

Sexual Misconduct Policy

Policy Content

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SEXUAL MISCONDUCT POLICY

Trinity University prohibits sexual misconduct, including sexual harassment, non-consensual sexual intercourse, non-consensual sexual contact, sexual exploitation, intimate partner violence, stalking, and retaliation, as defined below. Note that violations of this policy may also constitute violations of the Student Code of Conduct, state or federal law.

Sexual Harassment

Sexual harassment means unwelcome, sex-based verbal or physical conduct that:

1. In the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or
2. In the educational context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from educational programs or activities at a postsecondary educational institution.

Examples of conduct that may constitute a violation include but are not limited to unwanted efforts to develop a romantic or sexual relationship, requests for sexual favors, and other verbal or physical conduct based upon sex:

- when submission to such conduct is made either explicitly or implicitly a term or condition of instruction, employment, or participation in other University activities;
- when submission to or rejection of such conduct by an individual is used as a basis for evaluation in making academic or personnel decisions affecting the individual; or
- when such conduct has the purpose or effect of interfering with an individual's work performance or access to programs or creating an intimidating, hostile, or offensive University environment.

Non-consensual Sexual Intercourse

Non-consensual sexual intercourse is intercourse that occurs without consent (defined below). Examples include, but are not limited to:

- Penetration or causing penetration of an orifice (anal, vaginal, oral) with any body part or object, however slight or momentary;
- Other acts of oral, vaginal, or anal stimulation; and
- Knowingly exposing a person to and/or transmitting a sexually transmitted infection or HIV/AIDS to another person

Non-consensual Sexual Contact

Non-consensual sexual contact is any intentional sexual touching, however slight or momentary, or the use of an object to touch another in a sexual manner that is without consent (defined below). Sexual touching includes, but is not limited to, any contact with breasts, groin, genitals, mouth, or other bodily orifice of another individual, or any other contact in a sexual manner.

Sexual Exploitation

Sexual exploitation refers to a situation in which a person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to the advantage or benefit of anyone other than the one being exploited, and which behavior does not constitute any other form of Sexual Misconduct.

Examples of sexual exploitation include, but are not limited to, engaging in the following activities without the other person(s) consent:

- Sexual voyeurism such as watching or recording a person undressing, using the bathroom, or engaging in sexual acts in a place where they would have a reasonable expectation of privacy;
- Taking or sharing pictures or recording another in a sexual act, or in any other private activity (such as allowing another person to hide in a closet and observe sexual activity), or disseminating sexual pictures, including as an act of revenge, without the consent of all individuals depicted;
- Exposing one's genitals or breasts in non-consensual circumstances or inducing another to expose his or her genitals or breasts;
- Going beyond the boundaries of consent (such as engaging in actions that were not consented to during an otherwise consensual encounter);
- Prostitution;
- Threatening to disclose or disclosing a person's sexual activities, sexual orientation, gender identity, or gender expression;
- Administering alcohol or drugs (such as "date rape" drugs) to another person without their knowledge and consent.
- Intentionally aiding a violation of the sexual misconduct policy.

Intimate Partner Violence

Intimate Partner Violence includes both Dating and Domestic Violence, defined below, as well as any act, threat, or pattern of abusive behavior (including sexual, physical, psychological, and economic) that one person uses against a current or former partner in a sexual, dating, spousal, domestic, parenting or other intimate relationship, to gain or maintain power or control over another. Intimate Partner Violence can be a single act or a pattern of behavior within a relationship.

The determination of whether any conduct constitutes Intimate Partner Violence is whether the conduct is so severe, pervasive or persistent as to interfere with an individual's ability to learn and/or work or cause substantial emotional distress, when judged both objectively (meaning that a

“reasonable person” would find the behavior to be intimidating, frightening, terrorizing, or threatening) and subjectively (meaning the impacted individual felt the behavior was intimidating, frightening, terrorizing, or threatening).

The existence of such a relationship shall be determined based on consideration of the following factors: the length of the relationship; the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse 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 shall be determined based on consideration of the following factors: the length of the relationship; the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

Domestic Violence includes felony or misdemeanor crimes of violence committed by

- a current or former spouse 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 intimate partner;
- or by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Texas; by any other person who is protected from that person’s acts under the domestic or family violence laws of Texas.

Stalking

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their own safety, the safety of others, or suffer substantial emotional duress. This applies to acts that occur between people who currently have or have had a romantic or sexual relationship or occur because of the accused person’s desire to have a romantic or sexual relationship with the victim. Stalking includes cyberstalking. If someone engages in acts of stalking after university intervention, that may be considered a new and distinct report.

Retaliation

The university takes reports of Sexual Misconduct very seriously and will not tolerate retaliation against those who make such reports or cooperate with or participate in the investigation or adjudication process. Retaliation includes but is not limited to any behavior, adverse action, treatment, or condition taken against a person for alleging a violation of this policy or otherwise

participating under this policy. This includes direct or indirect behavior or actions taken by an individual or at the direction of a party or someone participating under this policy. Retaliation includes, but is not limited to intimidation, threats or menacing behavior, coercion, and discriminatory actions. Any behavior that has the purpose or effect of intimidating or improperly influencing any individual's participation in the investigation or adjudication process may also be retaliation. Any act of actual or threatened retaliation will be investigated immediately and adjudicated separately. Retaliation may also result in immediate removal from the University.

Any person who believes they have been subjected to retaliation should immediately report this to the Title IX Coordinator.

Consent

Consent is knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity or contact.

- Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity.
- A person can withdraw consent at any time during sexual activity by expressing in words or actions that they no longer want the act to continue, and, if that happens, the other person must stop immediately. Continued pressure can be coercive, which negates consent given under such circumstances.
- Consent cannot be inferred from silence or the absence of resistance.
- Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse).
- A current or previous dating or sexual relationship is not sufficient to constitute consent.
- Consent cannot be obtained by coercion, force, or from someone who is incapacitated.
- In order to give effective consent, one must be 17 years old in Texas.

Coercion and Force

The use of coercion or force to obtain consent invalidates the consent.

Generally, coercion is the act of unreasonably pressuring another person into doing something against their will. Sexual coercion can involve using physical force and/or convincing another person to engage in sexual activity by use of verbal and emotional pressure including manipulation, intimidation, and/or the use of alcohol or other drugs to make someone more vulnerable. What is unreasonable will be determined on a case by case basis, considering a number of factors such as the desire to be persuaded (seduction versus coercion), the intensity, frequency and duration of persuasion, and the isolation of individuals.

Force is the direct or indirect use of physical violence, threats, and/or imposing on someone physically. There is no requirement that someone resist the sexual advance or request, but resistance

is a clear demonstration of non-consent.

Incapacitation

A person is incapacitated and cannot consent to sexual activity if that person is asleep, unconscious, or otherwise unable to resist; is unaware that sexual activity is occurring; does not have the ability to make informed, rational judgments about whether or not to engage in sexual activity; and/or the person does not have the legal capacity to consent. Someone can be incapacitated due to the voluntary or involuntary use of alcohol or drugs. Drunkenness is different than incapacitation, and does not, in itself, automatically indicate a violation. Some signs that someone may be incapacitated include stumbling, slurring words, a lack of control of their motor skills; or inability to understand what is happening.

- Students who are not sure if they are interacting with a person who had diminished capacity should, as a matter of practice, avoid engaging in a sexual act with that person at that time. Someone who has ingested a “date rape” drug or is blacked out may not appear incapacitated; nonetheless, this person is incapable of knowing consent. A student who has sexual interactions with anyone who may be under the influence of any substance is vulnerable to accusations of violations of this policy.
- An individual who engages in sexual activity when the individual knows, or should know, that the other person is incapacitated, has violated the sexual misconduct policy.
- Being drunk or intoxicated is not an excuse for sexual misconduct.
- Possession, use and/or distribution and/or administering of any incapacitating drugs to someone without their knowledge and consent, is prohibited and is a violation of this policy.

Resolution Procedures

for allegations against a student

Initial Response to Reports

Once the Title IX Coordinator receives a report, the Title IX Coordinator or a designee will contact the person who is reported to have experienced sexual harassment or sexual misconduct to explain their rights under this policy and provide information about resources that are available to them, such as no contact orders and other interim measures.

Confidentiality

Information gathered during the investigation and adjudication process will only be shared with University officials with a need to know the information. Unless waived in writing, the identity of the complainant will only be disclosed as necessary to conduct an investigation, hearing, and appeal, as well as to law enforcement as necessary to conduct a criminal investigation.

Basic information may be shared confidentially within the University as required to comply with

reporting obligations under federal and state law. Basic information that does not identify any person will also be shared in reports on the University's website in order to comply with the requirements of Texas law.

Informal Resolution

In some instances, allegations of a violation of this policy may be resolved informally. Informal resolutions require the agreement of the parties and the approval of the Title IX Coordinator. In an informal resolution, the parties may agree that the person alleged to have violated the policy will participate in training or other conditions included in the agreement. Informal resolutions entered into before the investigator(s) make a recommendation are not an admission of responsibility or a university determination of a policy violation. Neither party has the right to appeal after they have entered into an informal resolution.

Investigative Roles

A pool of specially trained faculty and staff members will alternately serve in the following roles.*

Process Advisor: Each student in a case will be assigned a trained faculty or staff process advisor to assist in navigating the process and answering questions on policy and procedure.

Investigator: One or more investigators will be assigned to each case. The investigator(s) will be assigned from the pool and the Title IX Coordinator may also serve as an investigator.

Hearing Panelists: A Hearing Panel will consist of two faculty/staff and a trained student from the Student Conduct Panel, as assigned by the Dean of Students or their designee.

Hearing Facilitator: A Hearing Facilitator may be selected from the voting members of the Hearing Panel or be a trained faculty or staff member appointed as an additional non-voting member of the Panel.

* In cases where a conflict of interest may arise, alternates are available.

Initiating a Formal Complaint

A reporting student has the right to submit a formal complaint requesting a full investigation of the alleged violations of this policy. The Complainant has the opportunity to provide a written or verbal complaint. There is no time limit to initiate a formal complaint, but the University's ability to investigate allegations and impose sanctions against someone found responsible for violating the policy may decrease with the passage of time. The Title IX Coordinator will review the formal complaint and may decline to investigate the complaint if it does not describe a violation of this policy. Before the Title IX Coordinator makes this decision, they will discuss the complaint with the Complainant and suggest other options for assistance, if applicable.

Support People

Both the reporting student (Complainant) and the responding student (Respondent) may be accompanied by the advisors and/or support people of their choice during any meeting or proceeding. The student will be required to sign a release to allow these support people to receive information about the case. These support people can be friends, parents, and/or an attorney. If a support person is

an attorney, an attorney for the university will be present as well. Support people may not speak on behalf of the student or make a presentation, but they may ask to briefly suspend any meeting, interview or proceeding to consult with the student. In order to preserve the integrity of the process, if a support person is also a witness in the case, their testimony and evidence should be obtained before they attend any meeting or proceeding as a support person. Accommodations, including the scheduling of meetings, interviews or hearings, will not be made for support people if they unduly delay the process. Support people are expected to behave with decorum and may be asked to leave if they do not.

Investigation

If the Title IX Coordinator determines there is a basis for an investigation, the Respondent will be notified of the allegation and provided a general description of the conduct alleged to constitute the violation. One or more Investigators will be assigned to investigate the allegation. The University will strive to complete an investigation under this policy within 60 days of receiving a formal complaint; however, the length of investigations may vary and the timeline may be extended at the discretion of the Investigator(s).

Generally, the Investigator(s) will interview the Complainant, the Respondent, and relevant witnesses, and will gather and review other information related to the allegation(s) as part of the investigation process. Both the Complainant and Respondent will have the opportunity to be interviewed, provide written statements, identify witnesses, and provide documentary and other evidence for consideration. Those interviewed will have the opportunity to review their own statements and make comments. The Investigator(s) have sole discretion to determine how and when information will be shared with the parties and witnesses during the investigation process.

At the conclusion of the investigation, the Investigator(s) will draft a summary report of the investigation that will include proposed findings on responsibility and sanction recommendations, if applicable. Responsibility will be determined by a preponderance of the evidence standard. The parties will have the opportunity to review the proposed report and the evidence used to support the report, and will also have the opportunity to provide comments about the proposed summary report. The Investigators will review the comments from the parties and make changes to the summary report if they determine they are necessary. The report will be forwarded to the Dean of Students' Office for a hearing.

In some instances, an investigation may be terminated or a case may not be referred for a hearing, including but not limited to if a Complainant drops their complaint, the parties agree to informal resolution, or both parties agree in writing to accept the Investigator's/Investigators' recommendations as to the finding and sanction as the final result in the case. In all cases, the University reserves the right to continue the process in the best interest of the health and safety of the greater University community.

The Complainant and Respondent are expected to provide all relevant information during the investigation. If a party wishes to present new information after the report has been forwarded to the hearing panel, the Hearing Facilitator will confer with the Investigator(s) to determine whether the

information was available at the time of the investigation and whether the information was likely to have significantly impacted the Investigator's/Investigators' determination of responsibility. The investigation may be reopened before proceeding with a hearing.

Hearing Procedure

Upon receipt of the final summary report, the Dean of Students or designee will convene a Hearing Panel and appoint a Hearing Facilitator to oversee the hearing. The role of the Hearing Panel is to review the work of the Investigator(s) and recommend a finding and sanction to the Dean of Students based on a preponderance of the evidence, and not to reinvestigate the allegations. The Complainant, Respondent, and witnesses, if any, will have an opportunity to attend the hearing, but are not required to do so.

In the hearing, the Complainant and the Respondent may make opening statements, primarily to address issues raised in the report and explain why they agree or disagree with the report. The Hearing Panel may question the Investigator(s), the parties, and any witnesses present at the hearing. The parties may submit questions to the hearing panel before and during the hearing to be asked of the Investigator(s), other party, and witnesses who are present at the hearing. The Hearing Facilitator will review the questions and determine whether to ask the questions submitted. Support People are not permitted to speak on behalf of a party or to question any witness, investigator, or the panel during a hearing. The parties may make a closing statement to respond to any issues raised in the hearing. If the panel rejects the recommendations or adjusts the sanctions, they must do so within the framework of the policy and cite clear evidence to support the adjustments.

When the panel has finished asking questions and hearing from the parties, they will confer to reach their decision. The panel will recommend a finding and sanction to the Dean of Students. The Dean of Students or designee will determine whether or not to accept, reject, or modify the Hearing Panel's findings and recommendations and make the decision in the case. The parties will simultaneously be notified in writing of the outcome and any options for appeal.

Past History

The past sexual history or sexual character of a party will not be considered in hearings unless such information is determined to be highly relevant by the Hearing Panel Chair. All such information sought to be admitted by a party or the University will be presumed irrelevant until a determination of relevance is made, in advance of the hearing, by the Hearing Facilitator, and in consultation with the Hearing Panel. Demonstration of a pattern, repeated, and/or predatory behavior by the responding student, including previous findings in any legal or campus proceeding, may be relevant to the finding, not just the sanction. The parties will be notified if any such information is deemed relevant and will be introduced into the process.

Sanctions

Individuals found responsible for violating this policy will be sanctioned. Not all forms of sexual misconduct are equally serious offenses, and the University reserves the right to impose different sanctions, ranging from verbal warning to expulsion, depending on the severity of the offense and taking into account any previous campus conduct code violations. The University may also impose restrictions (such as no contact orders) or educational remedies (such as training) at its discretion, whether or not a party is found responsible for violating the policy. Variation from the guidelines below is possible but must be explained in writing:

- Any student found responsible for violating the policy provisions on Sexual Harassment, Sexual Exploitation, Stalking, or Retaliation will likely receive one of the following sanctions: warning, general warning, probation, probation with suspension of privileges, suspension, or expulsion.
- Any student found responsible for violating the policy provisions of Intimate Partner Violence or Non-consensual Sexual Contact (where no intercourse has occurred) will likely receive one of the following sanctions: probation, probation with suspension of privileges, suspension, or expulsion.
- Any student found responsible for violating the policy on Non-consensual Intercourse will likely receive a sanction of suspension or expulsion.

Appeals

Both parties have the right to appeal the Dean of Students' decision on responsibility and/or sanction within five days.

Appeal requests are limited to the following grounds:

1. A procedural or substantive error occurred that significantly impacted the outcome of the case (e.g. substantiated bias, material deviation from established procedures, etc.);
2. New evidence, not previously known at the time of the investigation or hearing, could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included; and
3. The sanctions imposed are substantially disproportionate to the severity of the violation.

This appeal will be reviewed and decided by the Vice President for Student Life or their designee, who may request any existing or new information they deem necessary to resolve the appeal. The decision of the Vice President for Student Life or designee is the final decision in the case and is not subject to further review within the University.

Requirements

Approvals:

Board of Trustees

Attachments

[Policy, Procedures, and Information regarding Sexual Harassment and other Sexual Misconduct](#)

Revision Management

Revision History Log:

Revision #:	Date:	Nature of Change:	Recorded By:
v1.0	8/16/2019 3:43 PM	New document	Rachel Rolf