

Article 129-B Policies

This section of the Montefiore School of Nursing (MSON) Handbook states policies related to Article 129-B, an Act to amend the education law , in relation to sexual assault, dating violence, domestic violence, and stalking prevention. These policies are part of the MSON Code of Conduct. The provisions of this Policy shall apply regardless of whether the violation occurs on campus or off campus.

Definition of Terms

"Bystander" shall mean a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of an institution.

"Code of conduct" shall mean the written policies adopted by an institution governing student behavior, rights, and responsibilities while such student is matriculated in the institution.

"Accused" shall mean a person accused of a violation who has not yet entered an institution's judicial or conduct process.

"Respondent" shall mean a person accused of a violation who has entered an institution's judicial or conduct process.

"Reporting individual" shall encompass the terms victim, survivor, complainant, claimant, witness with victim status, or any other individual who makes a report of a violation.

"Sexual act" shall mean

(a) contact between the penis and the vulva or the penis and the anus, and for purposes of contact involving the penis occurs upon penetration, however slight; (b) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; (c) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or (d) the intentional touching, not through the clothing, of the genitalia of another person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

"Sexual Assault" is defined as any sexual contact/ intrusion/ penetration that is absent or without consent by all parties. Examples include, but are not limited to: (a) touching breasts or another's genitals without their consent (through clothing or skin to skin contact), (b) having sexual contact/ intrusion/ penetration with someone who is incapacitated (one who is incapable of making a rational decision; e.g. from alcohol/drug usage), (c) continuing sexual activity after either party has made clear, either verbally or by conduct, that they do not wish to have physical contact.

“Dating/Domestic Violence” is the intentional use of abusive tactics and physical force in order to obtain and maintain power and control over an intimate partner.

“Stalking” is defined in general terms as engaging in a course of conduct or repeatedly committing acts towards another person, including following another person without proper authority with either: intent to place the person in reasonable fear of bodily injury, or intent to cause substantial emotional distress to the person.

“Affirmative Consent to Sexual Activity” is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

Principles of guidance regarding affirmative consent are as follows:

- a. Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- b. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- c. Consent may be initially given but withdrawn at any time.
- d. Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- e. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- f. When consent is withdrawn or can no longer be given, sexual activity must stop.

Policy for Alcohol and/or Drug Use Amnesty

The health and safety of every student at MSON is of utmost importance. MSON recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. MSON strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to MSON officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to MSON's officials or law enforcement will not be subject to MSON's code of conduct action for violations of alcohol and/or drug use

policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

Student's Bill of Rights

All students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process.
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few MSON representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by MSON, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of MSON;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of MSON.

Student Rights

Upon disclosure, an individual has the right to make a report to MSON security, local law enforcement, and/or state police or choose not to report; to report the incident to MSON; to be protected by MSON from retaliation for reporting an incident; and to receive assistance and resources from MSON.

Students also have the right to

- a. Notify campus security, local law enforcement, and/or state police;
- b. Have emergency access to MSON's Title IX Coordinator or other appropriate designated official who has been trained in interviewing victims of sexual assault who shall be available upon disclosure by a reporting individual to provide information regarding options to proceed, and, where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible, and detailing that the criminal justice process utilizes different standards of proof and

evidence and that any questions about whether a specific incident violated the penal law should be addressed to law enforcement or to the district attorney.;

c. Disclose confidentially the incident to MSON representatives, who may offer confidentiality pursuant to applicable laws and can assist in obtaining services for reporting individuals;

d. Disclose confidentially the incident and obtain services from the state or local government;

e. Disclose the incident to MSON representatives who can offer privacy or confidentiality, as appropriate, and can assist in obtaining resources for reporting individuals; licensed mental health counselors, medical providers and pastoral counselors are examples of institution employees who may offer confidentiality. "Privacy" may be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with this and other applicable laws, including informing appropriate institution officials.

f. File a report of sexual assault, domestic violence, dating violence, and/or stalking and the right to consult the Title IX Coordinator and other appropriate institution representatives for information and assistance. Reports shall be investigated in accordance with institution policy and a reporting individual's identity shall remain private at all times if said reporting individual wishes to maintain privacy;

g. Disclose, if the accused is an employee of MSON, the incident to MSON Department of Human Resources or the right to request that a confidential or private employee assist in reporting to the Department of Human Resources authority;

h. Receive assistance from appropriate MSON representatives in initiating legal proceedings in family court or civil court; and

i. Withdraw a complaint or involvement from the MSON process at any time.

Resources

The MSON Title IX Coordinator is Maha Singh, Director of Human Resources Montefiore New Rochelle Hospital. Resources for reporting individuals include access to the Title IX Coordinator, Sexual Assault Nurse Forensic Program (SAFE) nurse examiner, Employee Assistance Program (EAP), Occupational Health, and Emergency Department services. Access to the Title IX Coordinator, Employee Assistance Program, and SAFE program are included in student fees. MSON shall ensure that students have access to a sexual assault forensic examination through the Montefiore Mount Vernon Hospital. Students will be charged for Emergency Department services.

MSON shall assist with academic, housing, transportation, employment, and other reasonable and available accommodations regardless of reporting choices.

Information on sexually transmitted infections, sexual assault forensic examinations, and other resources is available through the New York State Office of Victim Services. The website address is <https://ovs.ny.gov>.

No Contact Order

When the accused or respondent is a student, reporting individuals may request that MSON issue a “no contact order” consistent with policies and procedures, whereby continued intentional contact with the reporting individual would be a violation of MSON policy subject to additional conduct charges. If the accused or respondent and a reporting individual observe each other in a public place, it shall be the responsibility of the accused or respondent to leave the area immediately and without directly contacting the reporting individual.

Prompt Review

Both the Accused or Respondent and the Reporting Individual shall, upon request and consistent with MSON policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of a no contact order, including potential modification, and shall be allowed to submit evidence in support of his or her request. MSON will establish an appropriate schedule for the Accused and Respondents to access applicable MSON buildings and property at a time when such buildings and property are not being accessed by the Reporting Individual.

The Reporting Individual will be assisted by MSON's security officers, if applicable, or other officials in obtaining an order of protection, and have an opportunity to meet or speak with a MSON representative, or other appropriate individual, who can explain the order and answer questions about it, including information from the order about the Accused's responsibility to stay away from the protected person or persons;

Both the Accused or Respondent and the Reporting Individual shall receive an explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension. They shall also receive assistance from MSON security in effecting an arrest through local law enforcement when an individual violates an order of protection. When the Accused or Respondent is a student determined to present a continuing threat to the health and safety of the community, MSON may subject the Accused or Respondent to interim suspension pending the outcome of a judicial or conduct process under MSON's policies and procedures. Both the Accused or Respondent and the Reporting Individual shall, upon request and consistent with the MSON's policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of an interim suspension, including potential modification, and shall be allowed to submit evidence in support of his or her request.

A Reporting Individual, the Accused and/or Respondent shall, upon request and consistent with MSON policies, be afforded a prompt review of the need for and terms of any reasonable and available interim measures and accommodations that effect a change in academic, housing, employment, transportation or other applicable arrangements in order to help ensure safety, prevent retaliation and avoid an ongoing

hostile environment, that directly affects him or her, and shall be allowed to submit evidence in support of his or her request.

Judicial Proceedings

MSON shall ensure that every student be afforded the following rights:

a. The right to request that student conduct charges be filed against the Accused. This request shall be initiated with the Title IX Coordinator. Upon the request of the Title IX Coordinator, an investigation will be conducted by the Coordinator of Student Services and the Director of Security.

b. the right to a process in all student judicial or conduct cases, where a student is accused of sexual assault, domestic violence, dating violence, stalking, or sexual activity that may otherwise violate the MSON's code of conduct, that includes, at a minimum:

(i) notice of the date, time, location and factual allegations concerning the violation, a reference to the specific code of conduct provisions alleged to have been violated, and possible sanctions;

(ii) an opportunity to offer evidence during an investigation, and to present evidence and testimony at a hearing with the Assistant Dean, and have access to a full and fair record of any such hearing, which shall be preserved and maintained for at least five years from such a hearing and may include a transcript, recording or other appropriate record; and

(iii) access to at least one level of appeal of a determination before a panel, which will include the President of Student Council, the Dean and one faculty member. In order to effectuate an appeal, a respondent and reporting individual in such cases shall receive written notice of the findings of fact, the decision and the sanction, if any, as well as the rationale for the decision and sanction. In such cases, any rights provided to a Reporting Individual must be similarly provided to a Respondent and any rights provided to a Respondent must be similarly provided to a Reporting Individual.

c. Throughout proceedings involving an accusation of sexual assault, domestic violence, dating violence, stalking, or sexual activity that may otherwise violate MSON's code of conduct, the Respondent, Accused, and Reporting Individual shall have the right to be accompanied by an advisor of choice who may assist and advise them throughout the judicial or conduct process including during all meetings and hearings related to such process. The advisor may speak to the person whom he or she is advising, but may not speak on behalf of that person or participate in any other way in the proceedings.

d. To a prompt response to any complaint and to have the complaint investigated and adjudicated in an impartial, timely, and thorough manner by property trained individuals.

e. To an investigation and process that is fair, impartial and provides a meaningful opportunity to be heard, and that is not conducted by individuals with a conflict of interest.

f. To have the MSON's judicial or conduct process run concurrently with a criminal justice investigation and proceeding, except for temporary delays as requested

by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than ten days except when law enforcement specifically requests and justifies a longer delay.

g. To review and present available evidence in the case file, or otherwise in the possession or control of the MSON, and relevant to the conduct case, consistent with MSON policies and procedures.

h. To exclude their own prior sexual history with persons other than the other party in the judicial or conduct process or their own mental health diagnosis and/or treatment from admittance in the MSON disciplinary stage that determines responsibility. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanction.

i. To receive written or electronic notice, provided in advance pursuant to MSON policy and reasonable under the circumstances, of any meeting they are required to or are eligible to attend, of the specific rule, rules or laws alleged to have been violated and in what manner, and the sanction or sanctions that may be imposed on the Respondent based upon the outcome of the judicial or conduct process, at which time the designated hearing or investigatory officer or panel shall provide a written statement detailing the factual findings supporting the determination and the rationale for the sanction imposed.

j. To make an impact statement during the point of the proceeding where the decision maker is deliberating on appropriate sanctions.

k. To simultaneous (among the parties) written or electronic notification of the outcome of a judicial or conduct process, including the sanction or sanctions.

l. To be informed of the sanction or sanctions that may be imposed on the respondent based upon the outcome of the judicial or conduct process and the rationale for the actual sanction imposed.

m. To choose whether to disclose or discuss the outcome of a conduct or judicial process.

n. To have all information obtained during the course of the conduct or judicial process be protected from public release until the appeals panel makes a final determination unless otherwise required by law.

The standard of evidence used in adjudication of these cases will be preponderance of evidence. Possible sanctions if a student is found responsible for violation of the code of conduct, with regards to sexual misconduct include disciplinary sanctions including suspension or expulsion.

For crimes of violence, including, but not limited to sexual violence, MSON shall make a notation on the transcript of students found responsible after a conduct process that they were "suspended after a finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation." For a Respondent who withdraws from the MSON while such conduct charges are pending, and declines to complete the disciplinary process, MSONs shall make a notation on the transcript of such students that they "withdrew with conduct charges pending." In cases of suspension, these transcript notations will be removed one year after conclusion of

the suspension. Notations for expulsion shall not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.

Options for Confidential Disclosure

MSON offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.

Professional counselors, medical providers, and clergy, including Employee Assistance Counselors, may offer confidentiality with regard to domestic violence, dating violence, stalking, or sexual assault. If a reporting individual discloses an incident to an MSON employee who is responsible for responding to or reporting domestic violence, dating violence, stalking, or sexual assault but wishes to maintain confidentiality or does not consent to MSON's request to initiate an investigation, the Title IX Coordinator will weigh the request against MSON's obligation to provide a safe, non-discriminatory environment for all members of its community.

MSON is not obligated to begin an investigation based on information disclosed through a public awareness event such as a candlelight vigil, protest, or other public event. MSON may use the information provided at such an event to inform its efforts for additional education and prevention efforts;

Please refer to table below regarding information about existing and available methods to anonymously disclose on confidential hotlines provided by New York state agencies and not-for-profit entities:

NAME	PHONE NUMBER	WEBSITE
Safe Horizon Domestic Violence Rape & Sexual Assault Stalking	Domestic Violence Hotline: 800-621-HOPE (4673) Crime Victims Hotline: 866-689-HELP (4357) Rape & Sexual Assault Hotline: 212-227-3000	www.safehorizon.org
Office for the Prevention of Domestic Violence - New York State Domestic and Sexual Violence	NY State Hotline 800-942-6906 NY City Domestic and Violence Hotline (800) 621-HOPE (4673)	www.opdv.ny.gov
Westchester Government Rape & Sexual Assault Teen Dating Violence	Family Helpline/Hotline Weekdays 9am – 5pm (914) 995-5972	www.women.westchestergov.com

Domestic Violence Stalking	Weekend & After Hours (914) 995-2099	
Hopes Doors Domestic Violence, Emergency Shelter, Support and Counseling, Referrals for Assistance.	Crisis Hotline 1-888-438-8700	www.hopesdoorny.org
My Sister's Place Domestic Violence, Emergency Shelter, Support and Counseling, Legal Services.	800-298-SAFE (7233)	www.mspny.org
Pace Women's Justice Center Legal Assistance, Emergency Orders of Protection	Legal Advise Hotline (914) 287-0739	www.law.pace.edu/wjc
Westchester Community Opportunity Program (WESTCOP)/Victims Assistance Services (VAS) Domestic or dating violence, rape or sexual assault, stalking, bullying (including cyber-bullying), harassment and hate crimes.	(914) 345-3113	www.westcop.org
The Samaritans Helping People in Crisis (Mostly Suicide)	Completely Confidential Hotline 212-673-3000	http://samaritansnyc.org/
National Hotlines	National Domestic Violence Hotline 800-799-7233 National Sexual Assault Hotline 800-656-4673	www.victimsofcrime.org/

Information regarding MSON crime reporting and MSON's annual security report may be found on Moodlerooms under Student Services/Safety and Security and the school's statistics may be found online at www.ope.ed.gov/security.

MSON is obligated to issue timely warnings of crimes enumerated in the Clery Act occurring within relevant geography that represent a serious or continuing threat to students and employees, except in those circumstances where issuing such a warning may compromise current law enforcement. Warnings will be issued through Everbridge mass notification system.

The Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, allows MSONs to share information with parents when there is a health or safety emergency, or when the student is a dependent on either parent's prior year federal income tax return; and that generally, MSON shall not share information about a report of domestic violence, dating violence, stalking, or sexual assault with parents without the permission of the reporting

individual. MSON may take proactive steps, such as training or awareness efforts, to combat domestic violence, dating violence, stalking or sexual assault in a general way that does not identify those who disclose or the information disclosed. If MSON determines that an investigation is required, it shall notify the reporting individuals and take immediate action as necessary to protect and assist them.

MSON shall seek consent from reporting individuals prior to conducting an investigation. Declining to consent to an investigation shall be honored unless MSON determines in good faith that failure to investigate does not adequately mitigate a potential risk of harm to the reporting individual or other members of the community. Honoring such a request may limit the MSON's ability to meaningfully investigate and pursue conduct action against an accused individual. Factors used to determine whether to honor such a request include, but are not limited to:

- a. Whether the accused has a history of violent behavior or is a repeat offender;
- b. Whether the incident represents escalation in unlawful conduct on behalf of the accused from previously noted behavior;
- c. The increased risk that the accused will commit additional acts of violence;
- d. Whether the Accused used a weapon or force;
- e. Whether the Reporting Individual is a minor; and
- f. Whether MSON possesses other means to obtain evidence such as security footage, and whether available information reveals a pattern of perpetration at a given location or by a particular group.

Student Onboarding

All new first-year and transfer students shall, receive training on the MSON's Code of Conduct and student's rights with respect to sexual and interpersonal violence, the dangers of drug and alcohol use, involuntary consumption of incapacitating drugs and the danger of mislabeled drugs and alcohol, the importance of communication with trusted friends and family whether on campus or off campus, and the availability of MSON officials who can answer general or specific questions about risk reduction; and consequences and sanctions for individuals who commit these crimes and code of conduct violations.