Policies and Definitions for Students

February 2018

This document is for your reference. See the MIT Mind Hand Book for a complete list of student conduct policies.

II (18). NONDISCRIMINATION

The Massachusetts Institute of Technology is committed to the principle of equal opportunity in education and employment. The Institute does not discriminate against individuals on the basis of race, color, sex, sexual orientation, gender identity, religion, disability, age, genetic information, veteran status, ancestry, or national or ethnic origin in the administration of its educational policies, admissions policies, employment policies, scholarship and loan programs, and other Institute administered programs and activities, but may favor US citizens or residents in admissions and financial aid.*

The Vice President for Human Resources is designated as the Institute’s Equal Opportunity Officer. Inquiries concerning the Institute’s policies, compliance with applicable laws, statutes, and regulations, and complaints may be directed to Lorraine Goffe, Vice President for Human Resources, Room NE49-5000, 617-253-6512. Such inquiries may also be directed to the Manager of Staff Diversity and Inclusion, Room NE49-5000, 617-452-4516. In addition, inquiries about Title IX (which prohibits discrimination on the basis of sex) may be directed to the Institute’s Title IX Coordinator, Sarah Rankin, Room W31-223, 617-324-7526, titleix@mit.edu. Inquiries about the laws and about compliance may also be directed to the United States Department of Education, Office for Civil Rights, Region I, 5 Post Office Square, 8th Floor, Boston, MA 02109-3912, 617-289-0111, OCR.Boston@ed.gov.

*The ROTC programs at MIT are operated under Department of Defense (DoD) policies and regulations, and do not comply fully with MIT’s policy of nondiscrimination with regard to gender identity. MIT continues to advocate for a change in DoD policies and regulations concerning gender identity, and will replace scholarships of students who lose ROTC financial aid because of these DoD policies and regulations.

II (22). SEXUAL MISCONDUCT

(updated January 30, 2018; effective February 6, 2018)

MIT is committed to providing a productive living and learning community in which students can pursue their educational goals. Sexual misconduct undermines this commitment and affects the ability of students to focus on their educational achievement. Therefore, MIT will not tolerate nor condone any form of sexual misconduct. MIT students are prohibited from engaging in sexual misconduct, as defined below. Moreover, MIT may take additional action in response to sexual misconduct as required by state and federal law, including Title IX (see TitleIX.mit.edu).
No one shall be retaliated against for, in good faith, objecting to a behavior that may violate this policy, reporting a violation of this policy, or participating in the Institute’s complaint resolution procedure in any capacity, including as a complainant, witness, or investigator.

A. Definitions
Due to the sensitive and sometimes violent nature of incidents involving sexual misconduct, the following definitions are provided for informational use by students and for guidance in the investigation and processing of alleged violations. It is possible that a particular action may constitute sexual misconduct even if not specifically mentioned in these examples.

1. Sexual Misconduct
Sexual misconduct is a broad term used to encompass a range of behaviors including sexual harassment, nonconsensual sexual contact, nonconsensual sexual penetration, and sexual exploitation. This definition of sexual misconduct includes sexual assault (rape, fondling, incest, or statutory rape) as defined by the Clery Act. The Clery Act is a federal law on campus safety and security – more information on the Clery Act can be found in MIT’s Annual Security Report.

Sexual misconduct can occur between individuals who know each other, individuals who do not know each other, individuals who have an established relationship, and individuals who have previously engaged in consensual sexual activity.

Sexual misconduct can be committed by persons of any gender identity, and it can occur between people of the same or different sex.

Use of alcohol or other drugs will not excuse any behavior that violates this policy.

2. Effective Consent
MIT students who engage in sexual behavior of any kind are expected to do so only with the effective consent of all parties involved. Doing otherwise constitutes sexual misconduct and is a violation of this policy.

Consent is ultimately about respecting another’s autonomy to make choices about their own body, their own boundaries, and their own behavior. The fundamental purpose of the Institute’s sexual misconduct policy is to reinforce the expectation that individuals give and receive this respect in their sexual interactions.

Given the importance of sexual autonomy and the potential impact on those subjected to nonconsensual sexual activity, the Institute places the responsibility for obtaining effective consent on the person who initiates the sexual activity. That responsibility is significant.

The Institute recognizes that there are a wide variety of sexual interactions, that there is no single way to communicate consent, and that context matters. At all times, each party is free to choose where, when, and how they participate in sexual activity. Accordingly, when evaluating whether sexual activity was consensual, the Institute will consider the entirety of the sexual interaction and the relevant circumstances.
Effective Consent is:

• informed;
• freely and voluntarily given;
• mutually understandable words or actions which indicate willing participation in mutually agreed upon sexual activity.

Further:
By definition, effective consent cannot be obtained by
• unreasonable pressure, which can generally be understood as conduct that pressures another person to “give in” to sexual activity rather than to choose freely to participate; factors that may be considered include (1) the frequency, nature, duration, and intensity of the requests for sexual activity; (2) whether and how previous requests were denied; and (3) whether the person initiating the sexual activity held a position of power over the other person;
• emotional intimidation, which can include (1) overtly degrading, humiliating, and shaming someone for not participating in sexual activity; (2) blackmail; and (3) threats to reputation;
• physical intimidation and threats, which can be communicated by words or conduct, and physical force.

Effective consent cannot be obtained from someone who is incapable of giving consent for any reason, including when:
• the person has a mental, intellectual, or physical disability that causes the person to be temporarily or permanently unable to give consent;
• the person is under the legal age to give consent;
• or the person is asleep, unconscious, physically helpless, or otherwise incapacitated, including by alcohol or other drugs.

An individual violates this policy if the individual initiates and engages in sexual activity with someone who is incapacitated, and (1) the individual knew the other person was incapacitated, or (2) a sober reasonable person under similar circumstances as the person initiating the sexual activity would have known the other person was incapacitated.

For purposes of this policy, silence and passivity do not signal consent.

There is no requirement that a person express non-consent or that they resist a sexual advance or request. For example, someone might not consent to sexual activity even though they do not say “no” or physically resist in any way. Physical or verbal resistance is evidence that there was not effective consent.

Some behaviors and statements do not indicate consent, including the following:
• “I don’t know.”
• "Maybe."
• Without more, ambiguous responses such as “uh huh” or “mm hmm,” and giggling.
• A verbal “no,” even if it may sound indecisive or insincere.
• Moving away.
A factor that may be considered when evaluating consent is whether, under similar circumstances as the person initiating the sexual activity, a sober reasonable person would have concluded that there was effective consent.

It is important for those who initiate sexual activity to understand that:

- even though someone gave effective consent to sexual activity in the past, that does not mean they have given effective consent to sexual activity in the future;
- even though someone gives effective consent to one type of sexual activity during a sexual interaction, that does not automatically mean they have given effective consent to other types of sexual activity;
- effective consent can be withdrawn at any time, and once a person withdraws effective consent, the other person must stop.

Effective consent is clearest when obtained through direct communication about the decision to engage in specific sexual activity. Effective consent need not be verbal, but verbal communication is the most reliable and effective way to seek, assess, and obtain consent. Nonverbal communication can be ambiguous. For example, heavy breathing or moaning can be a sign of arousal, but it can also be a sign of distress. Talking with sexual partners about desires, intentions, boundaries, and limits can be uncomfortable, but it serves as a strong foundation for respectful, healthy, positive, and safe intimate relationships.

3. Incapacitation

Incapacitation is the physical and/or mental inability to make informed, rational judgments and decisions. Someone is incapacitated if they are asleep or unconscious. Someone can also be incapacitated by alcohol or other substances.

Because the impact of alcohol and other drugs varies from person to person, one should be cautious before engaging in sexual contact or intercourse when either person has been drinking alcohol or using other drugs. The use of alcohol or other drugs may create ambiguity about consent. If there is any doubt about either party’s level of intoxication, the safe thing to do is to forgo all sexual activity.

Where alcohol or other substances are involved, incapacitation is determined by how the substance impacts a person’s decision-making capacity, awareness of consequences, and ability to make informed judgments. Incapacitation is a state beyond drunkenness or intoxication, and a person is not incapacitated merely because they have been drinking or using drugs.

Incapacitation is not determined by technical or medical definitions. The question is whether a person has the physical and/or mental ability to make informed, rational judgments and decisions.

Although each individual is different, there are some common and observable signs that someone is incapacitated or approaching incapacitation, including slurred or incomprehensible speech, unsteady gait, combativeness, emotional volatility, vomiting, or incontinence. A person who is incapacitated may not be able to understand or answer coherently some or all of the following questions:

- Do you know where you are?
• Do you know how you got here?
• Do you know what is happening?
• Do you know who you are with?

4. Nonconsensual Sexual Penetration
Nonconsensual sexual penetration is the sexual penetration or attempted sexual penetration of any bodily opening with any object or body part without effective consent.

• Nonconsensual sexual penetration includes the Clery Act definition of rape: the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim; the Clery Act definition of incest: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; and the Clery Act definition of statutory rape: sexual intercourse with a person who is under the statutory age of consent.

5. Nonconsensual Sexual Contact
Nonconsensual sexual contact is any physical contact with another person of a sexual nature without effective consent, including touching someone’s intimate parts (such as genitalia, groin, breast, or buttocks, either over or under clothing); touching a person with one’s own intimate parts; or forcing a person to touch another’s intimate parts.

• Nonconsensual sexual contact includes the Clery Act definition of fondling: the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

6. Sexual Harassment
Sexual Harassment is unwelcome conduct of a sexual nature, such as unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, 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 employment or academic standing
• Submission to or rejection of such conduct by an individual is used as the basis for significant employment decisions (such as advancement, performance evaluation, or work schedule) or academic decisions (such as grading or letters of recommendation) affecting that individual
• The conduct is sufficiently severe or pervasive that a reasonable person would consider it intimidating, hostile, or abusive and it adversely affects an individual’s educational, work, or living environment.

A partial list of examples of conduct that might be deemed to constitute sexual harassment if sufficiently severe or pervasive include:

*Examples of verbal sexual harassment* may include unwelcome conduct such as sexual flirtation, advances or propositions or requests for sexual activity or dates; asking about someone else’s sexual activities, fantasies, preferences, or history; discussing one’s own sexual activities, fantasies, preferences, or history; verbal abuse of a sexual nature; suggestive comments; sexually explicit jokes; turning discussions at work or in the academic environment to sexual topics; and making offensive sounds such “wolf whistles.”
Examples of nonverbal sexual harassment may include unwelcome conduct such as displaying sexual objects, pictures, or other images; invading a person’s personal body space, such as standing closer than appropriate or necessary or hovering; displaying or wearing objects or items of clothing which express sexually offensive content; making sexual gestures with hands or body movements; looking at a person in a sexually suggestive or intimidating manner; or delivering unwanted letters, gifts, or other items of a sexual nature.

RELATED POLICY: The Institute’s complete harassment policy, addressing all forms of harassment, can be found in Section 9.4 of the Institute Policies and Procedures. Students should be aware that Section 9.4 prohibits all gender-based harassment (including harassment based on gender, sex, sex-stereotyping, sexual orientation, or gender identity), not just harassment that is sexual in nature. See also Mind & Hand Book § II (11).

RELATED POLICY: Individuals should be aware that unwelcome conduct of a sexual nature that does not rise to the level of “sexual harassment” and gender-based harassing conduct that does not rise to the level of “harassment” may still violate Section 9.1 of the Institute Policies and Procedures and/or the Institute Expectations of Student Behavior and Integrity policy – Mind & Hand Book § II (16).

7. Sexual Exploitation
Sexual exploitation means taking sexual advantage of another person and includes:
1. Providing alcohol or other drugs to someone without that person’s knowledge, or unreasonably pressuring the person to consume alcohol or drugs, with the purpose of causing incapacitation in order for one to take sexual advantage of the person.
2. Recording, photographing, transmitting, or allowing another to view images of private sexual activity and/or the intimate parts of another person without effective consent.
3. Allowing third parties to observe private sexual acts without effective consent.
4. Voyeurism, including by electronic means.
5. Indecent exposure.
6. Knowingly or recklessly exposing another person to a significant risk of sexually transmitted infection, including HIV, without their knowledge.

B. Retaliation
Retaliation, as described above and in Mind & Hand Book § II (21), is prohibited.

C. Reporting Sexual Misconduct and Resources for Students
Students are encouraged to report sexual misconduct that is perpetrated against them or other members of the MIT community. Students have numerous options for reporting the misconduct and obtaining support; which option a student chooses depends upon the nature and severity of the misconduct, whether the student wishes the report to remain confidential, and whether the student wishes to pursue a formal complaint.
For information about reporting, campus resources, and grievance procedures, visit the Title IX website or contact the Institute Title IX Coordinator:

Sarah Rankin, Title IX Coordinator
120 Massachusetts Ave.
Cambridge, MA 02139
Building W31-223
(617) 324-7526
<titleix@mit.edu

Students may also choose to make a report to law enforcement and may simultaneously pursue criminal action and resolution through the Institute process. Students who choose to pursue criminal action can contact law enforcement directly:

- MIT Police (617) 253-1212 or by dialing 100 from any MIT phone
- Cambridge Police Department (617) 349-3381
- Boston Police Department (617) 343-4400

An advocate from MIT’s on-campus Violence Prevention and Response program (VPR) is available to assist in contacting law enforcement and/or reporting to the Title IX Office. VPR’s 24-hour hotline is (617) 253-2300.

D. MIT’s Response
The procedure for resolving complaints of gender-based discrimination (including sexual misconduct) alleged to have been committed by students at the Institute can be found in the Committee on Discipline Rules & Regulations, including Sections XII-XV.

The procedure for resolving complaints of gender-based discrimination alleged to have been committed by employees of the Institute, including faculty and staff, can be found in Section 9.7 of the Institute Policies & Procedures.

The sanctions of disciplinary suspension and disciplinary expulsion will be strongly considered when a student is found to have violated any part of the nonconsensual sexual contact, nonconsensual sexual penetration, sexual exploitation, or retaliation provisions of this policy; and for severe violations of the sexual harassment provision.

E. Interim Measures During Investigations
While an investigation or grievance proceeding is pending, MIT will provide written notification to a complainant about interim measures to assist or protect that person. Interim measures may include, for example, changing the living and/or transportation arrangements, class schedule, or work schedule of the person who was the subject of the alleged misconduct and/or the person alleged to have committed the misconduct, a no-contact order, or similar action. MIT will also provide written notification to students about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims, both at the Institute and off campus. Support services for respondents are also available. Interim measures may also be taken to protect the community.

II (17). INTIMATE PARTNER VIOLENCE
MIT prohibits intimate partner violence. Intimate Partner Violence is defined as actual or threatened physical violence, intimidation, or other forms of physical or sexual abuse directed toward a partner in an intimate relationship that would cause a reasonable person to fear harm to self or others. For this policy, “intimate relationship” means marriage, domestic partnership, engagement, casual or serious romantic involvement, and dating, whether current or former. Intimate Partner Violence can occur between persons of any gender identity, any sexual orientation, and it can occur in any type of intimate relationship including monogamous, non-committed, and relationships involving more than two partners. Intimate Partner Violence can be a single act or a pattern of behavior. Intimate Partner Violence also includes, without limitation, dating violence and domestic violence as defined by the Clery Act. (The Clery Act is a federal law on campus safety and security – more information can be found in MIT’s Annual Security Report.)

**Dating violence**

Dating violence is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship is determined based on the reporting party’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, “dating violence” includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

**Domestic violence**

Domestic violence is defined as a felony or misdemeanor crime of violence committed by a current or former spouse or dating/domestic of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or dating/domestic, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or by 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 in which the crime of violence occurred. To be considered domestic violence, the relationship must be more than just two people living together as roommates.

Intimate Partner Violence can take many forms. Examples include, but are not limited to, situations in which the following behaviors are directed toward a partner in a current or former intimate relationship: hitting, kicking, punching, strangling, or other violence; property damage; and threat of violence to one’s self, one’s partner, or the family members, friends, pets, or personal property of the partner.

**II (23). STALKING**

Stalking, whether or not sexual in nature, is prohibited by MIT. Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or to suffer substantial emotional distress. For the purposes
of this definition, “course of conduct” means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property. “Reasonable person” means a reasonable person under similar circumstances and with similar identities to the victim. “Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling. Stalking can take many forms.

Examples include, but are not limited to, two or more instances of the following conduct (that also meet the definition of stalking above): following a person; appearing at a person’s home, class or work; continuing to contact a person after receiving requests not to; leaving written messages, objects, or unwanted gifts; vandalizing a person’s property; photographing a person; and other threatening, intimidating, or intrusive conduct.

Stalking may also involve the use of electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices (often referred to as cyber-stalking). Such conduct may include, but is not limited to, non-consensual communication, telephone calls, voice messages, emails, texts, letters, notes, gifts, or any other communication that are repeated and undesired.

II (21). RETALIATION

MIT prohibits any member of the community from retaliating against any person for raising good faith concerns about conduct that violates MIT policy. MIT’s prohibition against retaliation includes retaliation against a person for reporting an incident, filing a complaint, cooperating in an inquiry or investigation, or participating in any other capacity in any of the Institute’s complaint resolution procedures, including the Committee on Discipline process or the complaint resolution process outlined in Institute Policies and Procedures Section 9.6.

Retaliation is any adverse action taken against a person in response to that person’s participation in any of the activities specified above. Retaliation can take many forms. Examples of possible retaliation include, but are not limited to:

- Adverse employment action (e.g., termination, demotion, reduction in pay, adverse change in schedule, adverse change in work location, etc.)
- Adverse action related to participation in any educational program offered by the Institute (e.g., adverse change to grades, class schedule, research opportunities, etc.)
- Stalking, harassment, bullying, intimidation, threats, or engaging in physical violence
- Adverse social actions such as exclusion or removal from a living group, student organization, or committee, or publishing personally identifiable information about an individual, including on websites or social media sites
- Encouraging or asking others to engage in retaliatory behavior on one’s behalf

A complaint alleging retaliation by a student will be investigated and may lead to action by the Committee on Discipline, up to and including suspension or expulsion from the Institute. A complaint alleging retaliation by faculty or staff should be directed to the faculty or staff
member’s supervisor or human resources. The Office of Student Citizenship or the Ombuds Office are available as a resource for students with concerns about retaliation.

**II (2)(E). GOOD SAMARITAN AMNESTY POLICY**

The health, safety, and general welfare of MIT students are of the utmost concern to the faculty, staff, students, and administration of the Institute. The following Good Samaritan Amnesty Policy has been established to reduce barriers related to seeking help during medical emergencies or situations when someone is believed to be the victim of a crime or significant policy violation even if there is no medical emergency.

All students are required to seek immediate medical attention in circumstances when they or others with them experience the potentially dangerous effects associated with the use of alcohol or prohibited substances.*

*Prohibited substances include illegal drugs and other illegal substances, as well as substances that are generally recognized as dangerous and detrimental to the individual and community, even though they may not be illegal (including, but not limited to, whippits, 2-C’s, NBOME, research drugs, Spice, K-2, non-prescribed performance enhancing or other prescription drugs).

_Policy Guidelines_

In a situation where students seek medical attention for an alcohol or prohibited substance-related medical emergency, MIT will treat the students’ use of alcohol or prohibited substances as a health and safety matter, not as a disciplinary incident. This policy, which is intended to reduce barriers to getting help, will be extended not only to the student receiving medical attention, but also to the student(s) who call for help. In addition, to encourage reporting and seeking help, this policy will be extended to any students who report in good faith that they witnessed or are the victim of a crime or a significant violation of MIT policy (e.g., sexual misconduct, hazing) even though they may have been under the influence of alcohol or prohibited substances at the time of the incident.

Signs of an alcohol or prohibited substance-related emergency can include a combination of lack of coordination, inability to stand, confusion, slurred speech, erratic behavior, slow or shallow breathing, pale or clammy skin, and/or vomiting while passed out. See “Make the Call.”

In an alcohol or prohibited substance-related medical emergency, students are expected to:
- Contact emergency officials by calling 100 (on campus) or 617-253-1212;
- Remain with the individual(s) requiring treatment and cooperate with emergency officials; and
- Meet and cooperate with appropriate Institute administrative staff after the incident.

There are no restrictions to the number of times this Good Samaritan Amnesty Policy may be used, and doing so repeatedly will not result in disciplinary action. If a student in need of medical attention is in a student residence, any other student(s) in the room or in the immediate presence are expected to make a call for assistance. Similarly, for situations occurring in
residential common spaces (e.g., suites, apartments, lounges, function rooms), it is expected that
the community members present at the time will make a call for assistance.

When members of student organizations* call for assistance on behalf of individuals in need of
help under this policy, the organizations will also not face disciplinary actions for violations of
the Institute’s policies on alcohol and prohibited substances.

*For the purpose of this policy, the term student organization includes both recognized and
unrecognized student groups; sports teams; fraternities, sororities, and independent living groups;
and floors, entryways, and other groupings within on-campus residences.

Policy Expectations

Students or student organizations using this policy may be required to complete educational
and/or counseling program(s) that are meant to support students and their organizations and
connect them with other community services and resources that may be beneficial. These
programs and services will be tailored to the specific circumstances and needs of those involved.

In instances where students or student organizations do not seek help for a student in need or do
not follow through with required educational and/or counseling program(s), the protections
offered by this policy may be voided and disciplinary follow-up through the Committee on
Discipline (COD) may occur.

Policy Limitations

The Good Samaritan Amnesty Policy applies to violations of policies relating to the use of
alcohol and prohibited substances, but does not preclude MIT from taking disciplinary actions to
address other serious or flagrant violations of MIT policy including, but not limited to, violence,
sexual assault, harassment, serious property damage, hazing, or the manufacture, sale, or
distribution of prohibited substances. It also cannot preclude or prevent action by police or other
legal authorities. In cases where there have been other violations of Institute policy, calling for
assistance for an individual in need of help may be considered a mitigating factor in any
disciplinary process arising out of such violations (and failure to seek assistance may be
considered an aggravating factor in any such disciplinary process).
Students and student organizations that do not seek medical attention in an alcohol or prohibited
substance-related emergency situation where action is warranted could lose all protections under
this policy and could face referral to the COD.