

# MID-PLAINS COMMUNITY COLLEGE JUDICIAL INCIDENT PROCEDURE

Last Update 6/22/18

The Mid-Plains Community College Judicial Incident  
Procedures are based upon,

THE NCHERM GROUP/ATIXA MODEL

POLICY AND PROCEDURE

**CIVIL RIGHTS EQUITY GRIEVANCE  
PROCEDURE (EGP) FOR ALL FACULTY,  
STUDENTS, AND EMPLOYEES**

ATIXA Model 3: Investigation → Hearing → Appeal → VPSA-Implemented Resolution

THIS MODEL PROCESS CAN BE USED AT LARGE OR SMALL CAMPUSES, AND  
WITHIN PUBLIC UNIVERSITIES, PRIVATE COLLEGES, AND COMMUNITY  
COLLEGES. IT IS INTENDED TO HELP CAMPUSES TO BE COMPLIANT WITH  
TITLE IX AND ALL OTHER FORMS OF CIVIL RIGHTS LAWS AND RELEVANT  
RESOLUTION PROCESSES.

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JURISDICTION TO ENSURE COMPLIANCE WITH ALL APPLICABLE LAWS AND  
REGULATORY REQUIREMENTS.

THIS STATEMENT MUST APPEAR IN ANY VERSION OF THIS MODEL

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## **I. Applicable Scope**

Mid-Plains Community College affirms its commitment to promote the goals of fairness and equity in all aspects of the educational enterprise.

The Equity Grievance Procedure governs Title IX investigations for MPCC Faculty, Students, and Employees. This includes: All Discriminatory and Bias Related Offenses are subject to resolution using Mid-Plains Community College's Equity Grievance Procedure (EGP), as detailed below. All Conduct Offenses are subject to resolution using the Mid-Plains Community College's Equity Grievance Procedure (EGP), when the act is based upon the reporting party's actual or perceived membership in a protected class.

All student Conduct Offenses not resolved through the EGP, will be resolved through the Judicial Incident Procedure (JIP), as detailed below.

When the responding party is a member of the Mid-Plains Community College community, the EGP or the JIP is applicable regardless of the status of the reporting party who may be a member or non-member of the campus community, including students, student organizations, faculty, administrators, staff, guests, visitors, campers, etc.

## **II. POLICY: Equal Opportunity, Harassment and Nondiscrimination**

*As used in this document, the term "reporting party" refers to the person impacted by alleged discrimination or offense. The term "responding party" refers to the person who has allegedly engaged in discrimination or offense.*

## **III. MPCC Vice President of Student Affairs**

The MPCC Vice President of Student Affairs (VPSA) oversees implementation of the Mid-Plains Community College's Judicial Incident Procedure and the Mid-Plains Community College Student Code of Conduct. The VPSA heads JIP Team and acts with independence and authority free of conflicts of interest. To raise any concern involving a conflict of interest by the VPSA, contact the Mid-Plains Community College President, Ryan Purdy, at (308) 535-3723. To raise concerns regarding a potential conflict of interest with any other administrator involved in the JIP, please contact the Vice President of Student Affairs.

Inquiries about and reports regarding this policy and procedure may be made internally to:

Andy Long  
McCook Campus Vice President  
1205 East 3<sup>rd</sup> Street, McCook, NE 69001  
(308) 345-8119  
longa@mpcc.edu

Brian Obert  
Area Dean of Student Life  
1205 East 3rd Street, McCook, NE 69001  
(308) 345-8109  
obertb@mpcc.edu

Janelle Higgins  
Area Associate Dean of Student Life  
601 West State Farm Road, North Platte, NE 69001  
(308) 535-3713  
higginsj@mpcc.edu

#### **IV. Reporting Discrimination**

Reports of discrimination, harassment and/or retaliation may be made using any of the following options. There is no time limitation on the filing of allegations.<sup>2</sup> However, if the responding party is no longer subject to the Mid-Plains Community College's jurisdiction, the ability to investigate, respond and provide remedies may be more limited:

- Report directly to the Title IX Coordinator<sup>3</sup>, Rebecca Wrage, at (308) 535-3679 or McCook Campus Vice President / Equity Grievance Panel Co-Chair, Andy Long, at (308) 345-8119;
- Report online, using the reporting form posted at <http://www.mpcc.edu/about-mpcc/general-information/incident-report>. Click the "Make A Report" Button.

All reports are acted upon promptly while every effort is made by the Mid-Plains Community College to preserve the privacy of reports. Such reports may also be anonymous. Anonymous reports will be investigated to determine if remedies can be provided. Additionally, all employees of the Mid-Plains Community College are designated as mandated reporters, except for the Area Counselor, and will share a report with the Title IX Coordinator promptly. Confidentiality and mandated reporting is addressed more specifically below. Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to the Mid-Plains Community College President, Ryan Purdy, at (308) 535-3723.

#### **V. Reporting Conduct Offenses**

Reports of Student Conduct Offenses may be made using any of the following options. There is no time limitation on the filing of allegations. However, if the responding party is no longer subject to the Mid-Plains Community College's jurisdiction, the ability to investigate, respond and provide remedies may be more limited:

- Report directly to Area Dean of Student Life, Dr. Brian Obert, at (308) 345-8109 or Area Associate Dean of Student Life, Janelle Higgins, at (308) 535-3713.
- Report online, using the reporting form posted at <http://www.mpcc.edu/about-mpcc/general-information/incident-report>. Click the "Make A Report" Button.

All reports are acted upon promptly while every effort is made by the Mid-Plains Community College to preserve the privacy of reports. Such reports may also be anonymous. Anonymous reports will be investigated to determine if remedies can be provided. Additionally, all employees of the Mid-Plains Community College are designated

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<sup>2</sup> Alternatively, the terminology of "grievance" may be used in lieu of allegation.

<sup>3</sup> Note that throughout this document, the term "Title IX Coordinator" refers to the Title IX Coordinator or their designee. This title should be adjusted accordingly to reflect the usage on your campus. e used in lieu of allegation.

as mandated reporters, except for the Area Counselor, and will share a report with the Title IX Coordinator promptly. Confidentiality and mandated reporting is addressed more specifically below.

The Judicial Incident Procedure applies to behaviors that take place on the campus, at Mid-Plains Community College -sponsored events and may also apply off-campus and to actions online when the VPSA determines that the off-campus conduct affects a substantial Mid-Plains Community College interest. A substantial Mid-Plains Community College interest is defined to include:

- A.** Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state or federal law;
- B.** Any situation where it appears that the responding party may present a danger or threat to the health or safety of self or others;
- C.** Any situation that significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder; and/or
- D.** Any situation that is detrimental to the educational interests of the Mid-Plains Community College.

[Public Universities/Colleges: Any online postings or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc. occurring completely outside of the Mid-Plains Community College's control (e.g. not on Mid-Plains Community College networks, websites or between Mid-Plains Community College email accounts) will only be subject to this policy when those online behaviors can be shown to cause a substantial on-campus disruption. Otherwise, such communications are considered speech protected by the 1<sup>st</sup> Amendment. Remedies for such conduct will be provided, but protected speech cannot be legally subjected to discipline.

Off-campus discriminatory or harassing speech by employees may be regulated by the Mid-Plains Community College only when such speech is made in an employee's official or work-related capacity.]

## **VII. Mid-Plains Community College Policy on Nondiscrimination**

Mid-Plains Community College adheres to all federal and state civil rights laws prohibiting discrimination in public institutions of higher education. Mid-Plains Community College will not discriminate against any employee, applicant for employment, student or applicant for admission on the basis of race, religion, hearing status, personal appearance, color, sex, pregnancy, political affiliation, source of income, place of business, residence, creed, ethnicity, national origin (including ancestry), citizenship status, physical or mental disability, age, marital status, family responsibilities, sexual orientation, gender, gender identity or expression, veteran or military status (including special disabled veteran, Vietnam-era veteran, or recently separated veteran), predisposing genetic characteristic information and testing, domestic violence victim status, Family Medical Leave or any other protected category under applicable local, state or federal law, including protections for those opposing discrimination or participating in any resolution process on campus or within the Equal Employment Opportunity Commission or other human rights agencies. This

policy covers nondiscrimination in employment and in access to educational opportunities. Therefore, any member of the campus community who acts to deny, deprive or limit the educational, employment, residential and/or social access, benefits and/or opportunities of any member of the campus community, guest or visitor on the basis of their actual or perceived membership in the protected classes listed above is in violation of the Mid-Plains Community College policy on nondiscrimination. When brought to the attention of the Mid-Plains Community College, any such discrimination will be appropriately addressed and remedied by the Mid-Plains Community College according to the Equity Grievance Process described below. Non-members of the campus community who engage in discriminatory actions within Mid-Plains Community College programs or on Mid-Plains Community College property are not under the jurisdiction of this policy, but can be subject to actions that limit their access and/or involvement with Mid-Plains Community College programs as the result of their misconduct. All vendors serving the Mid-Plains Community College through third-party contracts are subject by those contracts to the policies and procedures or their employers or to these policies and procedures, to which their employer has agreed to be bound.

This policy may be found at: <http://www.mpcc.edu/about-mpcc/general-information/non-discrimination-policy>

## **VIII. Mid-Plains Community College Policy on Accommodation of Disabilities**

Mid-Plains Community College is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA and ADAAA) and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws pertaining to individuals with disabilities. Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the institution whether qualified or not. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking or caring for oneself.

The Area Director of Adult Education/ADA, Robin Rankin at 308.535.3637, has been designated as the ADA/504 Coordinator responsible for coordinating efforts to comply with these disability laws, including investigation of any allegation of noncompliance.

This policy may be found at: [http://www.mpcc.edu/about-mpcc/general-information/americans-with-disabilities-act-\(ada\)-policy](http://www.mpcc.edu/about-mpcc/general-information/americans-with-disabilities-act-(ada)-policy)

### **A. Students with Disabilities**

Mid-Plains Community College is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs and activities of the Mid-Plains Community College.

All accommodations are made on a case-by-case basis. A student requesting any accommodation should first contact the Area Director of Adult Education/ADA who

coordinates services for students with disabilities. The Area Director of Adult Education/ADA reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate to the student's particular needs and academic programs.

## **B. Employees with Disabilities**

Pursuant to the ADA, Mid-Plains Community College will provide reasonable accommodation(s) to all qualified employees with known disabilities, where their disability affects the performance of their essential job functions, except where doing so would be unduly disruptive or would result in undue hardship.

An employee with a disability is responsible for requesting an accommodation in writing to the Director of Human Resources and provide appropriate documentation. The Director of Human Resources will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties.

## **IX. Mid-Plains Community College Policy on Discriminatory Harassment**

### **A. Discriminatory and Bias-Related Harassment**

Harassment constitutes a form of discrimination that is prohibited by Mid-Plains Community College policy as well as the law. Mid-Plains Community College condemns and will not tolerate discriminatory harassment against any employee, student, visitor or guest on the basis of any status protected by policy or law. Mid-Plains Community College will remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a hostile environment. When harassment rises to the level of creating a hostile environment, Mid-Plains Community College may also impose sanctions on the harasser through application of the Equity Resolution Process. Mid-Plains Community College's harassment policy explicitly prohibits any form of harassment, defined as unwelcome conduct on the basis of actual or perceived membership in a protected class, by any member or group of the community.

A hostile environment may be created by harassing verbal, written, graphic, or physical conduct that is severe or persistent/pervasive, and objectively offensive such that it interferes with, limits or denies the ability of an individual to participate in or benefit from educational programs or activities or employment access, benefits or opportunities.<sup>9</sup>

The Mid-Plains Community College reserves the right to address offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature not on the basis of a protected status. Addressing such behaviors may not result in the imposition of discipline under Mid-Plains Community College policy, but will be addressed through respectful confrontation, remedial actions, education and/or effective

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<sup>9</sup> This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994: Department Of Education Office For Civil Rights, Racial Incidents And Harassment Against Students At Educational Institutions Investigative Guidance. The document is available at: <http://www.ed.gov/about/offices/list/ocr/docs/race394.html>.

conflict resolution mechanisms. For assistance with conflict resolution techniques, employees should contact the Director of Human Resources and students should contact the Dean of Student Life.

**B. Sexual Harassment**

The Department of Education’s Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC) and the State of Nebraska regard sexual harassment as a form of sex/gender discrimination and, therefore, as an unlawful discriminatory practice. Mid-Plains Community College has adopted the following definition of sexual harassment, in order to address the special environment of an academic community, which consists not only of employer and employees, but of students as well.<sup>10</sup>

Sexual harassment is:

- unwelcome,
- sexual, sex-based and/or gender-based,
- verbal, written, online and/or physical conduct.

Anyone experiencing sexual harassment in any Mid-Plains Community College program is encouraged to report it immediately to the Title IX Coordinator or a deputy. Remedies, education and/or training will be provided in response.

Sexual harassment may be disciplined when it takes the form of *quid pro quo* harassment, retaliatory harassment and/or creates a hostile environment.

A hostile environment is created when sexual harassment is:

- Severe, or
- persistent or pervasive<sup>11</sup>, and
- objectively offensive, such that it:
- unreasonably interferes with, denies or limits someone’s ability to participate in or benefit from the University’s/College’s educational, employment, social and/or residential program.

*Quid Pro Quo* Sexual Harassment:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by a person having power or authority over another constitutes sexual harassment when submission to such sexual conduct is made either explicitly or

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<sup>10</sup> Also of relevance is the Office of Civil Rights 2001 statement on sexual harassment, “Revised Sexual Harassment Guidance: Harassment Of Students By School Employees, Other Students, Or Third Parties, Title IX,” which can be found at: <http://www2.ed.gov/legislation/FedRegister/other/2001-1/011901b.html>, the April, 2011 Dear Colleague Letter on Campus Sexual Violence, which can be found at: [http://www.whitehouse.gov/sites/default/files/dear\\_colleague\\_sexual\\_violence.pdf](http://www.whitehouse.gov/sites/default/files/dear_colleague_sexual_violence.pdf) and OCR’s Questions and Answers on Title IX and Sexual Violence, which can be found at: <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

<sup>11</sup> Private institutions may prefer the OCR standard: sufficiently severe or pervasive.



implicitly a term or condition of rating or evaluating an individual's educational development or performance.

Some examples of possible Sexual Harassment include<sup>12</sup>:

- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student accedes to the request and irrespective of whether a good grade is promised or a bad grade is threatened.
- A student repeatedly sends sexually oriented jokes around on an email list s/he created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.
- Explicit sexual pictures are displayed in a professor's office or on the exterior of a residence hall door.
- Two supervisors frequently 'rate' several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus.
- Male students take to calling a particular brunette student "Monica" because of her resemblance to Monica Lewinsky. Soon, everyone adopts this nickname for her, and she is the target of relentless remarks about cigars, the president, "sexual relations" and Weight Watchers.
- A student grabbed another student by the hair, then grabbed her breast and put his mouth on it. While this is sexual harassment, it is also a form of sexual violence.

### **C. Policy Expectations with Respect to Consensual Relationships**

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of this policy. The College does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the College. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student) are generally discouraged.

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<sup>12</sup> We recommend incorporation of examples into policy as an educational and preventive tool. Some campuses may prefer to break these out into separate documents or resources, but OCR has been consistent in their expectation for examples to be included in policy.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift a party out of being supervised or evaluated by someone with whom they have established a consensual relationship. This includes RAs and students over whom they have direct responsibility. Please see the Board of Governors Nepotism Policy (4145) for information on relationships that are prohibited by this policy, failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee.

This policy may be found at: <http://www.mpcc.edu/about-mpcc/board-of-governors-01/BoardMeetingPolicyManual/Section%2004-Personnel.pdf>

## **X. Sexual Misconduct<sup>13</sup>**

State law defines various violent and/or non-consensual sexual acts as crimes. While some of these acts may have parallels in criminal law, Mid-Plains Community College has defined categories of sex/gender discrimination as sexual misconduct, as stated below, for which action under this policy may be imposed. Generally speaking, Mid-Plains Community College considers Non-Consensual Sexual Intercourse violations to be the most serious of these offenses, and therefore typically imposes the most severe sanctions, including suspension or expulsion for students and termination for employees. However, Mid-Plains Community College reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any act of sexual misconduct or other sex/gender-based offenses, including intimate partner (dating and/or domestic) violence, non-consensual sexual contact and/or stalking based on the facts and circumstances of the particular allegation. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, sexual orientation and/or gender identity of those involved. Violations include:

### **A. Sexual Harassment (as defined in Section IX, B.)**

### **B. Non-Consensual Sexual Intercourse**

#### **1. Defined as:**

- any sexual intercourse
- however slight
- with any object
- by a person upon another person
- that is without consent and/or by force<sup>14</sup>

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<sup>13</sup> Avoid terms such as rape and sexual assault in policy, as they confuse discrimination with criminal activity.

<sup>14</sup> The use of force in non-consensual sexual intercourse and contact-based incidents is not “worse” than the subjective experience of violation of someone who is a victim of sexual intercourse or sexual contact without

**2. Sexual intercourse includes:**

- Vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation (mouth to genital contact) no matter how slight the penetration or contact.

**C. Non-Consensual Sexual Contact<sup>15</sup>**

**1. Defined as:**

- any intentional sexual touching
- however slight
- with any object
- by a person upon another person
- that is without consent and/or by force

**2. Sexual touching includes:**

- Intentional contact with the breasts, groin, or genitals, mouth or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or
- Any other bodily contact in a sexual manner.

**D. Sexual Exploitation**

Sexual Exploitation refers to a situation in which a person takes non-consensual or abusive sexual advantage of another, and that behavior does not otherwise fall within the definitions of Sexual Harassment, Non-Consensual Sexual Intercourse or Non-Consensual Sexual Contact. Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as watching a person undressing, using the bathroom or engaged in sexual acts without the consent of the person observed).
- Invasion of sexual privacy.
- Taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent).
- Prostitution.
- Sexual exploitation also includes engaging in sexual activity with another person while

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consent. However, the use of physical force constitutes a stand-alone non-sexual offense as well, as it is our expectation that those who use physical force (restrict, battery, etc.) would face not just the sexual misconduct allegation, but allegations under the code for the additional assaultive behavior.

<sup>15</sup> The Nebraska state definition of sexual assault is, "Any person who subjects another person to sexual contact (a) without consent of the victim, or (b) who knew or should have known that the victim was physically or mentally incapable of resisting or appraising the nature of his or her conduct is guilty of sexual assault", which is applicable to criminal prosecutions for sexual assault in Nebraska, but may differ from the definition used on campus to address policy violations.

knowingly infected with human immunodeficiency virus (HIV), a sexually transmitted disease (STD) or infection (STI) without informing the other person of the infection.

- Administering alcohol or drugs (such as “date rape” drugs) to another person without his or her knowledge or consent (assuming the act is not completed).
- Exposing one’s genitals in non-consensual circumstances.
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

## **E. Force, Consent<sup>16</sup>, and Incapacitation**

### **1. Force:**

a) Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent (“Have sex with me or I’ll hit you.” “Okay, don’t hit me, I’ll do what you want.”).

b) Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

c) NOTE: Silence or the absence of resistance alone is not consent. There is no requirement on a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of consent is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

### **2. Consent:**

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<sup>16</sup> The Nebraska state definition of without consent which is applicable to criminal prosecutions for sex offenses in Nebraska, but may differ from the definition used on campus to address policy violations. [Included for Clery/VAWA Sec. 304 compliance purposes] “Without Consent means: (a)(i) The victim was compelled to submit due to the use of force or threat of force or coercion, or (ii) the victim expressed a lack of consent through words, or (iii) the victim expressed a lack of consent through conduct, or (iv) the consent, if any was actually given, was the result of the actor's deception as to the identity of the actor or the nature or purpose of the act on the part of the actor; (b) The victim need only resist, either verbally or physically, so as to make the victim's refusal to consent genuine and real and so as to reasonably make known to the actor the victim's refusal to consent; and (c) A victim need not resist verbally or physically where it would be useless or futile to do so”

a) Consent is knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent can be withdrawn once given, as long as the withdrawal is clearly communicated.

b) Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous dating relationship is not sufficient to constitute consent. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced.

### 3. Incapacitation:

a) A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy.

b) It is not an excuse that the responding party was intoxicated and, therefore, did not realize the incapacity of the reporting party.

c) Incapacitation is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction). This policy also covers a person whose incapacity results from mental disability, involuntary physical restraint and/or from the taking of incapacitating drugs.

d) In Nebraska, a minor (meaning a person under the age of 19 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 19 years old may be a crime, and a potential violation of this policy, even if the minor wanted to engage in the act.

### 4. Examples of lack of consent:

- Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00pm until 3:00am, Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. He keeps at her, and begins to question her religious convictions, and accuses her of being “a prude.” Finally, it seems to Bill that her resolve is weakening, and he convinces her to give him a “hand job” (hand to genital contact). Amanda would never had done it but for Bill's incessant advances. He feels that he successfully seduced her, and that she wanted to do it all along, but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn't want it, she could have left. **Bill is responsible for violating the university Non-Consensual Sexual Contact policy. It is likely that campus decision-makers would find that the degree and duration of the pressure Bill applied to Amanda are unreasonable. Bill coerced Amanda into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. Consent is not valid when**

**forced. Sex without consent is sexual misconduct.**

- Jiang is a junior at the university. Beth is a sophomore. Jiang comes to Beth's residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, and are soon becoming more intimate. They start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a baby-sitter when she was five, and has not had any sexual relations since, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with her, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop, but cannot. Beth is stiff and unresponsive during the intercourse. **Is this a policy violation? Jiang would be held responsible in this scenario for Non Consensual Sexual Intercourse. It is the duty of the sexual initiator, Jiang, to make sure that he has mutually understandable consent to engage in sex. Though consent need not be verbal, it is the clearest form of consent. Here, Jiang had no verbal or non-verbal mutually understandable indication from Beth that she consented to sexual intercourse. Of course, wherever possible, it is important to be as clear as possible as to whether or not sexual contact is desired, and to be aware that for psychological reasons, or because of alcohol or drug use, one's partner may not be in a position to provide as clear an indication as the policy requires. As the policy makes clear, consent must be actively, not passively, given.**
- Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it's a lot. After the party, he walks John to his room, and John comes on to Kevin, initiating sexual activity. Kevin asks him if he is really up to this, and John says yes. Clothes go flying, and they end up in John's bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that John seems pretty groggy and passive, and he thinks John may have even passed out briefly during the sex, but he does not let that stop him. When Kevin runs into John the next day, he thanks him for the wild night. John remembers nothing, and decides to make a report to the Dean. **This is a violation of the Non-Consensual Sexual Intercourse Policy. Kevin should have known that John was incapable of making a rational, reasonable decision about sex. Even if John seemed to consent, Kevin was well aware that John had consumed a large amount of alcohol, and Kevin thought John was physically ill, and that he passed out during sex. Kevin should be held accountable for taking advantage of John in his condition. This is not the level of respectful conduct the university expects.**

## **XI. Other Civil Rights Offenses**

In addition to the forms of sexual misconduct described above, the following behaviors are also prohibited as forms of discrimination when the act is based upon the reporting party's actual or perceived membership in a protected class.<sup>17</sup>

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<sup>17</sup> For any campus that decides to replace existing conduct processes entirely – for all forms of misconduct – with the 1PIP model, all references in this section to protected class status should be removed.

A. Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;

B. Discrimination, defined as actions that deprive, limit or deny other members of the community of educational or employment access, benefits or opportunities;

C. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;

D. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the university community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);

E. Bullying, defined as

- Repeated and/or severe
- Aggressive behavior
- Likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally
- That is not speech or conduct otherwise protected by the 1<sup>st</sup> Amendment.

F. Intimate Partner Violence, defined as violence or abuse between those in an intimate relationship to each other<sup>18</sup>;

1. **Examples:**

- A boyfriend shoves his girlfriend into a wall upon seeing her talking to a male friend. This physical assault based in jealousy is a violation of the Intimate Partner Violence policy.
- An ex-girlfriend shames her female partner, threatening to out her as a lesbian if she doesn't give the ex another chance. Psychological abuse is a form of Intimate Partner Violence.
- A graduate student refuses to wear a condom and forces his girlfriend to take hormonal birth control though it makes her ill, in order to prevent pregnancy.
- Married employees are witnessed in the parking garage, with one partner slapping and

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<sup>18</sup> The definition provided here is model policy language from ATIXA. The state legal definitions of domestic violence and dating violence may also be included (if desired) as either a footnote or an appendix (find links to each state's definition [here](#)). While the state definitions are not required as policy by either Title IX or recent Clery Act amendments through VAWA Sec. 304, they are required in the Clery Act ASR. Thus, many campuses refer to this policy in their Annual Security Reports (ASR), or will use a link to this policy to satisfy the ASR requirements on sexual assault disclosures. Incorporating the state definitions of domestic violence and dating violence will help to satisfy the ASR disclosure requirement, but it is important to note that nothing in the law requires schools to evaluate campus reports using state legal standards, and we recommend differentiating campus standards from state law as a best practice. The Clery requirement is just one of disclosure, so that victims may know what the state provisions are if they are considering making a criminal complaint.

scratching the other in the midst of an argument.

**G. Stalking**

**1. Stalking 1:**

- A course of conduct
- Directed at a specific person
- On the basis of actual or perceived membership in a protected class
- That is unwelcome, AND
- Would cause a reasonable person to feel fear

**2. Stalking 2:**

- Repetitive and Menacing
- Pursuit, following, harassing and/or interfering with the peace and/or safety of another

**3. Examples of Stalking**

- A student repeatedly shows up at another student's on-campus residence, always notifying the front desk attendant that they are there to see the resident. Upon a call to the resident, the student informs residence hall staff that this visitor is uninvited and continuously attempts to see them, even so far as waiting for them outside of classes and showing up to their on-campus place of employment requesting that they go out on a date together (Stalking 1).
- A graduate student working as a on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student and stated that it was not necessary and would appreciate if the gift deliveries stop. The student then started leaving notes of love and gratitude on the graduate assistant's car, both on-campus and at home. Asked again to stop, the student stated by email: "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything necessary to make you have the feelings for me that I have for you." When the tutor did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. We are meant to be together" (Stalking 2).

H. Any other College policies may fall within this section when a violation is motivated by the actual or perceived membership of the reporting party's sex or gender.

Sanctions for the above-listed "Other Civil Rights Offense" behaviors range from reprimand through expulsion (students) or termination of employment.

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. Retaliation against an individual for alleging harassment, supporting a party bringing an allegation or for assisting in providing information relevant to a claim of harassment is a serious violation of Mid-Plains Community College policy and will be treated as another possible instance of harassment or discrimination. Acts of alleged retaliation should be reported immediately to



the Title IX Coordinator or Vice President of Student Affairs and will be promptly investigated. Mid-Plains Community College is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

**A. Examples of Retaliation:**

- Student-athlete A files an allegation against a coach for sexual harassment; the coach subsequently cuts the student-athlete’s playing time in half without a legitimate justification
- A faculty member complains of gender inequity in pay within her department; the Department Chair then revokes his prior approval allowing her to attend a national conference, citing the faculty member’s tendency to “ruffle feathers.”
- A student from Organization A participates in a sexual misconduct hearing against the responding individual – also a member of Organization A; the student is subsequently removed as a member of Organization A because he participated in the hearing.

**XIII. Remedial Action**

Upon notice of alleged discrimination, Mid-Plains Community College will implement initial remedial, responsive and/or protective actions upon notice of alleged harassment, retaliation and/or discrimination. Such actions could include but are not limited to: no contact orders, providing counseling and/or medial services, academic support, living arrangement adjustments, transportation accommodations, visa and immigration assistance, student financial aid counseling, providing a campus escort, academic or work schedule and assignment accommodations, safety planning, referral to campus and community support resources.

Mid-Plains Community College will take additional prompt remedial and/or disciplinary action with respect to any member of the community, guest or visitor upon a finding that they have engaged in harassing or discriminatory behavior or retaliation.

The Mid-Plains Community College will maintain as confidential any accommodations or protective measures, provided confidentiality does not impair the Mid-Plains Community College’s ability to provide the accommodations or protective measures.

Procedures for handling reported incidents are fully described below.

**XIV. Confidentiality and Reporting of Offenses Under This Policy**

All Mid-Plains Community College employees (faculty, staff, administrators) are expected to report actual or suspected discrimination or harassment to appropriate officials immediately, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality – meaning they are not required to report actual or suspected discrimination or harassment to appropriate university officials – thereby offering options and advice without any obligation to inform an outside agency or campus official unless a reporting party has requested information to be shared. Other resources exist for reporting parties to report crimes and

policy violations and these resources will take action when an incident is reported to them. The following describes the reporting options at Mid-Plains Community College:

**A. Confidential Reporting**

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with:

- On-campus Area Counselor
- Off-campus (non-employees):
- Licensed professional counselors
- Local rape crisis counselors
- Domestic violence resources
- Local or state assistance agencies
- Clergy/Chaplains

All of the above-listed individuals will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor. Campus counselors and/or the Employee Assistance Program are available to help free of charge and can be seen on an emergency basis during normal business hours. Mid-Plains Community College employees listed above will submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient or parishioner.

**B. Formal Reporting Options**

All Mid-Plains Community College employees have a duty to report, unless they fall under the “Confidential Reporting” section above. Reporting parties may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared with the Title IX Coordinator. Employees must promptly share all details of the reports they receive. Generally, climate surveys, classroom writing assignments or discussions, human subjects research, or events such as Take Back the Night marches or speak-outs do not provide notice that must be reported to the Coordinator by employees, unless the reporting party clearly indicates that they wish a report to be made. Remedial actions may result from such disclosures without formal Mid-Plains Community College action.

If a reporting party does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the reporting party may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. Note that the Mid-Plains Community College’s ability to remedy and respond to a reported incident may be limited if the reporting party does not want the institution to proceed with an investigation and/or the Equity Resolution Process.

In cases indicating pattern, predation, threat, weapons and/or violence, the Mid-Plains Community College will likely be unable to honor a request for confidentiality. In cases where the reporting party requests confidentiality and the circumstances allow the Mid-

Plains Community College to honor that request, the Mid-Plains Community College will offer interim supports and remedies to the reporting party and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have allegations taken seriously by Mid-Plains Community College when formally reported, and to have those incidents investigated and properly resolved through these procedures.

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told, including but not limited to: Office of Student Life, Area Counselor, and the Concern Investigation and Intervention Team. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party's rights and privacy. Additionally, anonymous reports can be made by victims and/or third parties using the online reporting form posted at <http://www.mpcc.edu/about-mpcc/general-information/incident-report>. Note that these anonymous reports may prompt a need for the institution to investigate.

Failure of a non-confidential employee, as described in this section, to report an incident or incidents of sex/gender harassment or discrimination of which they become aware is a violation of Mid-Plains Community College policy and can be subject to disciplinary action for failure to comply.

## **XV. Federal Timely Warning Obligations**

Parties reporting sexual misconduct should be aware that under the Clery Act, Mid-Plains Community College administrators must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. Mid-Plains Community College will ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

## **XVI. False Allegations**

Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.

## **XVII. Amnesty for Reporting Party and Witnesses**

The Mid-Plains Community College community encourages the reporting of misconduct and crimes by reporting parties and witnesses. Sometimes, reporting parties or witnesses are hesitant to report to Mid-Plains Community College officials or participate in resolution processes because they fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident. It is in the best interests of this community that reporting parties choose to report to university officials, and that witnesses come forward to share what they know. To encourage reporting, Mid-Plains Community College pursues a policy of offering reporting parties and witnesses amnesty from minor policy violations related to the incident.

**A. Students:**

Sometimes, students are hesitant to offer assistance to others for fear that they may get themselves in trouble (for example, a student who has been drinking underage might hesitate to help take a sexual misconduct victim to the Campus Police). The Mid-Plains Community College pursues a policy of amnesty for students who offer help to others in need. While policy violations cannot be overlooked, the university will provide educational options, rather than punishment, to those who offer their assistance to others in need.

**B. Optional: Employees<sup>25</sup>:**

Sometimes, employees are also hesitant report harassment or discrimination they have experienced for fear that they may get themselves in trouble. For example, an employee who has violated the consensual relationship policy and is then assaulted in the course of that relationship might hesitate to report the incident to Mid-Plains Community College officials. The institution may, at its discretion, offer employee reporting parties amnesty from such policy violations (typically more minor policy violations) related to the incident. Amnesty may also be granted to witnesses on a case-by-case basis.

The Mid-Plains Community College reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. The university may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is non-dependent, the Mid-Plains Community College will contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk. The Mid-Plains Community College also reserves the right to designate which university officials have a need to know about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act.

**XIX. Federal Statistical Reporting Obligations**

Certain campus officials – those deemed Campus Security Authorities - have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to the Office of Student Life regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the Annual Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student affairs/student conduct, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery

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<sup>25</sup> This section is included as optional as most traditional policies only offer amnesty to students. If an institution decides not to include this section, the “student” section can simply be merged into the amnesty section.

crime category. This reporting protects the identity of the victim and may be done anonymously.

## **XX. Mid-Plains Community College Student Code of Conduct Violations Definitions**

### **A. Discriminatory and Bias-Related Offenses**

All Discriminatory and Bias-Related Offenses will be resolved through the Equity Grievance Procedure (EGP)

#### **1. Discriminatory and Bias-Related Harassment (As stated in Section IX)**

Harassment constitutes a form of discrimination that is prohibited by Mid-Plains Community College policy as well as the law. Mid-Plains Community College condemns and will not tolerate discriminatory harassment against any employee, student, visitor or guest on the basis of any status protected by policy or law. Mid-Plains Community College will remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a hostile environment. When harassment rises to the level of creating a hostile environment, Mid-Plains Community College may also impose sanctions on the harasser through application of the Equity Resolution Process. Mid-Plains Community College's harassment policy explicitly prohibits any form of harassment, defined as unwelcome conduct on the basis of actual or perceived membership in a protected class, by any member or group of the community.

A hostile environment may be created by harassing verbal, written, graphic, or physical conduct that is severe or persistent/pervasive, and objectively offensive such that it interferes with, limits or denies the ability of an individual to participate in or benefit from educational programs or activities or employment access, benefits or opportunities.

The Mid-Plains Community College reserves the right to address offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature not on the basis of a protected status. Addressing such behaviors may not result in the imposition of discipline under Mid-Plains Community College policy, but will be addressed through respectful confrontation, remedial actions, education and/or effective conflict resolution mechanisms.

#### **2. Sexual Harassment**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC) and the State of Nebraska regard sexual harassment as a form of sex/gender discrimination and, therefore, as an unlawful discriminatory practice. Mid-Plains Community College has adopted the following definition of sexual harassment, in order to address the special environment of an academic community, which consists not only of employer and employees, but of students as well.<sup>27</sup>

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<sup>27</sup> Also of relevance is the Office of Civil Rights 2001 statement on sexual harassment, "Revised Sexual Harassment Guidance: Harassment Of Students By School Employees, Other Students, Or Third Parties, Title IX," which can be found at: <http://www2.ed.gov/legislation/FedRegister/other/2001-1/011901b.html>, the April,

Sexual harassment is:

- unwelcome,
- sexual, sex-based and/or gender-based,
- verbal, written, online and/or physical conduct.

Anyone experiencing sexual harassment in any Mid-Plains Community College program is encouraged to report it immediately to the Title IX Coordinator or a deputy. Remedies, education and/or training will be provided in response.

Sexual harassment may be disciplined when it takes the form of *quid pro quo* harassment, retaliatory harassment and/or creates a hostile environment.

A hostile environment is created when sexual harassment is:

- Severe, or
- persistent or pervasive, and
- objectively offensive, such that it:
- unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the University's/College's educational, employment, social and/or residential program.

*Quid Pro Quo* Sexual Harassment:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by a person having power or authority over another constitutes sexual harassment when submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational development or performance.

### 3. **Sexual Misconduct**

State law defines various violent and/or non-consensual sexual acts as crimes. While some of these acts may have parallels in criminal law, Mid-Plains Community College has defined categories of sex/gender discrimination as sexual misconduct, as stated below, for which action under this policy may be imposed. Generally speaking, Mid-Plains Community College considers Non-Consensual Sexual Intercourse violations to be the most serious of these offenses, and therefore typically imposes the most severe sanctions, including suspension or expulsion for students and termination for employees. However, Mid-Plains Community College reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any act of sexual misconduct or other sex/gender-based offenses, including intimate partner (dating and/or domestic) violence, non-consensual sexual contact and/or stalking based on the facts and

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2011 Dear Colleague Letter on Campus Sexual Violence, which can be found at: [http://www.whitehouse.gov/sites/default/files/dear\\_colleague\\_sexual\\_violence.pdf](http://www.whitehouse.gov/sites/default/files/dear_colleague_sexual_violence.pdf) and OCR's Questions and Answers on Title IX and Sexual Violence, which can be found at: <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

circumstances of the particular allegation. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, sexual orientation and/or gender identity of those involved. Violations include:

**a) Sexual Harassment (as defined in Section XX, 2)**

**b) Non-Consensual Sexual Intercourse**

(1) Defined as:

- any sexual intercourse
- however slight
- with any object
- by a person upon another person
- that is without consent and/or by force

(2) Sexual intercourse includes:

- Vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation (mouth to genital contact) no matter how slight the penetration or contact.

**c) Non-Consensual Sexual Contact**

(1) Defined as:

- any intentional sexual touching
- however slight
- with any object
- by a person upon another person
- that is without consent and/or by force

(2) Sexual touching includes:

- Intentional contact with the breasts, groin, or genitals, mouth or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or
- Any other bodily contact in a sexual manner.

**d) Sexual Exploitation**

Sexual Exploitation refers to a situation in which a person takes non-consensual or abusive sexual advantage of another, and that behavior does not otherwise fall within the definitions of Sexual Harassment, Non-Consensual Sexual Intercourse or Non-Consensual Sexual Contact. Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as watching a person undressing, using the bathroom or engaged in sexual acts without the consent of the person observed).
- Invasion of sexual privacy.

- Taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent).
- Prostitution.
- Sexual exploitation also includes engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV), a sexually transmitted disease (STD) or infection (STI) without informing the other person of the infection.
- Administering alcohol or drugs (such as "date rape" drugs) to another person without his or her knowledge or consent (assuming the act is not completed).
- Exposing one's genitals in non-consensual circumstances.
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

#### 4. **Other Civil Rights Offenses**

In addition to the forms of sexual misconduct described above, Conduct Offenses are also prohibited as forms of discrimination when the act is based upon the reporting party's actual or perceived membership in a protected class.

All Conduct Offenses are subject to resolution using the Mid-Plains Community College's Judicial Incident Procedure, unless the act is based upon the reporting party's actual or perceived membership in a protected class, in which case the Equity Grievance Procedure will be used for resolution.

Sanctions for Conduct Offenses, when based upon the reporting party's actual or perceived membership in a protected class, range from reprimand up through and including expulsion (students) or termination of employment (employees).

#### B. **Conduct Offenses**

##### 1. **Threatening or causing physical harm**

Threatening or causing physical harm or other conduct which threatens or endangers the health or safety of any person, or would cause a reasonable person to feel fear.

##### 2. **Extreme verbal abuse**

Extreme verbal abuse or forcefully criticizing, insulting, or denouncing someone else or other verbal conduct which would cause a reasonable person to feel fear.

##### 3. **Discrimination**

Discrimination, defined as actions that deprive, limit or deny other members of the community of educational or employment access, benefits or opportunities. Discrimination on the basis of race, color, creed, ancestry, religion, gender, age, national origin, military veteran status, disability, marital status, genetic information & testing, family and medical leave, sexual orientation, and gender identity or expression, pregnancy, or as defined by law in employment, admission, scholarship, and financial aid programs, or operation of its educational programs and activities, is a violation of College policy.



#### 4. **Intimidation**

Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another. This includes threatening another person face-to-face, via any means of communication, or communication of a threat through a third person.

#### 5. **Hazing**

Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the college community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy). Forcing or requiring another person to perform an act that creates a substantial risk of bodily injury or emotional stress, with or without the consent of that person, as a condition of association with a group or organization is considered a violation of human rights and is prohibited. See page 58 (Harassment Procedures, Section II, B., 3.) for more information: <http://www.mpcc.edu/about-mpcc/human-resources-01/Documents/Employee%20Handbook.pdf>

#### 6. **Bullying**

Bullying, defined as

- Repeated and/or severe
- Aggressive behavior
- Likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally
- That is not speech or conduct otherwise protected by the 1<sup>st</sup> Amendment.

#### 7. **Dating, domestic and/or relationship violence**

Intimate Partner Violence, defined as violence or abuse between those in an intimate relationship to each other;

#### 8. **Stalking**

a) Stalking 1:

- A course of conduct
- Directed at a specific person
- On the basis of actual or perceived membership in a protected class
- That is unwelcome, AND
- Would cause a reasonable person to feel fear

b) Stalking 2:

- Repetitive and Menacing
- Pursuit, following, harassing and/or interfering with the peace and/or safety of another

#### 9. **Retaliation**

Any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. Retaliation against an individual for alleging harassment, supporting a party bringing an allegation or for assisting in providing information relevant to a claim of harassment is a serious violation of Mid-Plains Community College policy and will be treated as another possible instance of harassment or discrimination. Mid-Plains Community College is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

**10. Provocation**

Reckless and/or intentional conduct likely to provoke a reasonable person to commit battery is a violation of state law.

**11. Disorderly Conduct**

Obstruction or disruption of normal College activities by any means, including physical or psychological methods, disturbing the peace, dropping or throwing objects, sports in hallways, or inappropriate behavior on College property is not permitted.

**12. Disorderly Conduct While Under the Influence**

No person while under the influence of alcohol or other drugs shall engage in conduct or create a condition that represents a risk of physical harm to self or another, or results in damage to property, or is likely to be offensive or cause inconvenience, annoyance, or alarm to others.

**13. Unreasonable Noise Level**

Reasonable quiet is required in or near sleeping, study, and class areas of the campus; actions that interrupt the study, rest or activities of others are not permitted. (Quiet hours are established in each residence hall and are to be observed by all those present in the hall.)

**14. Guest Conduct**

Members of the College community who bring guests/visitors to the campus assume responsibility for the behavior of those persons. Students hosting guests on campus who violate College policy will be held accountable for the actions of their guests. Guests who violate College policy or guidelines repeatedly or whose violations are of an extremely serious nature are subject to eviction from College property and may be barred from future visits.

**15. Guest Event Attendance**

Guests attending College-sponsored events and activities must be accompanied by their student host. Guests 16 years or older must be prepared to provide a picture ID (i.e. driver's license) when requested.

**16. Non-Compliance with College Officials**

Students must comply with verbal or written instructions of College officials acting in the performance of their duties.

**17. Soliciting and Sales**

Soliciting or selling merchandise on campus is not permitted. Violators are subject to eviction from College property and/or disciplinary action.

Students, staff, faculty, and registered campus organizations may solicit or sell merchandise for charitable causes in specific locations on campus, in campus buildings, and in residence halls. The College official responsible for the area where the solicitation will occur is the individual authorized to give permission.

The selling of homemade foods (i.e. bake sales, chili cook-offs, etc.) prepared in conditions not inspected by the Nebraska Board of Health is permitted, however there must be signage that indicates that the food was not prepared under Nebraska Board of Health approved conditions.

**18. Presence of Fire Hazards**

All open flames, open flame devices, slow burning items, or items that are designed to support open flame or burning items and items that present a potential fire hazard may not be present in MPCC-owned student housing. Includes, but is not limited to: Candles, incense, hot plates, Christmas trees, and coffee makers.

**19. Failure to Evacuate or Move to Safety**

Disregard or refusal to follow emergency response procedures during fire/tornado alarms is a violation of College policy.

**20. Tampering with Safety Equipment**

ampering with or discharging fire and safety equipment (including smoke detectors, pull stations, or fire extinguishers) is a violation of state law and College policy.

**21. False Report of Bomb or Fire**

Knowingly initiating or circulating a false report or warning of an impending bombing, fire alarm, activating emergency phones, or other such event, is a violation of both state law and College policy. (The blowing of security whistles on campus without just cause is classified as “a false report.”)

**22. Fireworks**

Possession and/or use of fireworks, incendiary devices, and other types of explosives are prohibited.

**23. Unauthorized Cooking**

Cooking in student housing is limited to units with kitchen facilities.

**24. Weapons**

The possession on campus of any instrument that could be perceived as a dangerous and/or deadly weapon, including but not limited to safes, knives, guns, bb and pellet guns, paint ball guns, bows and arrows, martial arts weapons, etc., is not permitted. Blades exceeding 3.5 inches are prohibited. This prohibition extends to any vehicle parked on College property and to any decor items which, though intended for display only, could be considered

potentially dangerous. Any exception to the above policy must be approved in advance by the Director of Housing or his/her designee.

**25. Theft**

Unauthorized taking of individual or College property is a violation of both state law and College policy.

**26. Property Damage**

Damaging or destroying personal or College property or littering on personal or College property is a violation of College Policy.

**27. Removal of Window Screens**

Removal of screens from any window within the residence halls or other College buildings is not permitted.

**28. Pets and/or Animals**

In accordance with public health regulations, no pets/other animals, with the exception of fish in a 5 gallon or smaller tank, are allowed in residence halls. Fish may not be left unattended in residence halls over scheduled holidays except when permitted by the Director of Housing or his/her designee. Therapy animals maybe permitted in residence halls in accordance with guidelines established in Presence and Use of Animals at MPCC Facilities and Events policy found at this location: <http://www.mpcc.edu/about-mpcc/general-information/student-right-to-know-policy>

**29. Alcoholic Beverages**

Possession, consumption, being in the presence, sale, or transfer of alcoholic beverages or their containers (including providing alcohol to minors) on College property or in College-owned vehicles is prohibited.

**30. Illegal Drugs**

The use, possession, sale, or transfer of any narcotic, hallucinogen, or other drug or drug paraphernalia, except as permitted by law, is prohibited.

**31. Tobacco**

The college is a tobacco-free campus. Prohibited use of tobacco includes all tobacco products, including smokeless (chewing) tobacco and electronic cigarettes, on-campus or in MPCC vehicles. See MPCC Board of Governors Policy 7300 at this link for more information: <http://www.mpcc.edu/about-mpcc/board-of-governors-01/BoardMeetingPolicyManual/Section%2007-Public%20Activities%20Involving%20Personnel%20Students%20MPCC%20Area%20Facilities.pdf>

**32. Honesty**

Intentional falsification of information or misrepresentation of identity to College personnel is a violation of College policy.

**33. Unauthorized Use of College Property**

Unauthorized use, entry, or occupancy of any College facility, structure (including roofs, building ledges, and special facilities), equipment, or property is not permitted.

Placement of unwanted room furnishings or personal belongings in hallways or any room other than storage rooms is not permitted.

**34. Unauthorized Removal of College Property**

Community furnishings are for community usage. The removal of College property located in community spaces (i.e - furniture, televisions, etc.) is not permitted without written approval from the Director of Housing or his/her designee.

**35. Unauthorized Room Change**

Residents seeking to change housing room assignments will require the written approval of the Director of Housing or his/her designee prior to changing room assignments.

Unauthorized room changes are subject to judicial sanctions.

**36. Displays on Window, Doors, and in Rooms**

While privacy of the individual's residence hall room is respected, it is recognized that the decorations and furnishings of that room should reflect positively on the policies, standards, commitments and philosophy of the College and should reflect respect for others.

Signs, containers, trademarks, and other displays on windows and doors that advertise or represent products (such as alcoholic beverages), behaviors, or philosophies not compatible with College policies or commitments are not permitted.

The possession or display in College buildings of signs or other facsimile that appear to be the property of municipalities or private business (without proof of ownership) is not permitted and will be confiscated.

**37. Identification Cards**

Identifications cards are issued to all students who are enrolled in classes for credit. Students are expected to carry their ID cards and present them to College officials, or be able to produce them within a reasonable amount of time, whenever such a request is made.

**38. Room Lock-outs / Key Replacement**

Residents are responsible for maintaining control of their keys. Residents are allowed one free lock out each semester. Lockouts after the first one are charged according to the following scale: First lock out – No Charge; Second lock out - \$10; Third lock out - \$25; Fourth and all further lock outs - \$40 each.

**39. Vehicle Regulations**

All members of the student body must register their motor vehicles and obtain and display registration decals.

Each vehicle registered on campus must be covered by the state-required minimum of liability insurance for the state in which the vehicle is registered.

Moving vehicle and parking violations on campus are subject to enforcement by local law enforcement agencies.

**40. Skateboarding**

Skateboarding is not allowed on any part of the College campus. In-line and quad skating is permitted providing it is done in a safe manner.

**41. Inappropriate Use of Electronic Devices**

Cellular phones, computers, cameras, and other electronic devices may not be used in a manner that causes disruption within any College-owned or College-operated facilities. Utilizing these devices for the purpose of photographing test questions or other forms of academic misconduct or illegal activity is prohibited. Taking photographs of any individual in locker rooms or lavatories is prohibited. Individuals taking photographs of others without prior consent may be subject to sanctions.

**42. Inappropriate Use of Internet or E-Communications**

Access to the Internet, Email, and all electronic communications provided by the College comes with the responsibility of using these service in a responsible and ethical manner. Violations of this policy include, but are not limited to: illegal downloading of copyrighted materials, or the downloading of illegal images.

**43. Violation of State and/or Federal Law**

Any behavior that violates Nebraska state law and/or United States federal law is also a violation of College policy. The College reserves the right to take necessary and appropriate action to protect the safety and well-being of the campus community. Such action may include, but is not limited to, pursuing disciplinary action for any violation of state or federal law — on or off campus — that affects the College’s educational interests. Students may be to both civil authorities and to the College for acts that constitute violations of state and/or law. Disciplinary action at the College will normally proceed during pendency of criminal proceedings.

**XXI. Appropriate use of Equity Grievance Procedure and Judicial Incident Procedure is defined in Section I. Applicable Scope**

Mid-Plains Community College will act on any formal or informal allegation or notice of violation of Conduct Offenses that is received by the Vice President of Student Affairs or a member of the administration, faculty, or other employee.

The procedures described below apply to all student Conduct Offenses not based on actual or perceived membership in a protected class. All other allegations of misconduct unrelated to incidents covered by this policy will be addressed through the procedures elaborated in the respective student, faculty and staff handbooks.

## **A. Overview**

Upon notice to the Vice President of Student Affairs, or his or her designee, this resolution process involves a prompt preliminary inquiry to determine if there is reasonable cause to believe a Conduct Offense has been violated. If so, the Mid-Plains Community College will initiate a confidential investigation that is thorough, reliable, impartial, prompt and fair. The investigation and the subsequent resolution process determines whether a Conduct Offense has been violated. If so, the Mid-Plains Community College will promptly implement effective remedies designed to end the conduct, prevent its recurrence, and address its effects.

[Public Universities/Colleges: Any online postings or other electronic communication by students, including cyber-bullying, cyberstalking, cyber-harassment, etc. occurring completely outside of the Mid-Plains Community College's control (e.g. not on Mid-Plains Community College networks, websites or between Mid-Plains Community College email accounts) will only be subject to this policy when those online behaviors can be shown to cause a substantial on-campus disruption. Otherwise, such communications are considered speech protected by the 1st Amendment. Remedies for such conduct will be provided, but protected speech cannot be legally subjected to discipline.

Off-campus discriminatory or harassing speech by employees may be regulated by the Mid-Plains Community College only when such speech is made in an employee's official or work-related capacity.]

## **XXIII. Judicial Incident Procedure**

Allegations under the policy on nondiscrimination are resolved using the EGP. All other allegations of violations of the MPCC Student Code of Conduct are resolved using the JIP. Members of the Conduct Panel are announced in an annual distribution of this policy to campus, prospective students, their parents and prospective employees.

The list of members and a description of the Conduct Panel can be found at <http://www.mpcc.edu/student-resources/student-life/student-code-of-conduct>.

Members of the Conduct Panel are trained in all aspects of the resolution process, and can serve in any of the following roles, at the direction of the Vice President of Student Affairs:

- To provide sensitive intake for and initial advice pertaining to allegations
- To investigate allegations
- To act as process advisors to those involved in the Equity Grievance Procedure
- To act as process advisors to those involved in the Judicial Incident Procedure
- To serve on hearing panels for allegations
- To serve on appeal panels for allegations

Conduct Panel members also recommend proactive policies, and serve in an educative role for the community. The President, in consultation with the Title IX Coordinator, appoints the Conduct Panel, which reports to the Title IX Coordinator in EGP resolutions and the VPSA in JIP resolutions. Conduct Panel members receive annual training organized by the

Title IX Coordinator and VPSA, including a review of Mid-Plains Community College policies and procedures as well as applicable federal and state laws and regulations so that they are able to appropriately address allegations, provide accurate information to members of the community, protect safety and promote accountability. This training will include, but is not limited to: how to appropriately remedy, investigate, render findings and determine appropriate sanctions in reference to all forms of harassment and discrimination allegations; the Mid-Plains Community College's Discrimination and Harassment Policies and Procedures (including Sexual Misconduct); confidentiality and privacy; applicable laws, regulations and federal regulatory guidance; and MPCC Student Code of Conduct. All conduct panel members are required to attend this annual training to be eligible to serve.

The Conduct Panel includes

- Co-chairs: one representative from HR and one campus Vice President
- Two Administrative Hearing Officers who are ex officio members and may serve as Chair of grievance panel hearings for grievances involving student responding parties
- Deans of Student Life
- At least 3 members of academic affairs administrators/division chairs
- At least 3 members of the administration
- At least 3 members of the staff
- The Assistant Director of Human Resources
- At least two representatives from Athletics

Conduct Panel members are usually appointed to three-year terms. Appointments to the Conduct Panel should be made with attention to representation of groups protected by the harassment and non-discrimination policy. Individuals who are interested in serving on the Conduct Panel are encouraged to contact the Title IX Coordinator. No member of the Panel may be a practicing attorney.

#### **A. Reporting Misconduct**

Any member of the community, guest or visitor who believes that a MPCC Conduct Offense has been violated should contact the Vice President of Student Affairs.

It is also possible for employees to notify a supervisor, or for students to notify an administrative advisor or faculty member. Any member of the community, including visitors, may contact Campus Police/Public Safety to make a report. These individuals will in turn notify the Title IX Coordinator or Vice President of Student Affairs. The Mid-Plains Community College website also includes a reporting form at <http://www.mpcc.edu/about-mpcc/general-information/incident-report> which may serve to initiate the EGP or JIP process.

All employees receiving reports of a potential violation of Mid-Plains Community College policy are expected to promptly contact the Title IX Coordinator, within 24 hours of becoming aware of a report or incident. All initial contacts will be treated with privacy: specific information on any allegations received by any party will be reported to the Title IX



Coordinator or Vice President of Student Services, but, subject to the Mid-Plains Community College's obligation to redress violations, every effort will be made to maintain the privacy of those initiating an allegation. In all cases, Mid-Plains Community College will give consideration to the reporting party with respect to how the reported misconduct is pursued, but reserves the right, when necessary to protect the community, to investigate and pursue a resolution even when a reporting party chooses not to initiate or participate in the resolution process.

## **B. Preliminary Inquiry**

Following receipt of notice or a report of misconduct, the Vice President of Student Affairs<sup>29</sup> engages in a preliminary inquiry to determine if there is reasonable cause to believe the MPCC Student Code of Conduct has been violated. The preliminary inquiry is typically 1-3 days in duration. This inquiry may also serve to help the Vice President of Student Affairs to determine if the allegations evidence violence, threat, pattern, predation and/or weapon, in the event that the reporting party has asked for no action to be taken. In any case where violence, threat, pattern, predation, and/or weapon is not evidenced, the Vice President of Student Affairs may respect a reporting party's request for no action, and will investigate only so far as necessary to determine appropriate remedies. As necessary, the Mid-Plains Community College reserves the right to initiate resolution proceedings without a formal report or participation by the reporting party.

In cases where the reporting party wishes to proceed or the Mid-Plains Community College determines it must proceed, and the preliminary inquiry shows that reasonable cause exists, the Vice President of Student Affairs will direct a formal investigation to commence and the allegation will be resolved through one of three processes discussed briefly here and in greater detail below:

Conflict Resolution – typically used for less serious offenses and only when both parties agree to conflict resolution

Informal Resolution – a resolution without a hearing panel, or

Formal Resolution – a resolution of contested allegations with a hearing panel.

The process followed considers the preference of the parties, but is ultimately determined at the discretion of the Vice President of Student Affairs. Conflict Resolution may only occur if selected by all parties. The parties can elect for Informal Resolution, but Informal Resolution may also apply if the responding party accepts responsibility for all alleged violations of policy. If either party or both parties select Formal Resolution, or the Vice President of Student Affairs determines that Formal Resolution is appropriate, the allegation will be addressed using the Formal Resolution option.

If conflict resolution is desired by the reporting party, and appears appropriate given the nature of the alleged behavior, then the report does not proceed to investigation, unless a

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<sup>29</sup> If circumstances require, the President or Vice President of Student Affairs may designate another person to oversee the process below, should an allegation be made against the Vice President or the Vice President be otherwise unavailable or unable to fulfill their duties.

pattern of misconduct is suspected or there is an actual or perceived threat of further harm to the community or any of its members.

Once a formal investigation is commenced, the Vice President of Student Affairs will provide written notification of the investigation to the responding party and the reporting party at an appropriate time during the investigation.<sup>31</sup> The Mid-Plains Community College aims to complete all investigations within a sixty (60) calendar day time period, which can be extended as necessary for appropriate cause by the Vice President of Student Affairs with notice to the parties as appropriate.

If, during the preliminary inquiry or at any point during the formal investigation, the Vice President of Student Affairs determines that there is no reasonable cause to believe that policy has been violated, the process will end unless the reporting party requests that the Vice President of Student Affairs makes an extraordinary determination to re-open the investigation or to forward the matter for a hearing. This decision lies in the sole discretion of the Vice President of Student Affairs.

### **C. Interim Remedies/Actions**

The Vice President of Student Affairs may provide interim remedies intended to address the short-term effects of harassment, discrimination and/or retaliation, i.e., to redress harm to the reporting party and the community and to prevent further violations.

- These remedies may include, but are not limited to:
- Referral to counseling and health services
- Education to the community
- Altering the housing situation of an the responding party (resident student or resident employee (or the reporting party, if desired))
- Altering work arrangements for employees
- Providing campus escorts
- Providing transportation accommodations
- Implementing contact limitations between the parties
- Offering adjustments to academic deadlines, course schedules, etc.

The Mid-Plains Community College may interim suspend a student, employee or organization pending the completion of JIP investigation and procedures, particularly when in the judgment of the Vice President of Student Affairs the safety or well-being of any member(s) of the campus community may be jeopardized by the presence on-campus of the responding party or the ongoing activity of a student organization whose behavior is in

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<sup>31</sup> Notification will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official Mid-Plains Community College records; or emailed to the parties' Mid-Plains Community College-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The reporting party is typically copied on such correspondence.

question. In all cases in which an interim suspension is imposed, the student, employee or student organization will be given the option to meet with the Vice President of Student Affairs prior to such suspension being imposed, or as soon thereafter as reasonably possible, to show cause why the suspension should not be implemented. The Vice President of Student Affairs has sole discretion to implement or stay an interim suspension and to determine its conditions and duration. Violation of an interim suspension under this policy will be grounds for expulsion or termination.

During an interim suspension or administrative leave, a student or employee may be denied access to Mid-Plains Community College housing and/or the Mid-Plains Community College campus/facilities/events. As determined by the Vice President of Student Affairs, this restriction can include classes and/or all other Mid-Plains Community College activities or privileges for which the student might otherwise be eligible. At the discretion of the Vice President of Student Affairs, alternative coursework options may be pursued to ensure as minimal an impact as possible on the responding party.

The institution will maintain as confidential any interim actions or protective measures, provided confidentiality does not impair the institution's ability to provide the interim actions or protective measures.

#### **D. Investigation**

Once the decision is made to commence a formal investigation, the Vice President of Student Affairs appoints Conduct Panel members to conduct the investigation (typically using a team of two investigators), usually within two (2) days of determining that an investigation should proceed. Investigations are completed expeditiously, normally within ten (10) days, though some investigations take weeks or even months, depending on the nature, extent and complexity of the allegations, availability of witnesses, police involvement, etc.

The Mid-Plains Community College may undertake a short delay its investigation (several days to weeks, to allow evidence collection) when criminal charges on the basis of the same behaviors that invoke this process are being investigated. The Mid-Plains Community College will promptly resume its investigation and resolution processes once notified by law enforcement that the initial evidence collection process is complete. Mid-Plains Community College action will not typically be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.

All investigations will be thorough, reliable, impartial, prompt and fair. Investigations entail interviews with all relevant parties and witnesses, obtaining available evidence and identifying sources of expert information, as necessary.

Judicial Investigation Procedure offenses may proceed with the College as the Reporter when the offenses are not interpersonal in nature (i.e. Alcohol in residence hall room, Presence of Fire Hazards, etc.) or when the offense affects the educational environment or the welfare of the campus community at large (i.e. Disorderly Conduct, Weapons, etc.).

The investigators will typically take the following steps, if not already completed (not necessarily in order):

- In coordination with campus partners (e.g.: the Vice President of Student Affairs), initiate or assist with any necessary remedial actions;
- Determine the identity and contact information of the reporting party;
- Identify all policies allegedly violated;
- Assist the Vice President of Student Affairs with an immediate preliminary inquiry to determine if there is reasonable cause to believe the responding party has violated policy.
- If there is insufficient evidence to support reasonable cause, the inquiry should be closed with no further action;
- Meet with the reporting party to finalize their statement;
- Prepare the notice of allegations on the basis of the preliminary inquiry;
- Commence a thorough, reliable and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses and the responding party, who may be given notice prior to or at the time of the interview;
- Prepare the notice of allegation on the basis of the preliminary inquiry;
- Meet with the reporting party to finalize their statement, if necessary;
- If possible, provide written notification to the parties prior to their interviews that they may have the assistance of a Conduct Panel member or other advisor of their choosing present for all meetings attended by the advisee;
- Provide reporting party and responding party with a written description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures and a statement of the potential sanctions/responsive actions that could result;
- Prior to the conclusion of the investigation, provide the reporting party and the responding party with a list of witnesses whose information will be used to render a finding;
- Allow each party the opportunity to suggest questions they wish the investigators to ask of the other party and witnesses.
- Provide parties with all relevant evidence to be used in rendering a determination and provide each with a full and fair opportunity to address that evidence prior to a finding being rendered;
- Complete the investigation promptly, and without unreasonable deviation from the intended timeline;
- Provide regular updates to the reporting party throughout the investigation, and to the responding party, as appropriate;
- Recommend to the Vice President of Student Affairs a finding, based on a preponderance of the evidence (whether a policy violation is more likely than not);

- Investigators and/or the Vice President of Student Affairs finalize and present the findings to the responding party, who may accept the findings, accept the findings in part and reject them in part, or may reject all findings;
- Share the findings and update the reporting party on the status of the investigation and responding party's decision on the finding, without undue delay.

At any point during the investigation, if it is determined there is no reasonable cause to believe that Mid-Plains Community College policy has been violated, the Vice President of Student Affairs has authority to terminate the investigation and end resolution proceedings.

Witnesses (as distinguished from the parties) are expected to cooperate with and participate in the Mid-Plains Community College's investigation and the Judicial Incident Procedure. Any witness who declines to participate in or cooperate with an investigation will not be permitted to offer evidence or testimony later in a hearing (if a hearing is held). Failure of a witness to cooperate with and/or participate in the investigation or Judicial Incident Procedure constitutes a violation of policy and may be subject to discipline. Witnesses may provide written statements in lieu of interviews during the investigation and may be interviewed remotely by phone, Skype (or similar technology), if they cannot be interviewed in person or if the investigators determine that timeliness or efficiency dictate a need for remote interviewing. Parties who elect not to participate in the investigation or to withhold information from the investigation do not will not have the opportunity to offer evidence during the hearing and/or appeal stages of the process if it could have been offered during the investigation. Failure to offer evidence prior to an appeal does not constitute grounds for appeal on the basis of new evidence.

No unauthorized audio or video recording of any kind is permitted during investigation meetings or other Judicial Investigation Procedure proceedings.

#### **E. Advisors**

Each party is allowed to have an advisor of their choice present with them for all JIP meetings and proceedings, from intake through to final determination. The parties may select whomever they wish to serve as their advisor as long as the advisor is eligible and available, and usually not otherwise involved in the resolution process, such as serving as a witness. The advisor may be a friend, mentor, family member, attorney or any other supporter a party chooses to advise them who is available and eligible. Witnesses cannot also serve as advisors. The parties may choose advisors from inside or outside the campus community. The Vice President of Student Affairs will also offer to assign a trained Conduct Panel member to work as an advisor for any party. The parties may choose their advisor from the Conduct Panel, choose a non-trained advisor from outside the Conduct Panel, if preferred, or proceed without an advisor.

The parties may be accompanied by their advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help their advisees prepare for each meeting, and are expected to advise ethically, with integrity and in good faith. The Mid-Plains Community College cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not,

or cannot afford an attorney, the Mid-Plains Community College is not obligated to provide one.

All advisors are subject to the same campus rules, whether they are attorneys or not. Advisors may not address campus officials in a meeting or interview unless invited to. The advisor may not make a presentation or represent the reporting party or the responding party during any meeting or proceeding and may not speak on behalf of the advisee to the investigators or hearing panelists. The parties are expected to ask and respond to questions on their own behalf, without representation by their advisor. Advisors may confer quietly with their advisees or in writing as necessary, as long as they do not disrupt the process. For longer or more involved discussions, the parties and their advisors should ask for breaks or step out of meetings to allow for private conversation. Advisors will typically be given an opportunity to meet in advance of any interview or meeting with the administrative officials conducting that interview or meeting. This pre-meeting will allow advisors to clarify any questions they may have, and allows the Mid-Plains Community College an opportunity to clarify the role the advisor is expected to take.

Advisors are expected to refrain from interference with the investigation and resolution. Any advisor who steps out of their role will be warned once and only once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the advisor will be asked to leave the meeting. When an advisor is removed from a meeting, that meeting will typically continue without the advisor present. Subsequently, the Vice President of Student Affairs will determine whether the advisor may be reinstated, may be replaced by a different advisor, or whether the party will forfeit the right to an advisor for the remainder of the process.

The Mid-Plains Community College expects that the parties will wish to share documentation related to the allegations with their advisors. The Mid-Plains Community College provides a consent form that authorizes such sharing. The parties must complete this form before the Mid-Plains Community College is able to share records with an advisor, though parties may share the information directly with their advisor if they wish. Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with 3<sup>rd</sup> parties, disclosed publicly, or used for purposes not explicitly authorized by the Mid-Plains Community College. The Mid-Plains Community College may seek to restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by the Mid-Plains Community College's privacy expectations.

The Mid-Plains Community College expects an advisor to adjust their schedule to allow them to attend Mid-Plains Community College meetings when scheduled. The Mid-Plains Community College does not typically change scheduled meetings to accommodate an advisor's inability to attend. The Mid-Plains Community College will, however, make reasonable provisions to allow an advisor who cannot attend in person to attend a meeting by telephone, video and/or virtual meeting technologies as may be convenient and available.

A party may elect to change advisors during the process, and is not locked into using the same advisor throughout. Where an employee is a member of a union and entitled to a union representative in the process, that employee may be accompanied by the union

representative as their advisor or may choose an advisor in addition to their union representative. In such cases, the other party may have two advisors as well.

The parties must advise the investigators of the identity of their advisor at least one (1) day before the date of their first meeting with investigators (or as soon as possible if a more expeditious meeting is necessary or desired). The parties must provide timely notice to investigators if they change advisors at any time.

## **F. Conflict Resolution and Informal Resolution**

Proceedings are private. All persons present at any time during the hearing are expected to maintain the privacy of the proceedings in accord with Mid-Plains Community College policy. While the contents of the hearing are private, the parties have discretion to share their own experiences if they so choose, and should discuss doing so with their advisors.

### **1. Conflict Resolution**

Conflict Resolution is often used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the formal hearing process to resolve conflicts. The Vice President of Student Affairs will determine if conflict resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue and the susceptibility of the conduct to conflict resolution. In a conflict resolution meeting, a trained administrator will facilitate a dialogue with the parties to an effective resolution, if possible. Sanctions are not possible as the result of a conflict resolution process, though the parties may agree to appropriate remedies. The Vice President of Student Affairs will keep records of any resolution that is reached, and failure to abide by the accord can result in appropriate responsive actions.

Conflict Resolution will not be the primary resolution mechanism used to address reports of violent behavior of any kind or in other cases of serious violations of policy, though it may be made available after the formal process is completed should the parties and the Vice President of Student Affairs believe that it could be beneficial. Mediation will not be used in cases of sexual violence. It is not necessary to pursue conflict resolution first in order to pursue Informal or Formal Resolution, and either party participating in Conflict Resolution can stop that process at any time and request a shift to either Informal or Formal Resolution.

### **2. Informal Resolution: Resolution Without a Hearing Panel**

Informal Resolution or Resolution Without a Hearing Panel can be pursued for any behavior that falls within the MPCC Student Code of Conduct at any time during the process. This option may be used when:

- A responding party admits responsibility for all or part of the alleged policy violations at any point in the process;
- When the investigation reaches a finding that the parties accept;
- When both parties elect to resolve the allegation using the Informal Resolution process and the Vice President of Student Affairs assents;
- When the Vice President of Student Affairs implements the results of an investigation for an at-will employee.

In Informal Resolution, the investigator has the authority to address all collateral misconduct, meaning that they hear all allegations of discrimination, harassment and retaliation, but also may address any additional alleged policy violations that have occurred in concert with the violations of the MPCC Student Code of Conduct. Accordingly, investigations should be conducted with as wide a scope as necessary.

Any evidence that the investigator believes is relevant and credible may be considered, including history and pattern evidence. The investigator may exclude irrelevant or immaterial evidence and may choose to disregard evidence lacking in credibility or that is improperly prejudicial.

Unless the investigator determines it is appropriate, the investigation and the finding will not consider: (1) incidents not directly related to the possible violation, unless they show a pattern, (2) the sexual history of the reporting party (though there may be a limited exception made in regards to the sexual history between the parties), (3) or the character of the reporting party. While previous conduct violations by the responding party are not generally admissible as information about the present allegation, the investigators may consider information about previous good faith allegations and/or findings to consider as evidence of pattern and/or predatory conduct.

The investigator(s) will not meet with character witnesses, but investigators will accept up to two (2) letters supporting the character of each of the parties.

The investigator(s) will base the determination(s) on the preponderance of the evidence, whether it is more likely than not that the responding party violated policy as alleged.

Typically, within ten (10) days of the close of an investigation which determines that a responding party is in violation of policy, the Vice President of Student Affairs or the investigator(s) or both will meet with the responding party to explain the finding(s) of the investigation. Once informed, the responding party may choose to admit responsibility for all or part of the alleged policy violations. If the responding party admits responsibility, in whole or in part, the Vice President of Student Affairs will render a determination that the individual is in violation of Mid-Plains Community College policy for the admitted conduct, and will normally proceed to convene a formal hearing on any remaining disputed violations.

If the responding party admits to the violation(s), the Vice President of Student Affairs, in consultation as appropriate, will determine an appropriate sanction or responsive action. If the sanction/responsive action is accepted by both the reporting party and responding party, the Vice President of Student Affairs will implement the finding and sanction, and act promptly and effectively to stop the harassment or discrimination, prevent its recurrence and remedy the effects of the discriminatory conduct. No appeal is permitted.

If either party rejects the sanction/responsive action, a formal hearing will be held on the sanction/responsive action only, according to the Formal Resolution procedures below.

If alleged misconduct is resolved at this stage, the Vice President of Student Affairs will inform the parties of the final determination within three (3) days of the resolution, without significant time delay between notifications. Notification will be made in writing and may



be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official Mid-Plains Community College records; or emailed to the parties' Mid-Plains Community College-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The notification of outcome will specify the finding on each alleged policy violation, any sanctions that may result which the Mid-Plains Community College is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the Mid-Plains Community College is permitted to share under state or federal law. The notice will also include information on when the results are considered by the Mid-Plains Community College to be final, any changes that occur prior to finalization, and any appeals options that are available.

At any point during the Informal Resolution process, including at its conclusion, either party may request that the matter be referred to the Formal Resolution Process for presentation before a hearing panel, except in cases where the responding party is an at-will employee.

### **3. Formal Resolution: Resolution with a Hearing Panel**

For all contested allegations that are not resolved through either Conflict Resolution or Informal Resolution, the Vice President of Student Affairs will initiate a formal hearing panel within ten (10) days of the conclusion of the investigation, barring unusual circumstances.

## **G. Formal Hearing Panel Procedures**

### **1. Hearing Panels**

The Vice President of Student Affairs will refer the investigation findings to one of the non-voting panel Chairs depending on whether the responding party is an employee or a student. The Chair will empanel three members from the available Conduct Panel to the hearing panel, none of whom have been previously involved with the allegation. An alternate will sit in throughout the process if needed or at the discretion of the Chair. Those who served as investigators will be witnesses in the hearing of the allegation and therefore may not serve as hearing panel members. Those who are serving the parties as advisors, if any, are not eligible to serve as panelists. The panel will meet at a time determined by the Chair.

### **2. Notice of Hearing**

At least five (5) days prior to the hearing, or as far in advance as is reasonably possible if an accelerated hearing is scheduled with the consent of the parties, the Chair will send a letter to the parties with the following information. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The letter will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures and a statement of the potential sanctions/responsive actions that could result.
- The time, date and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities. If any party does not appear at the scheduled hearing, the hearing will be held in their absence. For compelling reasons, the Co-chair may reschedule the hearing.

- Notification that the parties may have the assistance of a panel member or other advisor of their choosing at the hearing (See Section 6: “Advisors” above).

Hearings for possible violations that occur near or after the end of an academic term and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the Mid-Plains Community College and remain within the sixty (60) day goal for resolution.

### **3. Hearing Procedures**

Hearing panels will usually be convened within ten (10) days of the completion of the investigation, and will be conducted in private. The panel has the authority to hear all collateral misconduct, meaning that it hears all allegations of discrimination, harassment and retaliation, but also may hear any additional alleged policy violations that have occurred in concert with the discrimination, harassment or retaliation, even though those collateral allegations may not specifically fall within the panel’s jurisdiction. Accordingly, investigations should be conducted with as wide a scope as necessary.

Participants will include the non-voting Chair, the three (3) members of the panel, the investigator(s) who conducted the investigation, the reporting party, responding party (or three (3) organizational representatives where an organization is charged), advisors to the parties and any called witnesses.

#### **a) Pre-Hearing**

The Chair will exchange the names of witnesses who will be participating in the hearing, all pertinent documentary evidence and the investigation report between the parties at least two (2) days prior to the hearing. Any witness scheduled to participate in the hearing must have been interviewed first by investigators (or have proffered a written statement), unless all parties consent to the participation of that witness in the hearing. In addition, the parties will be given a list of the names of each of the hearing panel members at least two (2) days in advance of the hearing. All objections to any panelist must be raised in writing to the Chair as soon as possible. Hearing panel members will only be unseated if the Chair concludes that their bias precludes an impartial hearing of the allegation. The panelists will be given a list of the names of each parties and witnesses at least two (2) days in advance of the hearing. Any panelist or Chair who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties and all witnesses in advance of the hearing.

The Chair, in consultation with the parties and investigators, may decide in advance of the hearing that certain witnesses do not need to be physically present if their testimony can be adequately summarized by the investigator(s) in the investigation report or during the hearing. All parties will have ample opportunity to present facts and arguments in full and question all present witnesses during the hearing, though formal cross-examination is not used between the parties. If alternative attendance or questioning mechanisms are desired, such as the reporting party not wanting to be in the same room as the responding party for the hearing (screens, Skype or Zoom, questions directed through the Chair, etc.), the parties should request them from the Chair at least two (2) days prior to the hearing. In the case of documented disabilities for which accommodations in the process are necessary, Mid-Plains

Community College will make reasonable accommodations for the parties when requested in advance.

b) Investigator Presents the Report

Once the procedures are explained and the participants are introduced, the investigator will present the report of the investigation first, and be subject to questioning by the parties and the panel. The investigator(s) will be present during the entire hearing process, but will only be present during deliberations at the request of the Chair. The findings of the investigation are not binding on the panel, though any undisputed conclusions of the investigation report will not be revisited, except as necessary to determine sanctions/responsive actions. Once the investigator(s) present their report and are questioned, the panel will permit the parties to provide relevant information in turn and permit questioning of and by the parties. The panel will then permit all present witnesses to provide relevant information and the panel and the parties will each be allowed to ask questions of the witnesses. Questions are usually directed to the parties and witnesses through the panel at the discretion of the Chair.

c) Evidence Presented at the Hearing

Formal rules of evidence do not apply. Any evidence that the panel believes is relevant and credible may be considered, including history and pattern evidence. The Chair will address any evidentiary concerns prior to and/or during the hearing, may exclude irrelevant or immaterial evidence and may ask the panel to disregard evidence lacking in credibility or that is improperly prejudicial. The Chair will determine all questions of procedure and evidence. Anyone appearing at the hearing to provide information will respond to questions on his/her own behalf.

Unless the Chair determines it is appropriate, no one will present information or raise questions concerning: (1) incidents not directly related to the possible violation, unless they show a pattern, (2) the sexual history of the reporting party (though there may be a limited exception made in regards to the sexual history between the parties), (3) or the character of the reporting party. While previous conduct violations by the responding party are not generally admissible as information about the present allegation, the investigators will supply the panel with information about previous good faith allegations and/or findings to consider as evidence of pattern and/or predatory conduct.

There will be no observers in the hearing. The Chair may allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the panel or the parties involved, and then be excused. The panel does not hear from character witnesses, but will accept up to two (2) letters supporting the character of each of the parties.

In hearings involving more than one responding party or in which two (2) or more reporting parties have accused the same individual of substantially similar conduct, the standard procedure will be to hear the allegations jointly; however, the Vice President of Student Affairs may permit the hearing pertinent to each responding party to be conducted separately. In joint hearings, separate determinations of responsibility will be made for each responding party.

Proceedings are private. All persons present at any time during the hearing are expected to maintain the privacy of the proceedings in accord with Mid-Plains Community College policy. While the contents of the hearing are private, the parties have discretion to share their own experiences if they so choose, and should discuss doing so with their advisors.

Hearings (except for deliberations) are recorded for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted. Panel members, the parties, and appropriate administrative officers of the Mid-Plains Community College will be allowed to listen to the recording in a location determined by the Vice President of Student Affairs. No person will be given or be allowed to make a copy of the recording without permission of the Vice President of Student Affairs.

d) **Alternative Testimony Options**

For sexual misconduct reports, and other reports of a sensitive nature, the reporting party will be offered alternative testimony options, such as placing a privacy screen in the hearing room, or testifying outside the physical presence of the responding party, such as by Skype, Zoom or phone. While these options are intended to help make the reporting party more comfortable, they are not intended to work to the disadvantage of the responding party.

**4. Deliberation and Decisions**

The three (3) members of the hearing panel and the non-voting Chair will deliberate in closed session to determine whether the responding party is responsible or not responsible for the policy violation(s) in question. The panel will base its determination(s) on a preponderance of the evidence (i.e., whether it is more likely than not that the responding party committed each alleged violation). If a responding party or organization is found responsible by a majority of the panel, the panel will recommend appropriate sanctions.

The Chair will prepare a written deliberation report and deliver it to the Vice President of Student Affairs, detailing the recommended finding, the information cited by the panel in support of its recommendation and any information the hearing panel excluded from its consideration and why. The report should conclude with any recommended sanctions. This report should not exceed two (2) pages in length and must be submitted to the Vice President of Student Affairs within two (2) days of the end of deliberations, unless the Vice President of Student Affairs grants an extension.

The Vice President of Student Affairs will finalize the recommendations and will inform the parties of the final determination – both the finding(s) and applicable sanction(s) within three (3) days of the hearing, without significant time delay between notifications. Notification will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official Mid-Plains Community College records; or emailed to the parties' Mid-Plains Community College-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The notification of outcome will specify the finding on each alleged policy violation, any sanctions that may result which the Mid-Plains Community College is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the Mid-Plains Community College is permitted to share under state or federal law. The notice will also include information on

when the results are considered by the Mid-Plains Community College to be final, any changes that occur prior to finalization and any appeals options that are available.

## 5. Sanctions

The hearing panel assigned to the resolution will recommend sanctions or responsive actions to the Vice President of Student Affairs. Factors considered when determining a sanction/responsive action may include:

- The nature, severity of, and circumstances surrounding the violation
- An individual's disciplinary history
- Previous allegations or allegations involving similar conduct
- Any other information deemed relevant by the hearing panel
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment and/or retaliation
- The need to remedy the effects of the discrimination, harassment and/or retaliation on the reporting party and the community

### a) Student Sanctions

The following are the usual sanctions that may be imposed upon students or organizations singly or in combination:

- **Warning:** A formal statement that the behavior was unacceptable and a warning that further infractions of any Mid-Plains Community College policy, procedure or directive will result in more severe sanctions/responsive actions.
- **Probation:** A written reprimand for violation of the Code of Student Conduct, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any Mid-Plains Community College policy, procedure or directive within a specified period of time. Terms of the probation will be specified and may include denial of specified social privileges, exclusion from co-curricular activities, non-contact orders and/or other measures deemed appropriate.
- **Suspension:** Termination of student status for a definite period of time not to exceed two years, and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure at Mid-Plains Community College. This sanction may be noted as a Conduct Suspension on the student's official transcript, at the discretion of the Vice President of Student Affairs.
- **Expulsion:** Permanent termination of student status, revocation of rights to be on campus for any reason or attend Mid-Plains Community College-sponsored events. This sanction will be noted as a Conduct Expulsion on the student's official transcript.
- **Withholding Diploma:** The Mid-Plains Community College may withhold a student's diploma for a specified period of time and/or deny a student participation in

commencement activities if the student has an allegation pending, or as a sanction if the student is found responsible for an alleged violation.

- **Revocation of Degree:** The Mid-Plains Community College reserves the right to revoke a degree awarded from the Mid-Plains Community College for fraud, misrepresentation or other violation of Mid-Plains Community College policies, procedures or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- **Organizational Sanctions:** Deactivation, de-recognition, loss of all privileges (including University registration), for a specified period of time.
- **Other Actions:** In addition to or in place of the above sanctions, the Mid-Plains Community College may assign any other sanctions as deemed appropriate.

#### **6. Withdrawal or Resignation While Charges Pending**

**Students:** The Mid-Plains Community College does not permit a student to withdraw if that student has an allegation pending for violation of the MPCC Student Code of Conduct. Should a student decide to leave and/or not participate in the JIP, the process will nonetheless proceed in the student's absence to a reasonable resolution and that student will not be permitted to return to Mid-Plains Community College unless all sanctions have been satisfied. The student will not have access to an academic transcript until the allegations have been resolved.

#### **7. Appeals**

All requests for appeal consideration must be submitted in writing to the Vice President of Student Affairs within three (3) days of the delivery of the written finding of the hearing panel. Any party may appeal the findings and/or sanctions only under the grounds described, below

A three-member appeals panel chosen from the Conduct Panel will be designated by the Vice President of Student Affairs from those who have not been involved in the process previously. Any party may appeal, but appeals are limited to the following grounds:

- A procedural error or omission occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.).
- To consider new evidence, unknown or unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.
- The sanctions imposed fall outside the range of sanctions the Mid-Plains Community College has designated for this offense and the cumulative record of the responding party.

The appeals panel will review the appeal request(s). The original finding and sanction/responsive actions will stand if the appeal is not timely or is not based on the grounds listed above, and such a decision is final. The party requesting appeal must show that the grounds for an appeal request have been met, and the other party or parties may show the grounds have not been met, or that additional grounds are met. The original finding and sanction are presumed to have been decided reasonably and appropriately. When

any party requests an appeal, the Vice President of Student Affairs will share the appeal request with the other party(ies), who may file a response within three (3) days and/or bring their own appeal on separate grounds within the original timeframe. If new grounds are raised, the original appealing party will be permitted to submit a written response to these new grounds within three (3) days. This response or appeal requests will be shared with the each party.

Where the appeals panel finds that at least one of the grounds is met by at least one party, additional principles governing the hearing of appeals will include the following:

- Decisions by the appeals panel are to be deferential to the original decision, making changes to the finding only where there is clear error and to the sanction/responsive action only if there is a compelling justification to do so.
- Appeals are not intended to be full re-hearings (de novo) of the allegation. In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal. An appeal is not an opportunity for appeals panelists to substitute their judgment for that of the original hearing panel merely because they disagree with its finding and/or sanctions.
- Appeals granted based on new evidence should normally be remanded to the original hearing panel or investigators for reconsideration. Other appeals may be remanded at the discretion of the Vice President of Student Affairs or, in limited circumstances, heard by the three-member appeals panel.
- Sanctions imposed as the result of the Formal or Informal Resolution processes are implemented immediately unless the Vice President of Student Affairs or designee stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
- For students: Graduation, study abroad, internships/ externships, etc. do NOT in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal.
- The Vice President of Student Affairs will confer with the appeals panel, incorporate the results of any remanded grounds, and render a written decision on the appeal to all parties within three (3) days from hearing of the appeal or remand.
- All parties should be informed of whether the grounds for an appeal are accepted and the results of the appeal decision or remand.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- All parties will be informed in writing within three (3) days of the outcome of the Appeals Panel, without significant time delay between notifications, and in accordance with the standards for notice of outcome as defined above.
- In rare cases where a procedural [or substantive] error cannot be cured by the original hearing panel (as in cases of bias), the appeals panel may recommend a new hearing with a new hearing panel. The results of a remand to a hearing panel cannot be appealed. The results of a new hearing can be appealed, once, on any of the three applicable grounds for appeals.

- In cases where the appeal results in reinstatement to the Mid-Plains Community College or resumption of privileges, all reasonable attempts will be made to restore the responding party to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

#### **8. Long-Term Remedies/Actions**

Following the conclusion of the Judicial Investigation Procedure and in addition to any sanctions implemented, the Vice President of Student Affairs may utilize long-term remedies or actions stop the harassment or discrimination, remedy its effects and prevent their reoccurrence. These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Education to the community
- Permanently altering the housing situation of an the responding party (resident student or resident employee (or the reporting party, if desired))
- Permanently altering work arrangements for employees
- Providing campus escorts
- Climate surveys
- Policy modification
- Providing transportation accommodations
- Implementing long-term contact limitations between the parties
- Offering adjustments to academic deadlines, course schedules, etc.

At the discretion of the Vice President of Student Affairs, long-term remedies may also be provided even when the responding party is found not responsible.

The institution will maintain as confidential any long-term remedies/actions or protective measures, provided confidentiality does not impair the institution's ability to provide the actions or protective measures.

#### **9. Failure to Complete Sanctions/Comply with Interim and Long-term Remedies/Responsive Actions**

All responding parties are expected to comply with conduct sanctions, responsive actions and corrective actions within the timeframe specified by the Vice President of Student Affairs. Failure to abide by these conduct sanctions, responsive actions and corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions/responsive/corrective actions and/or suspension, expulsion and/or termination from the Mid-Plains Community College and may be noted on a student's official transcript. A suspension will only be lifted when compliance is achieved to the satisfaction of the Vice President of Student Affairs.

#### **10. Records**



In implementing this policy, records of all allegations, investigations, resolutions, and hearings will be kept by the Vice President of Student Affairs indefinitely in the Jenzabar Judicial Database.

## 11. **Statement of the Rights of the Parties**

### *Statement of the Reporting Party's rights:*

- The right to investigation and appropriate resolution of all credible allegations of sexual misconduct or discrimination made in good faith to Mid-Plains Community College officials;
- The right to be informed in advance of any public release of information regarding the incident;
- The right not to have any personally identifiable information released to the public, without their consent;
- The right to be treated with respect by Mid-Plains Community College officials.
- The right to have Mid-Plains Community College policies and procedures followed without material deviation;
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence;
- The right not to be discouraged by Mid-Plains Community College officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities;
- The right to be informed by Mid-Plains Community College officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the reporting party so chooses. This also includes the right not to be pressured to report, as well;
- The right to have reports of sexual misconduct responded to promptly and with sensitivity by campus law enforcement and other campus officials;
- The right to be notified of available counseling, mental health, victim advocacy, health, legal assistance, student financial aid, visa and immigration assistance, or other student services, both on campus and in the community;
- The right to a campus no contact order (or a trespass order against a non-affiliated third party) when someone has engaged in or threatens to engage in stalking, threatening, harassing or other improper behavior that presents a danger to the welfare of the reporting party or others;
- The right to notification of and options for, and available assistance in, changing academic and living situations after an alleged sexual misconduct incident, if so requested by the reporting party and if such changes are reasonably available (no formal report, or investigation, campus or criminal, need occur before this option is available).  
Accommodations may include:
  - Change of an on-campus student's housing to a different on-campus location;

- Assistance from Mid-Plains Community College support staff in completing the relocation;
  - Transportation accommodations;
  - Arranging to dissolve a housing contract and pro-rating a refund;
  - Exam (paper, assignment) rescheduling;
  - Taking an incomplete in a class;
  - Transferring class sections;
  - Temporary withdrawal;
  - Alternative course completion options.
- The right to have the Mid-Plains Community College maintain such accommodations for as long as is necessary, and for protective measures to remain confidential, provided confidentiality does not impair the institution's ability to provide the accommodations or protective measures;
  - The right to be fully informed of campus policies and procedures as well as the nature and extent of all alleged violations contained within the report;
  - The right to ask the investigators to identify and question relevant witnesses, including expert witnesses;
  - The right to review all documentary evidence available regarding the report, subject to the privacy limitations imposed by state and federal law, at least 48 hours prior to the hearing;
  - The right to be informed of the names of all witnesses who will be called to give testimony, at least two (2) days prior to the hearing, except in cases where a witness's identity will not be revealed to the responding party for compelling safety reasons (this does not include the name of the reporting party, which will always be revealed);
  - The right not to have irrelevant prior sexual history admitted as evidence;
  - The right to regular updates on the status of the investigation and/or resolution.
  - The right to have reports heard by hearing and appeals officers who have received [at least eight hours of] annual sexual misconduct training;
  - The right to a panel that is not single-sex in its composition, if a panel is used;
  - The right to preservation of privacy, to the extent possible and permitted by law;
  - The right to meetings, interviews and/or hearings that are closed to the public;
  - The right to petition that any Mid-Plains Community College representative in the process be recused on the basis of demonstrated bias and/or conflict of interest;
  - The right to bring a victim advocate or advisor of the reporting party's choosing to all phases of the investigation and resolution proceeding;
  - The right to provide evidence by means other than being in the same room with the responding party;

- The right to have the university compel the participation of student, faculty and staff witnesses, and the opportunity (if desired) to ask questions, directly or indirectly, of all present witnesses including the responding party, and the right to challenge documentary evidence;
- The right to be present for all testimony given and evidence presented during any resolution-related hearing;
- The right to submit an impact statement in person or in writing to the hearing officers following determination of responsibility, but prior to sanctioning;
- The right to be promptly informed of the outcome and sanction of the resolution process in writing, without undue delay between the notifications to the parties;
- The right to be informed in writing of when a decision by the Mid-Plains Community College is considered final, any changes to the sanction to occur before the decision is finalized, to be informed of the right to appeal the finding and sanction of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the Mid-Plains Community College;

#### **XXIV. Statement of the Responding Party's rights:**

The rights of the responding party should also be prominently indicated. These should include, among others particular to your Mid-Plains Community College:

- The right to investigation and appropriate resolution of all credible reports of sexual misconduct and/or discrimination made in good faith to Mid-Plains Community College administrators;
- The right to be informed in advance, when possible, of any public release of information regarding the report;
- The right to be treated with respect by Mid-Plains Community College officials;
- The right to have Mid-Plains Community College policies and procedures followed without material deviation;
- The right to be informed of and have access to campus resources for medical, health, counseling, and advisory services;
- The right to timely written notice of all alleged violations, including the nature of the violation(s), the applicable policies and procedures and possible sanctions;
- The right to a hearing on the report, including timely notice of the hearing date, and adequate time for preparation; (does not apply to at-will employees)
- The right to review all documentary evidence available regarding the report, subject to the privacy limitations imposed by state and federal law, at least two (2) days prior to the hearing;
- The right to be informed of the names of all witnesses who will be called to give testimony, at least two (2) days prior to the hearing, except in cases where a witness's identity will not be revealed to the responding party for compelling safety reasons (this does not include the name of the reporting party, which will always be revealed);

- The right not to have irrelevant prior sexual history admitted as evidence in a campus resolution process;
- The right to have reports heard by hearing and appeals officers who have received at least 8 hours of annual training;
- The right to petition that any Mid-Plains Community College representative be recused from the resolution process on the basis of demonstrated bias and/or conflict of interest;
- The right to a panel that is not single-sex in its composition, if a panel is used;
- The right to meetings, interviews and hearings that are closed to the public;
- The right to have the Mid-Plains Community College compel the participation of student, faculty and staff witnesses, and the opportunity to ask questions, directly or indirectly, of all present witnesses, and the right to challenge documentary evidence;
- The right to have an advisor of their choice to accompany and assist in the campus resolution process;
- The right to a fundamentally fair resolution, as defined in these procedures;
- The right to submit an impact statement in person or in writing to the hearing officers board following any determination of responsibility, but prior to sanctioning;
- The right to a decision based solely on evidence presented during the resolution process. Such evidence shall be credible, relevant, based in fact, and without prejudice;
- The right to be promptly informed of the outcome and sanction of the resolution process in writing, without undue delay between the notifications to the parties;
- The right to be informed in writing of when a decision of the Mid-Plains Community College is considered final, any changes to the sanction to occur before the decision is finalized, to be informed of the right to appeal the [finding and] sanction of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the Mid-Plains Community College.

## **XXV. Disabilities Accommodation in the Equity Resolution Process**

Mid-Plains Community College is committed to providing qualified students, employees or others with disabilities with reasonable accommodations and support needed to ensure equal access to the Equity Resolution Process at the Mid-Plains Community College. Anyone needing such accommodations or support should contact the Area Director of Adult Education/ADA, who will review the request and, in consultation with the person requesting the accommodation, and the Vice President of Student Affairs, determine which accommodations are appropriate and necessary for full participation.

## **XXVI. Revision**

These policies and procedures will be reviewed and updated annually by the Vice President of Student Affairs. The Mid-Plains Community College reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect. The Vice President of Student Affairs may make minor modifications to procedure that do

not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules, etc. The Vice President of Student Affairs may also vary procedures materially with notice (on the institutional web site, with appropriate date of effect identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure. Procedures in effect at the time of the resolution will apply to resolution of incidents, regardless of when the incident occurred. Policy in effect at the time of the offense will apply even if the policy is changed subsequently but prior to resolution, unless the parties consent to be bound by the current policy. If government regulations change in a way that impacts this document, this document will be construed to comply with government regulations in their most recent form.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such codes generally.

This policy and procedure was implemented in [June 22, 2018].