

Sexual Misconduct Policy

Section 1

Introduction and Policy Language

- 1.1** It is the policy of the Morehouse College ("Morehouse" or "the College") to maintain a work and academic environment that is free from sexual and gender-based harassment and misconduct, including, but not limited to: Sexual Assault, Sexual Violence, Domestic Violence, Dating Violence, Nonconsensual Sexual Contact, Nonconsensual Sexual Intercourse, Rape, Sexual Exploitation, Stalking and Retaliation ("Prohibited Conduct").
- 1.2** In furtherance of the goal to make Morehouse College an institution free from sexual and gender-based harassment and discriminatory actions, Morehouse College implements this, its "Sexual Misconduct Policy" created in accordance with state and federal law.
- 1.3** Students who engage in Prohibited Conduct are subject to disciplinary action up to and including permanent separation from the College (i.e. expulsion). Students are also subject to disciplinary action for *Aiding, Abetting, or Inciting* any of these forms of misconduct.
- 1.4** Bystanders. A Bystander is anyone who observes an emergency or any situation where someone is in need of help. Bystanders play a critical role in the prevention of sexual and relationship violence. Morehouse College promotes a culture of community accountability where bystanders are actively engaged in the prevention of violence without causing harm to themselves or others.
- 1.5** Further, any *Retaliation* against an individual who has complained about sexual harassment or unlawful discrimination, or retaliation against individuals for cooperating with an investigation of a complaint of sexual harassment or unlawful discrimination, is similarly unlawful and will not be tolerated.
- 1.6** ***The Sexual Misconduct Policy and its procedures do not replace the criminal justice system.*** In the event that an individual files a report with Campus Police, the Morehouse College Police Department will report to the Atlanta Police Department certain alleged crimes, including some forms of Sexual Harassment, Domestic Violence, Dating Violence, or Stalking, which occur in Atlanta, Fulton County and constitute a felony under Georgia law.
- 1.7** The Sexual Misconduct Procedures can be found in the [Sexual Misconduct Procedures](#) document, which will continually be published on the College's intranet, as well as external website.

Section 2

Applicability, Jurisdiction & Title IX Coordinator Authority

2.1 The Sexual Misconduct Policy and its procedures will apply to all complaints by or against students for Prohibited Conduct. The Policy and the accompanying procedures will also apply to individuals reporting or participating in investigations of such conduct whether made by students, faculty, staff, or third parties, and will take precedence over any other Morehouse College policies and procedures with respect to such complaints. At this time, this policy does not apply to complaints of harassment, discrimination or misconduct between two non-student Morehouse community members. Such complaints should be referred to the Office of Human Resources or Campus Police, as appropriate.

2.2 Morehouse designates the Title IX Coordinator (Title IX Coordinator") as the individual charged with coordinating efforts to comply with Title IX. The Title IX Coordinator addresses and oversees the investigation and resolution of all complaints related to sexual and gender-based harassment involving students, faculty, staff, visitors, and vendors, including Sexual Misconduct and Assault, Sexual Harassment, Dating Violence, Domestic Violence, or Stalking.

2.3 The Title IX Coordinator is available to meet with any person to provide information about resources, interim measures and options for investigation and resolution under this Sexual Misconduct Policy:

Crystal Lucas, Esq.
Interim Title IX Coordinator
Office of General Counsel and Compliance
830 Westview Drive, S.W., Gloster Hall, Room 109
Atlanta, GA 30314
(p) 404.215.6200
crystal.lucas@morehouse.edu

2.4 Inquiries or complaints concerning the application of Title IX may be referred to the Title IX Coordinator and/or the United States Department of Education:

United States Department of Education
Office for Civil Rights
61 Forsyth Street, S.W., Suite 19T70
Atlanta, GA 30303-8927
Telephone: (404) 974-9406
Fax: (404) 974-9471
Email: OCR.Atlanta@ed.gov

Section 3 Definitions

3.1 As used in this Policy:

- a) **"Aiding, Abetting, or Inciting"**: participating in, soliciting, directing, or assisting in Sexual Assault, Sexual Harassment, Domestic Violence, Dating, or Stalking.
- b) **"College Premises"**: refers to buildings or grounds owned, leased, operated, controlled, or supervised by the College.
- c) **"College-sponsored activity"**: any activity hosted, performed, or conducted on or off College premises that is specifically initiated or supervised by the College.
- d) **"Complainant"**: a person who alleges that another person or Student Organization violated this Sexual Misconduct Policy.
- e) **"Consent"**: clear and unambiguous agreement, expressed in mutually understandable words or actions, to engage in a particular sexual activity. Whether valid consent has been given will be judged based upon what a reasonable person would have understood from such words or actions.
 - i. **Consent must be voluntarily given and is not valid**: 1) if obtained by physical force, coercion, or threat; 2) when a person is Incapacitated; 3) when an intellectual or other disability prevents a person from having the capacity to give consent; or 4) if consent is given for a particular sexual activity on a prior occasion (cannot be presumed to constitute consent to engage in a different sexual activity or to engage again in a sexual activity).
 - ii. **Consent can be withdrawn by either person at any point.**
- f) **"Cyberbullying / Media-Based Misconduct"**: Photographing or taping someone (via audio, video or otherwise) involved in sexual activity, or in a state of undress, without his or her knowledge or consent. Even if a person consented to sexual activity, photographing or taping someone without his or her knowledge and agreement goes beyond the boundaries of that consent. Dissemination of photographs or video/audio of someone involved in sexual activity, or in a state of undress, without his or her knowledge or consent constitutes a separate and additional act of sexual misconduct."
- g) **"Dating Violence"**: violence committed by a person:
 - i. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 - ii. where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - 1. the length of the relationship;
 - 2. the type of relationship; and
 - 3. the frequency of the interaction between the persons involved in the relationship.

- h) "Domestic Violence": Felony or misdemeanor crimes of violence committed by a current or former spouse of the victim by:**
- i. a person with whom the victim shares a child in common,
 - ii. a person who is cohabiting with or has cohabited with the victim as a spouse,
 - iii. person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction where the crime occurred, or
 - iv. any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction where the crime occurred.
- i) "Force":** 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 overcomes resistance or produces consent.
- i. There is no requirement that a person has to resist the sexual advance or request, but resistance is a clear demonstration of non-consent.
 - ii. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.
- j) "Incapacitation":** a person lacks the capacity to give Consent to sexual activity because the person is: asleep, unconscious, mentally and/or physically helpless, or otherwise unaware that sexual activity is occurring.
- i. **Incapacitation is not necessarily the same as legal intoxication.** Where alcohol or other drugs are involved, evaluating Incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects a person's:
 1. decision-making ability; awareness of consequences;
 2. ability to make informed, rational judgments;
 3. capacity to appreciate the nature and quality of the act; or level of consciousness.
 - ii. The assessment is based on objectively and reasonably apparent indications of incapacitation when viewed from the perspective of a sober, reasonable person.
 - iii. **Intentional Incapacitation:** providing alcohol or other drugs to a person with the intent to render the person Incapacitated.
- k) "Interim Measures":** temporary accommodations or conditions placed upon a Complainant or Responding Party by the Title IX Coordinator to address immediate physical safety and emotional needs following any allegation of violation of the Sexual Misconduct Policy.
- l) "Notification of Outcome":** a written notification issued to a Complainant and a Respondent following the conclusion of a student judicial proceeding under this Policy.
- m) "Reporting Party":** a person who is aware of, and reports a possible violation under the Sexual Misconduct Policy on behalf of a victim, but who is not personally the victim of the misconduct.

- n) **"Respondent"**: a student or Student Organization accused of misconduct under this Policy.
- o) **"Retaliation"**: engaging in conduct that may reasonably be perceived to adversely affect a person's educational, living, or work environment because of their good faith participation in the reporting, investigation, and/or resolution of report of a violation of this Sexual Misconduct Policy; or Discourage a reasonable person from making a report or participating in an investigation under this Sexual Misconduct Policy.
- i. Retaliation includes but is not limited to:
 1. acts or words that constitute intimidation;
 2. threats or coercion intended to pressure a person to drop or support a complaint or to provide false/misleading information in connection with an investigation; and
 3. pressuring a person to participate or refrain from participating as a witness in an investigation.
 - ii. Retaliation may constitute a violation of this Sexual Misconduct Policy even when the underlying report made in good faith did not result in a finding of responsibility.
- p) **"Sexual Assault"**: unwanted or unwelcome touching of a sexual nature, including: fondling; penetration of the mouth, anus, or vagina, however slight, with a body part or object; or other sexual activity that occurs without valid consent. This definition includes, but is not limited to, rape and other physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (e.g., due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent).
- q) **"Sexual Contact"**: the deliberate touching of a person's intimate parts (including genitalia, groin, breast, buttock, or clothing covering any of those areas), or using Force or the threat of Force to cause a person to touch his or her own or another person's intimate parts.
- r) **"Sexual Harassment"**: includes any of the following behaviors:
- i. Hostile Environment – unwelcome sexual advances, requests for sexual favors, and other visual, verbal, or physical conduct of a sexual nature when the conduct is sufficiently severe or pervasive to deny or limit the victim's ability to participate in or benefit from Morehouse's educational programs or benefits by creating an intimidating or hostile environment.
 - ii. Quid Pro Quo – unwelcome sexual advances, requests for sexual favors, and other visual, verbal, or physical conduct of a sexual nature when submission to such conduct is made either explicitly or implicitly a term or condition of an individual's education, living environment, employment, or participation in a college-related activity or program.
 - iii. Threats / Intimidation of a Sexual Nature – conduct of a sexual nature, which reasonably would be expected to have the effect of threatening or intimidating the person at whom such conduct is directed.

- s) "Sexual Misconduct":** is a broad term that encompasses sexually motivated misconduct, including conduct of an unwelcome and/or criminal nature. Thus, for purposes of this Policy, Sexual Misconduct includes, but is not limited to:
- i. Rape;
 - ii. Sexual Exploitation;
 - iii. Nonconsensual Sexual Contact;
 - iv. Nonconsensual Sexual Intercourse;
 - v. Sexual Assault;
 - vi. Sexual Violence;
 - vii. Domestic Violence; and
 - viii. Dating Violence.
- t) "Stalking":** occurs when a person engages in a course of conduct or repeatedly commits acts toward another person, under circumstances that would place the person in reasonable fear for safety, or of harm or bodily injury to self or others; or reasonably cause substantial emotional distress to the person.
- i. A course of conduct refers to a pattern of behavior of two or more acts over a period of time that can be reasonably regarded as likely to alarm, harass, or cause fear of harm or injury to that person or to a third party. The feared harm or injury may be physical, emotional, or psychological, or related to the personal safety, property, education, or employment of that individual.
 - ii. Stalking may involve individuals who are known to one another or have an intimate or sexual relationship, or may involve individuals who do not know to one another.
- u) "Student Organization":** a recognized Morehouse student organization, group, or team including but not limited to those devoted to academic, athletic, cultural, Greek life, leadership, pre-professional or other student activities.
- v) "Title IX Coordinator":** the designated College official with ultimate oversight and responsibility for the College's compliance with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. § 1681 et seq. ("Title IX"), implementing regulations and relevant supplemental guidance.

Section 4

Student and Student Organization Rights and Expectations

4.1 Confidentiality; Respect for Privacy.

- a) Information regarding Sexual Assault, Sexual Harassment, Domestic Violence, Dating Violence, or Stalking reports, and any investigation or review of those reports, including sanctioning determinations, will be shared among Morehouse officials with a legitimate educational interest or with external individuals or entities only on a need-to-know basis and only as permitted by Morehouse policy and applicable law.

4.2 When a Complainant Requests Confidentiality and Elects Not to Proceed With an Investigation

- a) If the Complainant does not wish to proceed with an investigation and/or requests to remain confidential, Title IX still requires the College to investigate and take reasonable corrective action in response to the Complainant's information. In such case, College's ability to respond may be limited.
- b) The Title IX Coordinator will weigh the Complainant's request(s) for confidentiality and/or wish not to proceed with an investigation against the College's obligation to provide a safe, non-discriminatory environment for all students.
- c) Specifically, the Title IX Coordinator will consider the following factors:
 - i. The seriousness of the alleged misconduct;
 - ii. Whether there have been other complaints of Sexual Misconduct or Sex Discrimination against the accused at the College or any other school or in the nature of prior criminal charges;
 - iii. Whether the accused threatened further misconduct or violence against the Complainant or others;
 - iv. Whether the Sexual Misconduct or Sex Discrimination was committed by multiple persons;
 - v. Whether the Sexual Misconduct involved use of a Weapon;
 - vi. The age of the Complainant;
 - vii. Whether the University possesses other means to obtain relevant evidence of the misconduct;
 - viii. Whether the Complaint reveals a pattern of conduct at a particular location or by a particular individual and or student group or organization;
 - ix. The accused's right to receive information about the allegations if the information is maintained by the College as an "education record" under the Family Educational Rights and Privacy Act ("FERPA"); and
 - x. Any other information that is relevant under the circumstances.

- 4.3** The Title IX Coordinator or designee will inform the Complainant if the College cannot ensure confidentiality. In an instance where the College must disclose a Complainant's identity, the Title IX Coordinator or designee will inform the Complainant prior to making the disclosure.

4.4 Mandatory Reporters.

- a) **Responsible employees** are those who have the authority to address and remedy sexual misconduct and gender-based discrimination or those who a student or another employee would reasonably believe to have such authority or obligation. All supervisors are responsible employees but not all responsible employees are supervisors. Responsible employees must report known details of the incident as well as the names of the Complainant and Respondent.
 - i. Examples of responsible employees are Directors, Faculty, Department Heads, Deans, Vice Presidents, Managers, Supervisors, Police Officers, Residential Deans, Coaches, Advisors, Office of General Counsel, Human Resources, and Office of Student Conduct.

4.5 Confidential Reporting.

- a) **Confidential employees** are those individuals who have a confidentiality privilege to protect the personal identification of a Complainant.
- b) These confidential employees (i.e. ***health care professional, licensed counselors, etc.***) can fulfill their reporting requirements by making general reports for statistical purposes and pattern tracking but do not divulge personally identifiable information without client consent.
 - i. Employees who do not have a confidentiality privilege should not promise confidentiality to the Complainant. An employee can tell the Complainant that he/she will only tell the individuals that must know and will do his/her best to protect the Complainant's identify but cannot promise confidentiality. **If the Complainant wants confidentiality, then he/she must be referred to a confidential employee (i.e. health care provider or licensed counselor).**

4.6 Protection from Retaliation.

- a) Morehouse will take appropriate steps to ensure that a person who in good faith reports or participates in a Sexual Assault, Sexual Harassment, Domestic Violence, Dating Violence, or Stalking investigation will not be subjected to Retaliation by the Responding Persons or others.
- b) Anyone who believes that they are experiencing Retaliation is strongly encouraged to report that concern using the procedure for the reporting of Sexual Assault, Sexual Harassment, Domestic Violence, Dating Violence, or Stalking under this Sexual Misconduct Policy.

4.7 Coordination with Concurrent Legal Proceedings. Students may report to law enforcement in connection with the same behavior that forms the basis of Prohibited Conduct under this Sexual Misconduct Policy.

- a) Where a Complainant or another person with knowledge of possible Prohibited Conduct has reported to law enforcement, Morehouse will fulfill its responsibility under Title IX to take prompt and appropriate action to provide protection and resources to the Complainant to the extent permitted by law or policy.

- b) A report to law enforcement will not change the College's obligation to potentially investigate the matter but it may briefly delay the timing of the investigation if a law enforcement agency requests that the College delay its process for a reasonable amount of time to allow it to gather evidence of criminal conduct.

4.8 Advisor of Choice. Both Complainant and Respondent are entitled to have a single advisor and/or observer of their choice accompany them at any meeting related to the Title IX process. This advisor or observer may be an attorney. The advisor may not interrupt or interfere with the proceedings and, to the extent they do, Morehouse retains the right to stop the process and remove the advisor.

4.9 Conflict of Interest. Any persons exercising authority under this Sexual Misconduct Policy who believe they may be unable to exercise that authority impartially in any case shall excuse themselves from the matter and will be replaced with another person.

- a) If the Complainant or Respondent believes a person exercising authority under this Sexual Misconduct Policy has a personal, professional, or financial involvement with the Complainant or Respondent that would prevent the person from exercising their authority impartially, they may make a prompt objection to the Title IX Coordinator.
- b) If the Title IX Coordinator determines that the objection is reasonable, the challenged person will be replaced with another person.
- c) Because Morehouse is a small community, knowledge of or acquaintance with the student(s) and/or witness in a matter, awareness of a matter, participating as a consequence of one's official role in events surrounding a matter, and/or participation in the process prior to the formal disciplinary process, shall not automatically be grounds for disqualification. The decision of the Title IX Coordinator regarding a challenge is final.

Section 5

Additional Matters

5.1 Duty of Honesty. All Parties and witnesses are obligated to be completely honest during the course of the entire process set forth in the Sexual Misconduct Policy. Any person who knowingly makes a false statement – either explicitly or by omission – in connection with any part of the process may be subject to separate College disciplinary action.

5.2 Duty of Cooperation. All Parties and witnesses are obligated to cooperate with the Title IX Coordinator and any persons charged with implementing the Sexual Misconduct Policy. Any person who knowingly interferes with the actions taken to implement the reporting, investigation, or resolution of matters under the Sexual Misconduct Policy may be subject to separate College disciplinary action.

5.3 Recording the Proceedings. The Parties are not permitted to make video, audio, or other electronic, photographic, or digital recordings of any meetings or proceedings held under the Sexual Misconduct Policy. The Title IX Coordinator may make exceptions to this prohibition in limited circumstances if he or she concludes, in his or her sole discretion, that a recording is warranted, and upon written request of the Party seeking the recording that explains the need for the recording.

5.4 Follow-up with Complainant. Where the Title IX Coordinator deems appropriate, he or she may contact the Complainant to provide an update on the process, the timing and extent of which will be determined by the Title IX Coordinator and depend upon the nature of the allegations and the situation.

5.5 Prohibition Against Retaliation. The College will not tolerate retaliation in any form against any persons for their participation or involvement in the reporting, investigation, and/or resolution of matters subject to the Sexual Misconduct Policy. The College will take appropriate steps to prevent and/or address retaliatory conduct immediately. The College includes retaliation in its definition of prohibited conduct under this Sexual Misconduct Policy, as well as the College's general prohibition on retaliation.

5.6 Amnesty for Students Reporting Misconduct. The College encourages reporting under the Sexual Misconduct Policy and seeks to remove barriers to reporting. The College generally will not hold a student who reports conduct or is a witness during an investigation under the Sexual Misconduct Policy accountable for disciplinary violations of the College's Community Standards prohibiting use of drugs or alcohol. Under limited circumstances, a person who reports conduct under the Sexual Misconduct Policy may be held accountable for his or her own misconduct if, in the College's discretion, it is determined that the behavior placed the health and safety of any person at risk, or if it created a danger to the College community. The College retains the right to require students to attend counseling or drug/alcohol related courses even in circumstances in which disciplinary conduct will not be pursued under this part.

5.7 Special Situations. The College retains the right to determine, in its sole discretion, if it will address a report of conduct that falls under the Sexual Misconduct Policy administratively and outside of the process described herein when the safety of the College community is at risk, if the material facts are undisputed, if there are extenuating circumstances involving either of the Parties, or if the Title IX Coordinator, in consultation with appropriate administrators, determines it is in the best interest of the College and/or the community to do so.

5.8 Responsible Office. The Office of General Counsel & Compliance is the responsible office for updating and maintaining this policy.

Revision History

Approved by the President; Compliance, Enterprise Risk & Policy Committee; Title IX Committee. Effective Date August 1, 2016