

## **MORTON COLLEGE GUIDELINES FOR ADDRESSING STUDENT-ON-STUDENT DISCRIMINATION, SEXUAL HARASSMENT OR MISCONDUCT, HARASSMENT OR RETALIATION**

### **I. STATEMENT OF INTENT**

Morton College is committed to providing a safe and secure learning environment in all educational programs and activities free from Discrimination, Sexual Harassment or Misconduct, Harassment or Retaliation for all students.

The Morton College Board has empowered the Title IX Coordinator or Deputy Title IX Coordinator for Students to process all Discrimination, Sexual Harassment or Misconduct, Harassment or Retaliation allegations or complaints. These Guidelines must be read in conjunction with the Morton College Board's Comprehensive Non-Discrimination, Sexual Harassment or Misconduct, Harassment and Retaliation Policy. Additionally, these Guidelines will be reviewed at least annually and amended to ensure that they comply with Morton College Board policies and procedures, State and Federal law, and all state and federal regulations that govern Morton College.

### **II. THE GUIDELINES' SCOPE OF COVERAGE**

These Guidelines cover instances where a current Morton College student ("Complainant") makes allegations or files a complaint against another current Morton College student that asserts that the offending student ("Respondent") engaged in improper Discrimination, Sexual Harassment or Misconduct, Harassment or Retaliation in an educational program or activity as those terms are defined below. These Guidelines do **not** cover instances of employee or other adult misconduct against a student which is governed under separate guidelines. Additionally, these Guidelines do **not** apply to former Morton College students.

This Policy covers all phases of academic status, including, but not limited to, admissions, educational testing, extracurricular programs, and athletics.

Nothing in this Policy is intended nor shall be construed to create a private right of action against Morton College or the Board or any of its employees or agents. Furthermore, no part of this Policy shall be construed to create contractual or other rights or expectations. Nothing herein is intended to affect the right of any person to file a charge or complaint of Discrimination, Sexual Harassment or Misconduct, Harassment or Retaliation with any agency with jurisdiction over such charge or complaint.

**FINAL GUIDELINES (8/14/2020)**

Morton College Guidelines Covering Student-on-Student Allegations

**III. DEFINITIONS**

- a. **Complainant:** A student that makes an allegation against another student that they/they has engaged in Discrimination, Sexual Harassment or Misconduct, Harassment or Retaliation.
- b. **Discrimination:** Unjust or prejudicial treatment, including harassment and sexual misconduct, towards an individual due to that person's real or implied membership in one or more of the Protected Categories as defined below.
- c. **Educational Program or Activity:** Locations, events or circumstances over which Morton College exercises substantial control. Morton College exercises substantial control over: (1) premises that it owns or officially recognized student organizations that own or control the premises; (2) where it exercises oversight, supervision or discipline (e.g., a student's status in a Morton College course or program); or (3) where it has funded, sponsored, promoted or endorsed a certain event. Morton College specifically does not exercise substantial control over any event occurring outside the United States of America.
- d. **Formal Complaint:** A document filed by a Complainant or signed by the Title IX Coordinator alleging Discrimination, Sexual Harassment or Misconduct, Harassment or Retaliation against a Respondent requesting a formal investigation into those allegations.
- e. **Harassment:** Unwelcome verbal, nonverbal, visual, and/or physical conduct that is the person's real or implied membership in one or more of the Protected Categories as defined below. Unwelcome conduct may include, but is not limited to, bullying, intimidation, offensive jokes, slurs, epithets or name calling, assaults or threats, touching, ridicule or mockery, insults or put-downs, offensive objects or pictures, messages sent via email, text or social media, or any other persistent, pervasive or severe conduct that interferes with a student's access to or participation in any educational program or activity.
- f. **Hearing Officer:** An individual chosen by the President to conduct an administrative hearing based upon the findings made in an investigative report completed by an Investigator.
- g. **Investigator:** An individual chosen by the President to conduct an impartial investigation into allegations set forth in a Formal Complaint.

**FINAL GUIDELINES (8/14/2020)**

Morton College Guidelines Covering Student-on-Student Allegations

- h. Protected Category:** Actual or perceived sexual orientation, gender or sex (includes gender identity, gender expression, pregnancy, childbirth, breastfeeding, and pregnancy related medical conditions), race or ethnicity, ethnic group identification, ancestry, nationality, national origin, religion, color, disability, age (40 and above), immigration status, marital status, registered domestic partner status, genetic information, political belief or affiliation (not union related), military status, unfavorable discharge from military service, or on the basis of a person's association with a person or group with one or more of these actual or perceived characteristics, or any other basis protected by federal, state or local law, ordinance, or regulation.
- i. Respondent:** A student that has been accused of engaging in Discrimination, Sexual Harassment or Misconduct, Harassment or Retaliation against a Complainant.
- j. Retaliation:** Adverse change in academic status, such as discipline or denial of or access to a service or benefit, against any person for having made a complaint or report of Discrimination, Sexual Harassment or Misconduct, Harassment or Retaliation, whether made internally, or externally with a federal, state, or local agency; or participating or aiding in an investigation of Discrimination, Sexual Harassment or Misconduct, Harassment or Retaliation, whether internal, or external with a federal, state, or local agency, is strictly prohibited.
- k. Sexual Assault:** A forcible sex offense in which any sexual act is directed against another person without the consent of the victim including instances where the victim is incapable of giving consent.
- l. Sexual Harassment Under Title IX Regulations:** Conduct on the basis of sex that satisfies one or more of the following:
1. A student conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct (i.e. *quid pro quo*);
  2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an education program or activity (i.e., hostile environment); or
  3. Sexual assault (as defined above), dating violence, domestic violence or stalking (as defined below).



**FINAL GUIDELINES (8/14/2020)**

Morton College Guidelines Covering Student-on-Student Allegations

**m. Sexual Misconduct:** Any conduct of a sexual nature that is unwelcome or inappropriate, including but not limited to, sexual harassment, sexual assault, grooming, dating or domestic violence, sexual violence, inappropriate touching, or any misuse of a sexual nature of any Morton College information technology, as described in Board Policy 8.20.

**n. Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for his or her safety or the safety of others, or (b) suffer substantial emotional distress.

**IV. PROCEDURES FOR HANDLING ALLEGATIONS AND COMPLAINTS OF DISCRIMINATION, SEXUAL HARASSMENT OR MISCONDUCT, HARASSMENT AND RETALIATION**

**A. Filing An Allegation or Complaint and Reporting Obligations**

**1. Reporting Obligations**

All Morton College employees have an obligation to immediately report to the Title IX Coordinator any and all allegations that they learn of from a third party or have reasonable belief occurred where a student engaged in Discrimination, Sexual Harassment or Misconduct, Harassment or Retaliation against another student in an educational program or activity. The failure to immediately report such an allegation could result in disciplinary action up to and including termination. All Morton College students have an obligation to immediately report to the Title IX Coordinator any act of Discrimination, Sexual Harassment or Misconduct, Harassment or Retaliation that they or them observes against another Morton College student.

Morton College students and third parties who experience or learn about an alleged violation of these Guidelines are encouraged to immediately report the alleged violation to the Title IX Coordinator.

**2. Filing An Allegation or Formal Complaint**

Any complainant of Discrimination, Sexual Harassment or Misconduct, Harassment or Retaliation shall notify the Title IX Coordinator or any official who has authority to institute corrective measures on behalf of the institution, such as the President, Provost, Dean of Student Services, Counselors or their designees. While not required, the preferred

**FINAL GUIDELINES (8/14/2020)**

Morton College Guidelines Covering Student-on-Student Allegations

method for filing an allegation with the Title IX Coordinator is in writing on a form that may be found at <https://www.morton.edu/about/employment/title-ix-sexual-misconduct/>.

The Title IX Coordinator will consider the Complainant's wishes before initiating any investigation or grievance process regarding the allegations. On some occasions, the Title IX Coordinator may initiate an investigation or grievance process against the wishes of a Complainant if doing so is necessary for community safety or not clearly unreasonable in light of all the known circumstances.

### **3. Support Requirements**

Regardless of whether a formal complaint is filed or not, the Title IX Coordinator shall provide support to the Complainant and Respondent. The Title IX Coordinator shall insure that they or them:

- a. promptly contacts the Complainant and Respondent to discuss the availability of supportive measures;
- b. considers the Complainant's wishes with respect to supportive measures;
- c. informs the Complainant of availability of supportive measures with or without filing a formal complaint; and
- d. explains to the Complainant the process for filing a formal complaint.

The support measures offered by the Title IX Coordinator shall be designed to: (1) restore or preserve access to the school's educational programs or activities without unreasonably burdening the Complainant or Respondent; (2) protect the safety of all parties and the school's educational environment; and (3) deter discrimination, sexual harassment or misconduct, harassment or retaliation. Such measures may include, but are not limited to, the following:

- counseling,
- extensions of deadlines or other course-related adjustments,
- modifications of work or class schedules,
- campus escort services,
- mutual restrictions on contact between the parties,
- changes in work or housing locations,
- leaves of absence, and
- increased security and monitoring of certain areas of the campus.

**FINAL GUIDELINES (8/14/2020)**

Morton College Guidelines Covering Student-on-Student Allegations

The support measures should be non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or Respondent.

Supportive measures shall remain confidential.

**4. Emergency Removal of Respondent**

The President of Morton College or designee shall have the right to remove a student from the educational institution (“emergency removal”) when the following conditions have been met by Morton College: (a) Conducted an individualized safety and risk analysis; (b) Determined that an immediate threat to the health or safety of students or others justifies the emergency remove; and (c) Provided the Respondent with notice and an opportunity to challenge the decision immediately following removal.

**5. Informal Resolution Option**

At the discretion of the Title IX Coordinator, and with due consideration of the wishes of the Complainant, the Title IX Coordinator or designee may institute an informal resolution process between the Complainant and Respondent after a formal Complaint has been filed. The form and process of the informal resolution process shall be determined by the Title IX Coordinator. The goal of the informal resolution process is to reach an amicable resolution to the allegations in the best interest of Morton College and the parties taken into consideration.

Before the informal resolution process is undertaken, the Title IX Coordinator shall: (a) provide the parties with written notice of the allegations; (b) the requirements of the informal resolution process and any consequences of participating in it; and (c) obtain the parties’ voluntary written consent to the use of the informal resolution process.

Either party may withdraw from the informal resolution process at any time.

If an informal resolution is reached, then the resolution shall be placed in writing and served on both parties along with appropriate Morton College personnel. The informal resolution shall be signed by all parties. Once a resolution is reached, then the formal complaint will be closed and not processed further.

If an informal resolution cannot be reached, then the Title IX Coordinator shall inform the parties in writing and advance the allegations to the next stage.

**FINAL GUIDELINES (8/14/2020)**

Morton College Guidelines Covering Student-on-Student Allegations

**B. Grievance Process for Formal Complaints**

A formal investigation into the allegations shall only occur when a formal written complaint has been filed by the Complainant or the Title IX Coordinator. Key elements of the investigation include the following:

- a. The Respondent is presumed innocent throughout the grievance process with the burden of proof on Morton College to prove the allegations raised in the formal complaint;
- b. The investigative decision-maker shall be an individual chosen by the President that is separate from the Title IX Coordinator or Hearing Officer;
- c. The evidentiary requirement before any disciplinary action or sanction may be imposed on a Respondent is by a preponderance of the evidence standard;
- d. Written notice of the allegations will be simultaneously given to all relevant parties and all parties and their advisors shall have an equal opportunity to review the evidence;
- e. The investigation shall be conducted in a reasonably prompt time frame with any extensions requested by the parties allowed upon a showing of “good cause” only and with proper notice to the opposing party;
- f. Morton College shall notify the parties if it is requesting any delay or extension of time frames set forth below and the reasons for it; and
- g. A final investigative report shall be completed at the conclusion of the investigation which shall be simultaneous given to all parties and their advisors.

**1. Written Notice of Allegations**

Written notice of the formal complaint’s allegations shall include the following:

- a. sufficient detail of the allegations (including the identities of the parties involved, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident) to permit the parties to prepare for an initial interview;
- b. notification to the parties that they may have an advisor of their choice and inspect and review evidence obtained during the investigation;

**FINAL GUIDELINES (8/14/2020)**

Morton College Guidelines Covering Student-on-Student Allegations

- c. a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is only made at the conclusion of the grievance process; and
- d. a statement informing the parties that making false statements or knowingly submitting false information during the grievance process violates Board Policy and the Student Code of Conduct.

## **2. Investigation**

The Investigator shall have discretion and autonomy in deciding how to conduct the investigation. The Investigator may consolidate two or more Complaints filed by a Complainant or filed against a Respondent. While the investigator possesses wide discretion, the following key points will govern all investigations:

- a. The parties must have an equal opportunity to present witnesses, including both fact and expert witnesses and other witnesses ;
- b. Morton College shall not restrict the parties' ability to discuss the allegations or gather and present evidence (but see Confidentiality provision below);
- c. The parties must be allowed to have an advisor of their choosing present at any meeting or grievance proceeding;
- d. The parties shall be provided with written notice in advance of any meeting, interview, or hearing conducted as part of the investigation or adjudication in which they are expected or invited to participate;
- e. The investigation shall not access or rely upon any treatment records maintained by a healthcare provider, including Morton College's student health center, unless the party provides written consent; and
- f. The burden of gathering evidence sufficient to reach a determination regarding responsibility rests on Morton College, not on either party.

At the conclusion of the investigation, but **before** an investigative report is completed by the Investigator, the Investigator shall simultaneously provide all parties an equal opportunity to inspect and review any evidence obtained during the investigation that is



**FINAL GUIDELINES (8/14/2020)**

Morton College Guidelines Covering Student-on-Student Allegations

directly related to the allegations raised in a formal complaint (“preliminary investigative report”). The parties shall be given ten (10) days to submit a written response to the Investigator which the Investigator shall consider before completing a final investigative report.

However, before sharing any such evidence, all parties and advisors will be obligated to sign a Nondisclosure agreement to prevent the circulation or publication of any of the evidence subject to inspection and review.

### **3. Final Investigative Report**

At the conclusion of the investigation, the Investigator shall create a final investigative report that fairly summarizes the relevant evidence and makes a conclusion as to whether one or more allegations set forth in the Formal Complaint are supported or sustained by the evidence. The final investigative report shall be simultaneously sent to the parties.

If the Investigator makes a finding that one or more of the allegations set forth in the Formal Complaint are supported or sustained by the evidence, then the parties shall be notified that a formal live administrative hearing shall be scheduled by a Hearing Officer.

A Formal Complaint **shall** be dismissed if the conduct alleged: (a) Would not constitute Discrimination, Sexual Harassment or Misconduct, Harassment or Retaliation even if proven; or (b) Did not occur within the Scope of Coverage of these Guidelines.

A Formal Complaint **may** be dismissed if: (a) The Complainant notifies the Title IX Coordinator in writing that the Complainant wishes to withdraw the Formal Complaint or allegations; (b) The Respondent no longer is a student at Morton College; or (c) Specific circumstances prevent Morton College from gathering evidence sufficient to reach a determination regarding responsibility.

If an Investigator dismisses one or more allegations in a Formal Complaint, the Complainant has the right to appeal such a finding as outlined below.

The final investigative report shall be sent simultaneously to the parties at least ten (10) days in advance of a hearing before a Hearing Officer so that all parties have time to review its findings and provide written responses if desired.

### **4. Live Hearings**

**FINAL GUIDELINES (8/14/2020)**

Morton College Guidelines Covering Student-on-Student Allegations

The President shall appoint a Hearing Officer to adjudicate all hearings involving sustained allegations set forth in an Investigative Report. The Hearing Officer shall have broad authority in conducting this hearing in all respects. The Hearing Officer has the authority to rule on all motions presented by the parties before, during or after the hearing. The Hearing Officer has authority in determining the order of hearing, limitation on witnesses, and all other adjudicatory decisions. The Hearing Officer shall be free from conflicts of interest or bias, properly trained to conduct such hearings, and serve impartially.

The Hearing shall be conducted with all parties present physically or virtually so long as the technology enables the parties to see **and** hear one another in real time. Thus, no party may participate solely by use of a telephone. Additionally, the Hearing Officer shall decide whether the parties should be in separate rooms while the hearing, or portions of the hearing, is conducted. The Hearing Officer shall be responsible for creating a record of the hearing.

The parties have the right to an advisor throughout the hearing proceedings. If a party cannot afford an advisor, then Morton College shall provide the party with an advisor at no cost.

The parties have the right to make opening statements and call witnesses within the limitations imposed by the Hearing Officer. All witnesses are subject to cross-examination. However, neither the Respondent nor Complainant may cross-examine each other. Only an advisor may conduct such cross-examinations.

The Hearing Officer shall not draw any inference based upon either the Complainant's or Respondent's failure or refusal to appear at the hearing or answer cross-examination questions.

The parties or their advisors must ask only relevant questions of all witnesses or parties. The Hearing Officer shall rule on all evidentiary objections. However, the Complainant's prior sexual behavior is deemed not relevant, unless the question is offered to prove someone else was responsible for the alleged conduct or offered to prove consent.

Once all the evidence has been submitted by the parties, the Hearing Officer shall allow closing arguments or briefs within the Hearing Officer's discretion. The Hearing Officer has the authority to close the record.

The Hearing Officer shall simultaneously issue a written decision to the parties that shall include the following:

**FINAL GUIDELINES (8/14/2020)**

Morton College Guidelines Covering Student-on-Student Allegations

- a. The procedural steps taken from receipt of the allegation through a final determination;
- b. An identification of the allegations presented to the Hearing Officer
- c. Findings of fact that support the determination;
- d. A determination as to whether the allegations were proven by a preponderance of the evidence and the support for each finding with the rationale relied upon;
- e. A finding as to whether the proven misconduct violated any applicable Policy, code or guideline of Morton College;
- f. The sanction or discipline imposed on the Respondent for each allegation proven by a preponderance of the evidence. Any sanction or discipline imposed on the Respondent shall be in accordance with Morton College's Student Code of Conduct;
- g. Any and all remedies provided to the Complainant; and
- h. The rights of the parties to appeal the Hearing Officer's determinations.

## **5. Appeals**

Appeals of Investigator's or Hearing Officer's findings may be appealed equally by the parties to the President of Morton College. All Appeals must be filed within ten (10) days of receipt of the Investigator's or Hearing Officer's final report or determination. Appeals to the President may be made on the following grounds:

1. Procedural irregularity that affected the outcome;
2. New evidence that was not reasonably available when the determination of responsibility was made that could affect the outcome; and
3. The Title IX Coordinator, Investigator, or Hearing Officer had a conflict of interest or bias against the complainant or respondent that affected the outcome.

All Appeals must be served on the opposing party. The opposing party has the right to file a Response to the Appeal within ten (10) days after receipt. The Response to the Appeal must, likewise, be served on the opposing party. The party that filed the Appeal shall have seven (7) days to file a Reply. The Reply must be served on the opposing party.

**FINAL GUIDELINES (8/14/2020)**

Morton College Guidelines Covering Student-on-Student Allegations

After all briefs have been filed, the President or designee shall simultaneously issue a decision as to whether the Appeal has been granted or denied. The decision of the President or designee is final.

**V. POSSIBLE RANGE OF DISCIPLINE**

Students who are found to have violated the Comprehensive Non-Discrimination, Sexual Harassment or Misconduct, Harassment and Retaliation Policy are subject to disciplinary and/or sanctions up to and including expulsion from Morton College. The range of discipline or sanctions is set forth in the Morton College Student Handbook.

**VI. PROHIBITION ON ALL FORMS OF RETALIATION**

Morton College shall not tolerate any form of retaliation by any party against anyone for exercising their rights under the Non-Discrimination, Sexual Harassment or Misconduct, Harassment or Retaliation Policy or these Guidelines.

Morton College prohibits all forms of retaliation against any individual for exercising their rights under Title IX, including the participation in or refusing to participate in the filing of a complaint, the investigation, or any proceeding or hearing covered by these Guidelines.

**VII. CONFIDENTIALITY**

All documentation obtained and produced in accordance with these Guidelines shall be considered confidential to the full extent of applicable law and regulations that govern Morton College. Moreover, neither the Investigator nor Hearing Officer shall access or rely upon any treatment records maintained by a healthcare provider, including Morton College's student health center, unless the party provides written consent.

Morton College shall keep confidential the identity of any individual who has made a report or complaint under these Guidelines, any complainant, any respondent, and any witness, except as may be permitted by state or federal laws and regulations that govern Morton College.