

Bemidji State University Policies

Policy Name: Response to Sexual Violence Procedure	Effective Date: 7/1/2018
Policy Owner: Assistant to the President-Affirmative Action	Last Review: 4/1/2019
	Next Review: 9/1/2020

Policy Statement

Sexual violence is an intolerable intrusion into the most personal and private rights of an individual and is prohibited at Bemidji State University. Bemidji State University is committed to eliminating sexual violence in all forms and will take appropriate remedial action against any individual found responsible for acts in violation of this policy. Acts of sexual violence may also constitute violations of criminal or civil law, or of other Bemidji State University policies that may require separate proceedings. To further its commitment against sexual violence, Bemidji State University provides reporting options, an investigative and disciplinary process, and prevention training or other related services as appropriate.

Scope and Purpose of Policy

This procedure provides a process through which individuals alleging sexual violence may pursue a complaint, pursuant to Bemidji State University's Sexual Violence Policy prohibiting sexual violence.

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

This policy applies to Bemidji State University students and employees and to others, as appropriate, where incidents of sexual violence on system property have been reported.

Reports of sexual violence committed by a student at a location other than on system property are covered by this policy pursuant to the factors listed in Board Policy 3.6, Part 2.

Reports of sexual violence committed by a system employee at a location other than system property are covered by this policy.

Reports of sexual violence committed on system property by individuals who are not students or employees are subject to appropriate actions by Bemidji State University, including but not limited to pursuing criminal or civil action against them.

Allegations of discrimination or harassment are governed by Bemidji State University's Equal Opportunity and Nondiscrimination in Employment and Education Policy.

Definitions

The definitions in Bemidji State University's Sexual Violence Policy also apply to this procedure.

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

1. A college or university security department;
2. Any individual who has campus security responsibilities in addition to a college or university security department;
3. Any individual or organization identified in a college or university security policy as an individual or organization to which students and employees should report criminal offenses;

An official of a college or university who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings; advisors to recognized student organizations; and athletic coaches. Professional counselors, whose official responsibilities include providing mental health counseling, and who are functioning within the scope of their license or certification, are not included in this definition.

Procedures

Part 1. Reporting Incidents of Sexual Violence

Subpart A. Prompt reporting encouraged

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

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

Subpart B. Assistance in reporting

When informed of an alleged incident of sexual violence, all Bemidji State University students and employees are urged to encourage and assist complainants, as needed, to report the incident to local law enforcement, local victim/survivor services, the campus Title

IX coordinator, or campus security authorities.

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

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

Part 2. Confidentiality of Reporting

Subpart A. Confidential reports

Because of laws concerning government data contained in Minn. Stat. § 13 Government Data Practices, Bemidji State University cannot guarantee confidentiality to those who report incidents of sexual violence except where those reports are privileged communications with licensed healthcare professionals. Some off-campus reports also may be legally privileged by law, such as reports to clergy, private legal counsel, or healthcare professionals.

Subpart B. Reports to campus security authorities

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

Subpart C. Required reports

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

coordinator, in order to initiate any applicable investigative or other resolution procedures.

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

Part 3. Policy notices

Subpart A. Distribution of policy to students

Bemidji State University shall, at a minimum, at the time of registration make available to each student information about its sexual violence policy and procedure, including its online reporting system that allows for anonymous reporting, and shall additionally post a copy of its policy and procedure at appropriate locations on campus at all times. Bemidji State University may distribute its policy and procedure by posting on an Internet or Intranet website, provided all students are directly notified of how to access the policy by an exact address, and that they may request a paper copy.

Subpart B. Distribution of policy to employees

Bemidji State University shall make available to all employees a copy of the sexual violence policy and procedure. Distribution may be accomplished by posting on an Internet or Intranet website, provided all employees are directly notified of the exact address of the policy and procedure as well as the option of receiving a paper copy upon request.

Subpart C. Required notice

Bemidji State University shall have a sexual violence policy, which must include the notice provisions in this part.

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

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

- a. Their right to file criminal charges with local law enforcement officials in sexual assault cases;
- b. Rights under the crime victims bill of rights, Minn. Stat. §§ 611A.01 – 611A.06, including the right to assistance from the Crime Victims Reparations Board and the commissioner of public safety;
- c. Availability of prompt assistance from campus officials, upon request, in notifying the appropriate campus investigating authorities and law enforcement officials, and, at the direction of law enforcement authorities, assistance in obtaining, securing, and maintaining evidence in connection with a sexual violence incident;
- d. Assistance available from campus authorities in preserving for a sexual violence complainant materials relating to a campus disciplinary proceeding;
- e. Complaints of incidents of sexual violence made to campus security authorities must be promptly and appropriately investigated and resolved;
- f. Upon a sexual assault complainant's request, the university may take action to prevent unwanted contact with the alleged assailant, including, but not limited to, transfer of the complainant and/or the respondent to alternative classes, or to a work site or to alternative college-owned housing, if such alternatives are available and feasible.
- g. Upon the request of the complainant, students who reported sexual assaults to the university and subsequently chose to transfer to another college or university will be provided with information about resources for victims of sexual assault at the college or university to which the complainant is transferring.

Part 4. Investigation and Disciplinary Procedures

Subpart A. Immediate action

Bemidji State University may, at any time during the report/complaint process, reassign or place on administrative leave an employee alleged to have violated the university's Sexual Violence Policy, in accordance with the procedures in Bemidji State University's Report/Complaint of Discrimination/Harassment Investigation and Resolution Procedure. Such action must be consistent with the applicable collective bargaining agreement or personnel plan.

Bemidji State University may summarily suspend or take other temporary measures against a student alleged to have committed a violation of the Bemidji State University Sexual Violence Policy, in accordance with the procedures in Bemidji State University's

Report/Complaint of Discrimination/Harassment Investigation and Resolution Procedure or Minnesota State Board Policy 3.6.

Subpart B. General Principles

Bemidji State University shall use the Report/Complaint of Discrimination/Harassment Investigation and Resolution Procedure when investigating complaints of sexual violence. Procedures used in response to a complaint of sexual violence should avoid requiring complainants to follow any plan of action, to prevent the possibility of re-victimization.

University investigation and disciplinary procedures concerning allegations of sexual violence against employees or students must:

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

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

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

Subpart C. Relationship to parallel proceedings

In general, university investigation and disciplinary procedures for allegations of sexual violence will proceed independent of any action taken in criminal or civil courts. A university need not, and in most cases should not, delay its proceedings while a parallel legal action is

ongoing. If a university is aware of a criminal proceeding involving the alleged incident, they may contact the prosecuting authority to coordinate when feasible. Criminal or civil court proceedings are not a substitute for university procedures.

Subpart D. Memorandum of understanding with local law enforcement

The university shall enter into a memorandum of understanding with the primary law enforcement agencies that serve their campus (es). Prior to the start of each academic year, Bemidji State University shall distribute an electronic copy of the MOU to all employees on the campus that are subject to the memorandum. Universities are exempt from the MOU requirement if they and local or county law enforcement agencies establish a sexual assault protocol team to facilitate effective cooperation and collaboration between the university and law enforcement.

Subpart E. False statements prohibited

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

Subpart F. Withdrawn complaint

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

Subpart G. Discretion to pursue certain allegations

Bemidji State University reserves discretion whether to pursue alleged violations of policy under appropriate circumstances, including, but not limited to, a determination that an effective investigation is not feasible because of the passage of time, or because the respondent is no longer a student or employee of the university.

Subpart H. Sanctions

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

Witnesses or victims who report in good faith an incident of sexual violence will not be sanctioned by the university for admitting in the report to a violation of the student conduct policy on the use of alcohol or drugs.

Subpart I. Retaliation prohibited

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

Part 5. Sexual Violence Prevention and Education.

Subpart A. Campus-wide training

Bemidji State University shall:

1. Include in their sexual violence policy a description of educational programs that they offer to students and employees to promote the awareness of sexual violence offenses, including sexual violence prevention measures and procedures for responding to incidents;
2. Provide training on awareness of sexual violence prevention measures and procedures for responding to incidents of sexual violence. At a minimum, all incoming students and all new employees must be provided with this training;
3. Emphasize in their educational programs the importance of preserving evidence for proof of a criminal offense, safe and positive options for bystander intervention, and information on risk reduction to recognize warning signs of abusive behavior and risk associated with the perpetration of sexual violence.

Subpart B. Other training and education

The university and affiliated student organizations are encouraged to develop educational programs, brochures, posters, and other means of information to decrease the incidence of sexual violence and advise individuals of the legal and other options available if they are the complainants of an incident or if they learn of such an incident.

Subpart C. Training for individuals charged with decision-making authority

Prior to serving as either an investigator or decision maker for complaints under this procedure, administrators shall complete investigator or decision-maker training provided by the system office.

Investigators/decisionmakers, campus security officers, and anyone else involved in the adjudication process must receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

Part 6. Maintenance of report/complaint procedure documentation

Data that is collected, created, received, maintained, or disseminated about incidents of sexual violence will be handled in accordance with the privacy requirements of Minn. Stat. § 13 Government Data Practices and other applicable laws.

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

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

Each college, university and the system office shall annually report statistics on sexual assaults to the Minnesota Office of Higher Education. Additionally, the report must be published on each college and university website in accordance with state law.

Rationale

Sexual violence is an intolerable intrusion into the most personal and private rights of an individual, and is prohibited at Bemidji State University. To further its commitment against sexual violence, Bemidji State University this procedure provides reporting options, an investigative and disciplinary process, and prevention training or other related services as appropriate.

Supporting References

- Minnesota State Board Procedure 1B.3.1 Response to Sexual Violence
<http://www.minnstate.edu/board/procedure/1b-03p1.pdf>
- Minnesota State Board 1B.3 Sexual Violence Policy
<http://www.minnstate.edu/board/policy/1b-03.pdf>
- Bemidji State University Sexual Violence Policy
- Bemidji State University Report/Complaint of Discrimination/Harassment Investigation and Resolution Procedure
- Minnesota State Board Policy 3.6 Student Conduct
<http://www.minnstate.edu/board/Policy/3-06.pdf>
- Bemidji State University Student Code of Conduct
<https://www.bemidjistate.edu/offices/development-enrollment/handbook/conduct/>