Minnesota Campus Sexual Misconduct Law Training

June 25, 2026

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Agenda

- Grievance Procedure Requirements under Minnesota Campus Sexual Misconduct Policy Law ("MN Law")
- Recommendations for Compliance
- Determining When MN Law Applies
- Examples
- Q&A

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Background

- The Minnesota Campus Sexual Assault Policy law was amended during the 2025 special session, effective January 1, 2026
- Requires higher education institutions to adopt a written sexual misconduct policy
  - Must inform students and employees about their rights and duties
  - Must include procedures for reporting sexual misconduct and disciplinary actions for violations
  - Must provide extensive grievance procedures in cases involving reports of sexual misconduct ***against a student***
- The policy must be implemented by the start of institutions' academic year (as determined by the institution), or no later than September 1, 2026

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MN Law: Grievance Procedure Requirements

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MN Law: Overview of Grievance Procedure Requirements

- Notice of Allegations
- Supportive Measures
- Investigation
- Access to Investigation Report
- Advisors
- Hearing or Questioning by a Decision-Maker
- Notice of Outcome/Determination
- Retaliation Prohibited

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MN Law: Grievance Procedure Requirements

- Must provide respondent a notice of allegations (similar to Title IX)
- Must offer and coordinate academic and residential supportive measures to both complainant and respondent (similar to Title IX)
- Must provide complainant opportunity for impartial, timely, and thorough investigation of report of sexual misconduct against a student
- Must proceed with the grievance process, if requested by complainant, concurrently with a criminal investigation
  - May temporarily delay if requested by law enforcement and grievance process may impede criminal investigation (similar to Title IX)

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MN Law: Advisors

- A complainant must be permitted to have an advisor present at any meeting with campus officials concerning a sexual misconduct complaint or campus disciplinary proceeding concerning a sexual misconduct complaint
- If institution allows for cross-examination of witnesses and parties, cross-examination must be performed by party's advisor or an adjudicator of the campus disciplinary proceeding (institution can decide)
- Parties may discuss the investigation and disciplinary proceedings with an advisor of choice
- Advisors may be an attorney

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Advisors (continued)

- Under Title IX and VAWA, the complainant and the respondent have the right to an advisor of their choice, who may be, but is not required to be, an attorney
- Under Title IX, parties have right to have their advisors receive access to directly related evidence and investigation report; MN law does not explicitly require advisors to have access to investigation report
- Advisors may cross-examine parties and witnesses at live hearing (Title IX only)
  - Parties are not permitted to cross-examine parties and witnesses;
  - Institution must provide an advisor for hearing if party does not have one
- Institutions may otherwise limit extent of advisor's participation in the process (must apply equally to both parties)

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Advisors: Recommendation

- Allow attorney advisors in all sexual misconduct cases
- Continue to limit role for advisors in complaint resolution process
  - Inform parties about restrictions on advisors in advance
  - Signed advisor agreements
  - Be prepared to enforce agreement parameters
  - Hold the party responsible for the advisor's actions
  - Institutions may remove or dismiss advisors who become disruptive or who do not abide by the restrictions on their participation
  - Be consistent
- Institutions will have to decide whether to provide advisors with access to investigation report in cases that fall outside scope of Title IX but within scope of MN law

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MN Law: Relevant Evidence

- Questions and evidence about complainant's sexual predisposition or prior sexual behavior are not considered relevant unless:
  - Offered to prove that someone other than respondent committed alleged conduct; or
  - Concern specific incidents of the complainant's prior sexual behavior with respondent are offered to prove consent (similar to Title IX)
- Personal information of the complainant (e.g. character witness or sexual behavior) allowable if information is deemed relevant by decision-maker and if information substantiates that misconduct may have occurred

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MN Law: Relevant Evidence

- Mental health and medical information of complainant may be considered if:
  - Release is signed by complainant; and
  - Nonrelevant information is redacted
- If respondent is found responsible, medical and mental health information of complainant may be considered to determine sanctions

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Evidence & Report Review

- MN Law: Must allow the reporting and responding parties to present and review relevant testimony by parties and witnesses and relevant evidence compiled in an investigative report
- Title IX:
  - **Directly related evidence**: Prior to completion of investigation report, must provide equal opportunity to inspect and review any evidence obtained that is *directly related to the allegations*. Parties must be given at least 10 days to submit a written response.
  - **Investigation report**: Must create investigation report that fairly summarizes relevant evidence. Must send hard copy or electronic format to parties and advisors. Must be provided at least 10 days prior to live hearing and parties must be given opportunity to submit written response.

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Family Educational Rights & Privacy Act (FERPA)

- Limits disclosure of student education records
- Several exceptions permit disclosure
  - In Title IX cases, exception permits school to disclose to both parties all directly related evidence, all information in the investigation report and attachments that goes to the decision-maker, and statement of, and rationale for, the final results of any disciplinary proceedings or appeals, including sanctions and whether remedies will be provided
    - Required by Title IX
    - Does not include what the remedies are
  - In cases involving sexual assault/VAWA crime, exception permits school to disclose to the parties any information provided to the decision-makers and the final results of the disciplinary proceedings, including *all* sanctions

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FERPA (continued)

- No FERPA exception for compliance with MN law
- Investigation report likely considered part of education record for each party or witness who is a student
- To comply with FERPA, institution would need FERPA release for each party and witness who is a student
  - If permitting advisors with access to report, need to state that in FERPA release
- Removing the names of parties and witnesses will not meet the requirement under FERPA because the student's identity is likely still personally identifiable given context of the report and any exhibits

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Evidence & Report Review: Recommendation

- No access to investigation report in cases that fall outside of scope of Title IX/VAWA
  - But recommend providing hearing in these cases
- If there are other types of cases in which the institution shares information/an investigation report with the parties, such as in discrimination cases, discontinue that practice in those cases

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MN Law: Nondisclosure Agreements

- Parties may discuss the investigation and disciplinary proceeding with an advisor of choice, the party's parents, or an authorized legal guardian
- "Rights given to a student by the policy required by subdivision 1" cannot be made contingent upon the complainant "entering into a nondisclosure agreement or other contract restricting the complainant's ability to discuss information in connection with a sexual misconduct complaint, investigation or hearing."
- A nondisclosure agreement or other contract restricting the complainant's ability to discuss information in connection with a sexual misconduct complaint, investigation, or hearing may not be used as a condition of financial aid or remedial action

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Office of Higher Education (OHE) Guidance: Nondisclosure Agreements

- Institutions can request that parties enter into a nondisclosure agreement, but the agreement cannot restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence
- If a party does not sign a nondisclosure agreement, institutions cannot restrict any rights under the sexual misconduct policy or withhold financial aid

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Nondisclosure Agreements (continued)

- Under Title IX:
  - Must not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
  - May require parties and advisors sign a nondisclosure agreement before accessing evidence
- Recommendation:
  - Continue to require parties and advisors to sign a nondisclosure agreement before accessing evidence
  - Don't require nondisclosure agreement for notice of outcome/determination

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MN Law: Adjudications

- Decision-maker/panel of decision-makers must **assess credibility** of reporting party, responding party, and any other witnesses **through live hearing *or* direct questioning**
- Decision-maker/panel of decision-makers cannot be the same person as the investigator (similar to Title IX)
- Must apply, at a minimum, a preponderance of the evidence standard of proof in any grievance process arising from an alleged incident of sexual misconduct against a student (similar to Title IX)

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MN Law: Live Hearing Requirements

- Must have a hearing, if requested by either the complainant or respondent
- Parties may not cross-examine each other (similar to Title IX)
- Institutions can decide whether an advisor or decision-maker questions each party (conflicts with Title IX)
- Must provide each party with equal opportunity to provide testimony without encountering the other party in person, and to review testimony provided by the other party in a similar manner, such as through video conference or closed-circuit television (similar to Title IX)
- OHE Guidance: decision-maker should only allow questions and evidence that are relevant

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Live Hearing Recommendations

- For cases that fall outside the scope of Title IX but within the scope of MN law, we recommend that a hearing is the default option
  - Questioning via a decisionmaker in separate meetings would lack transparency because the other party is not present
    - To provide more transparent process, would need to record meetings and provide transcripts to the other party
  - In rare circumstances in which neither party requests a hearing, questioning by a decisionmaker will take more time; hearing is a more efficient approach
  - Likely would need to set a timeframe for when a party must request a hearing

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Live Hearing Recommendations (continued)

- Include language in policy that gives institution some discretion to not hold a hearing in cases in which neither party wants a hearing
- Continue to have advisors conduct cross-examination during hearings

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Live Hearing – Additional Support Person

- MN Law: institution must allow equal opportunity during hearing for complainant and respondent to consult additional support person other than party's advisor (e.g., an advocate), if requested and deemed appropriate by the Title IX Coordinator or designee
  - OHE Guidance:
    - An institution can limit the extent to which the support person is involved in the process
    - Title IX Coordinator can limit consultation with additional support person to requested breaks (outside of the hearing)

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Live Hearing – Additional Support Person & FERPA Concerns

- Under Title IX, parties may be accompanied only by their advisors and other persons for reasons "required by law"
  - Institution must keep confidential complainant, respondent, and any witness except as may be permitted by FERPA, as required by law, or to carry out the grievance process
    - Limits institution's ability to authorize the parties to be accompanied to the hearing by individuals other than their advisors
  - A person assisting a party with a disability, or a language interpreter, may attend because presence is required by law and/or necessary to conduct the hearing

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Live Hearing – Additional Support Person: Recommendation

- In all sexual misconduct cases, allow each party to access support person during break (outside of the hearing) if deemed appropriate by Title IX Coordinator
- Parties must request access in advance of hearing

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Issuing a Notice of Determination

- Institutions must:
  - Give parties notice **24 hours in advance** of sharing decision in a sexual misconduct case, and
  - Offer campus resources, if applicable, and community mental health resources
- The outcome of the decision **cannot be delivered** to the parties at the **end of the day or on a weekend or holiday** to ensure the parties may access supportive services
- The outcome must be delivered simultaneously to the parties (same as Title IX)

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Issuing a Notice of Determination: Recommendations

- Provide 24-hour notice in advance of sharing notice of determination in all cases
- Ensure that supportive services are available for at least a few hours after the outcome is shared with the parties
- It is up to the institution to determine holidays, end of day, and weekends

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Appeals

- MN law does not require institutions to offer appeals
- Under Title IX, an institution must offer each party an appeal from the determination regarding responsibility, and from the institution's dismissal of a formal complaint, on certain bases (procedural irregularity, new evidence, conflict of interest or bias).
- Recommendation: Allow appeals in all cases even though it is not required under Minnesota law

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MN Law: Retaliation

- Institutions must have **policy prohibiting retaliation**, specifies:
  - What constitutes retaliation, and
  - Possible actions for students and employees if retaliation occurs
- Retaliation means intimidation, threats, coercion, or discrimination against a reporting party, responding party, or witness for the purpose of interfering with any right or privilege or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this section, including in nondisciplinary restorative justice services (similar to Title IX definition of retaliation)
- OHE Guidance: specify examples of retaliation, list sanctions or possible outcomes if a student is found responsible for engaging in retaliation

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When Does MN Law Apply?

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MN Law Definition of Sexual Misconduct

An incident of sexual violence, intimate partner violence, domestic violence, sexual assault, sexual harassment, nonconsensual distribution of sexual images, sexual extortion, nonconsensual dissemination of a deepfake depicting intimate parts or sexual acts, sex trafficking, or stalking.

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Definition of Sexual Harassment: Title IX vs. MN

Definition of Sexual Harassment	
2020 Title IX Regulations	**Minn. Stat. § 363A.03, subd. 43**
Unwelcome conduct on the basis of sex determined by a reasonable person to be ***so severe, pervasive, and objectively offensive*** that it ***effectively denies*** a person equal access to the recipient's education program or activity	Unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct or communication of a sexual nature when . . . that conduct or communication ***has the purpose or effect of substantially interfering*** with an individual's employment, public accommodations or public services, education, or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, public services, educational, or housing environment

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Non-Title IX Sexual Harassment

- Continue to address sexual harassment that does not rise to the level of Title IX Sexual Harassment
- Examples of Non-Title IX Sexual Harassment:
  - Single incident of harassment based on sex (clearly not pervasive)
    - Single unwelcome kiss
    - Single comment about an individual's body
    - Single sexual joke
  - Harassment based on sex that is not so severe, pervasive, and objectively offensive that it denies a person equal access to the institution's education program or activity

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Compare: Domestic Violence, Dating Violence, and Intimate Partner Violence

Domestic Violence	Dating Violence	Intimate Partner Violence
A felony or misdemeanor crime committed by a current or former spouse or intimate partner of the victim under the domestic or family violence laws of the jurisdiction	Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim	Any physical or sexual harm or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior against an individual, that may be classified as a sexual misconduct, dating violence, or domestic violence caused by (1) a current or former spouse of the individual, or (2) a person in a sexual or romantic relationship with the individual

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Which law(s) apply?

Applicable Law	Alleged Conduct	Respondent	Additional Conditions
MN Law only	• Intimate Partner Violence that does not include Dating/Domestic Violence • Non-Title IX Sexual Harassment	Student	• Occurs within education program or activity
MN Law + Title IX + VAWA	• Sexual Assault • Dating Violence • Domestic Violence • Stalking	Student	• Occurs within education program or activity • Against a person in the U.S.
MN Law + Title IX	Title IX Sexual Harassment	Student	• Occurs within education program or activity • Against a person in the U.S.
Title IX + VAWA	• Sexual Assault • Dating Violence • Domestic Violence • Stalking	Employee / Community Member / Third Party	• Occurs within education program or activity • Against a person in the U.S.
Title IX only	Title IX Sexual Harassment	Employee / Community Member / Third Party	• Occurs within education program or activity • Against a person in the U.S.

VAWA — Sexual Assault, Dating Violence, Domestic Violence, or Stalking that occurs **outside** an education program or activity, **or** against a person outside of the U.S.

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Which Grievance Procedure Applies?

- General principles:
  - When federal and state law conflict, federal law controls
    - Example: Must have hearings in cases that fall within scope of Title IX, even if MN law permits questioning by a decisionmaker, rather than a hearing
  - To the extent MN law provides additional rights without conflicting with federal law, apply MN law
    - Example: Provide 24-hour notice in advance of sharing notice of determination (required under MN law, but not Title IX)
      - To streamline the process, we recommend providing these additional rights in all cases, not just those that fall within scope of MN law

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Types of Conduct that Fall Under MN Law but not Title IX

- Single incident of sexual harassment by a student that occurs within an education program or activity
- Intimate partner violence by a student that occurs within an education program or activity that does not include Dating Violence or Domestic Violence:
  - Any physical or sexual harm or a pattern of any other **coercive behavior** committed, enabled, or solicited to gain or maintain power and control over a victim, including
    - Verbal abuse
    - Psychological abuse
    - Economic abuse
    - Technological abuse

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Harris/Jackson

- Harris comes to your office and tells you he had an uncomfortable interaction with Jackson, his teammate on the soccer team. He says that after their last soccer game, he and Jackson were cleaning up the locker room and joking around. He says that all of a sudden, Jackson leaned in and kissed him on the mouth. Harris says that he jerked away and left the locker room immediately. Harris tells you that he doesn't know what to do because he wants to avoid Jackson but doesn't want it to interfere with the soccer team.

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Peter/Dr. Smith

Peter tells you that last week, he wore a suit to class because he had an interview immediately afterward. Peter says that when he got to class, his professor, Dr. Smith, whistled, fanned herself, and said, “Wow, is it just me or did it just get really hot in here?” Peter tells you that Dr. Smith’s comment made him feel embarrassed and really uncomfortable.

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Jane/Tom

Jane comes to your office and tells you that she wants to break up with her boyfriend, Tom, but she is scared to do so. She tells you that Tom is really possessive of her and gets jealous easily. She says that he checks her text messages and voicemails to make sure that she isn’t talking to other guys, even though she has told him not to. She says that he also has deleted photos on her phone of her with her guy friends. She tells you that she started to get really freaked out last weekend when, after she had a couple of drinks at a bar, he took her credit card from her and told her he would give it back when she showed she could be responsible with her money. Jane tells you that she and Tom have two classes together this semester and that she’s worried she’ll have to drop out of those classes to avoid him.

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Questions?

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