and rights of individuals involved;
2. Proceed as promptly as possible;
3. Permit a student complainant and a student respondent to have the same opportunity to have an appropriate support person or advisor present at any interview or hearing, in a manner consistent with the governing procedures and applicable data practices law;
4. Employees shall have the right to representation consistent with the appropriate collective bargaining agreement or personnel plan;
5. Be conducted in accordance with applicable due process standards and privacy laws;
6. Simultaneously inform both the complainant and respondent of the outcome in a timely manner, as permitted by applicable privacy law.
7. Be based on a preponderance of evidence standard, meaning that it is more likely than not that the policy or code has been violated.

The past sexual history of the complainant and respondent shall be deemed irrelevant except as that history may directly relate to the incident being considered.

A respondent's use of any drug, including alcohol, judged to be related to an offense may be considered to be an exacerbating rather than mitigating circumstance.

**Subpart C. Relationship to parallel proceedings.** In general, Minnesota State Colleges and Universities investigation and disciplinary procedures for allegations of sexual violence will proceed independent of any action taken in criminal or civil courts. A college or university need not, and in most cases should not, delay its proceedings while a parallel legal action is on-going. If a college or university is aware of a criminal proceeding involving the alleged incident, they may contact the prosecuting authority to coordinate when feasible. Criminal or civil court proceedings are not a substitute for Minnesota State Colleges and Universities procedures.

**Subpart D. False statements prohibited.** Minnesota State Colleges and Universities takes allegations of sexual violence very seriously and recognizes the consequences such allegations may have on a respondent as well as the complainant. Any individual who knowingly provides false information regarding the filing of a complaint or report of sexual violence or during the investigation of such a complaint or report may be subject to discipline or under certain circumstances, legal action. Complaints of conduct that are found not to violate policy are not assumed to be false.

**Subpart E. Withdrawn complaint.** If a complainant no longer desires to pursue a complaint through the college or university's proceeding, the college or university reserves the right to investigate and resolve the complaint as it deems appropriate.

**Subpart F. Minnesota State Colleges and Universities discretion to pursue certain allegations.** Minnesota State Colleges and Universities reserves discretion whether to pursue alleged violations of policy under appropriate circumstances, including, but not limited to, a determination that an effective investigation is not feasible because of the passage of time, or because the respondent is no longer a student or employee of the college or university.

**Subpart G. Minnesota State Colleges and Universities discretion to deal with policy violations disclosed in investigation.** Minnesota State Colleges and Universities reserves the right to determine whether to pursue violations of policy by students or employees other than the respondent, including a complainant or witness, that come to light during the investigation of an incident of sexual violence. In order to encourage reporting of sexual violence, under appropriate circumstances college or university administrators may choose to deal with violations of Minnesota State Colleges and Universities policy in a manner other than disciplinary action.

**Subpart H. Sanctions.** Sanctions that may be imposed if a finding is made that sexual violence has occurred include, but are not limited to, suspension, expulsion of students or termination from employment. The appropriate sanction will be determined on a case-by-case basis taking into account the severity of the conduct, the student's or employee's previous disciplinary history, and other factors as appropriate.

**Subpart I. Retaliation prohibited.** Actions by a student or employee intended as retaliation, reprisal or intimidation against an individual for making a complaint or participating in any way in a report or investigation under this policy are prohibited and are subject to appropriate disciplinary action.

## **Part 7. Sexual violence prevention and education.**

**Subpart A. Campus-wide training.** SCTCC employs several methods to ensure the security of students and staff to reduce the risk of violence occurring on campus property. Campus security patrolling, an extensive video monitoring system, escort services, informational brochures, educational programs, staff training, and the presence of the St. Cloud Police Department liaison officers work to mitigate the opportunity for sexual violence to occur.

To further implement Policy 1B.3 and Procedures 1B.3.1 all new and incoming SCTCC students and staff participate in at least one educational program prior to beginning classes or employment. Content includes:

- SCTCC policies and procedures in preventing and responding to sexual assaults
- Awareness of sexual violence, and recognizing signs of abusive behavior
- Sexual violence prevention
- Reporting and responding to incidents of sexual violence – including bystander intervention, taking immediate action, evidence preservation, complainants rights and options, and victim support



- Penalties for perpetrating sexual violence and the provisions of Policy 1b.3.1

**Subpart B. Other training and education.** Colleges and universities and affiliated student organizations are encouraged to develop educational programs, brochures, posters and other means of information to decrease the incidence of sexual violence and advise individuals of the legal and other options available if they are the complainants of an incident or they learn of such an incident.

**Subpart C. Training for individuals charged with decision making authority.** Prior to serving as either an investigator or decision maker for complaints under this procedure, administrators must complete investigator or decisionmaker training provided by the system office. Investigators/decisionmakers and anyone else involved in the adjudication process must receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

**Part 8. Maintenance of report/complaint procedure documentation.** Data that is collected, created, received, maintained or disseminated about incidents of sexual violence will be handled in accordance with the privacy requirements of the Minnesota Statutes §13 (Minnesota Government Data Practices Act), and other applicable laws.

Information on reports of incidents of sexual violence that are made to Campus Security Authorities shall be documented in accordance with the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act, codified at 20 United States Code section 1092 (f). Such information will be used to report campus crime statistics on college and university campuses as required by that Act.

During and upon the completion of the complaint process, the complaint file shall be maintained in a secure location. Access to complaint file information shall be in accordance with the applicable collective bargaining agreement or personnel plan, the Minnesota Government Data Practices Act, the Family Educational Rights and Privacy Act and other applicable law and policy.

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College President: Jan Kloos Date: 5/7/18  
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