

SECTION D: SEXUAL MISCONDUCT PROCEDURES FOR STUDENTS

The University is committed to providing and strengthening an educational, working, and living environment where students, faculty, staff, and visitors are free from sex discrimination of any kind. Texas Tech prohibits discrimination based on sex (which includes pregnancy, sexual orientation, gender identity, and gender expression), and other types of Sexual Misconduct. Sexual Misconduct includes Title IX Sexual Misconduct, sexual harassment, nonconsensual sexual contact, nonconsensual sexual intercourse, sexual assault, sexual exploitation, stalking, public indecency, interpersonal violence, sexual violence, and any other misconduct based on sex. Any acts that fall within the scope of this policy hereinafter are referred to as Sexual Misconduct. Discriminatory behavior is prohibited regardless of the manner in which it is exhibited, whether verbally, in writing, by actions, or electronically displayed or conveyed.

This section provides information regarding the University's prevention and education efforts related to sex discrimination and Sexual Misconduct. This policy, in conjunction with TTU OP 40.03 and Texas Tech University System Regulation 07.06, provides students with their rights and options and also explains how the University will proceed once it is made aware of allegations of prohibited conduct in keeping with the University's values and in order to meet the legal obligations of Title IX, the Violence Against Women Act (VAWA), the Campus Sexual Violence Elimination Act (SaVE), the Clery Act, Texas Education Code, 34 CFR Part 106, and other applicable law. Any conflict among the policies set forth in this Handbook, OP 40.03, and System Regulation 07.06 shall be resolved by System Regulation 07.06.

These policies apply to all University students. The University will respond to any Sexual Misconduct and restore or preserve equal access to the University's Education Programs or Activities, as appropriate.

All investigations and procedures will be conducted in a reasonably prompt timeframe of 120 business days, and in an equitable and impartial manner. Investigations conducted under this policy are not criminal investigations. For all complaints under this policy, the burden of proof shall be a preponderance of the evidence, which means more likely than not.

The University expects all members of the University Community to comply with applicable laws, System Regulations, and University policies. Members of the University Community who violate these policies and laws may be subject to disciplinary action or sanctions, up to and including termination of employment, expulsion from the University, or being barred from University premises and events.

In accordance with federal and state laws, the University has adopted two distinct policies and procedures for responding to reports of Sexual Misconduct. The applicable policy is based on the nature, context, and location of the alleged conduct. Title IX Sexual Misconduct is addressed in accordance with System Regulation 07.06.A, and Non-Title IX Sexual Misconduct is addressed in accordance with System Regulation 07.06.B. The Title IX Coordinator or designee will assume

responsibility for determining which policy should be utilized to address a report of Sexual Misconduct and will coordinate the appropriate processes. The following flowchart will be utilized to assist the Title IX Coordinator in determining what policy will apply to the alleged misconduct.

1. **Definitions**

For purposes of this policy, the definitions below apply. However, some of these terms are also defined under state law. If a person would like to file criminal charges for any alleged violations of criminal law, the definitions as set forth in state law may apply.

- a. **Actual Knowledge** – Notice of Title IX Sexual Misconduct or allegations thereof to the University’s Title IX Coordinator or Deputy Coordinators.
- b. **Complainant** – An individual who was alleged to be the victim of conduct that could constitute Sexual Misconduct.
- c. **Consent** – Mutually understandable words or actions, actively communicated both knowingly and voluntarily, that clearly conveys permission for a specific activity.
 - i. Consent is not effective if it results from: (a) the use of physical force, (b) a threat of physical force, (c) intimidation, (d) coercion, (e) incapacitation, or (f) any other factor that would eliminate an individual’s ability to exercise their own free will to choose whether or not to engage in sexual activity.
 - ii. Before engaging in any type of sexual activity, it is the initiator’s responsibility to obtain their partner’s consent, either verbally or non- verbally. Silence cannot be assumed to express consent and saying “NO” is not the only way a sexual partner may communicate lack of consent. A partner may use non-verbal cues to indicate their lack of consent for any sexual activity. Some examples of non-verbal communication that demonstrate lack of consent include:
 1. Resistance: pushing hands away, pulling away from partner
 2. Body going limp or freezing up
 3. Crying
 4. Wincing
 - iii. Other points regarding consent:
 1. A person is not required to actively resist their aggressor.
 2. A person’s intentional use of alcohol/drugs neither negates nor diminishes the initiator’s responsibility to acquire consent before engaging in sexual activity.
 3. Consent has an expiration date. Consent on Thursday does not mean consent on Friday.
 4. A prior existing sexual relationship between consenting adults does not imply future consent to engage in sexual activities. This is true even in marriage or other long-term sexual relationships.
 5. A person CANNOT consent to sexual activity when they are incapacitated. Engaging in sexual activity with someone you know or reasonably should know is incapacitated is a violation of this policy. The question of what the Respondent should have known is objectively based on what a reasonable person would have known about the condition of the Complainant.
- d. **Revocation of Consent** – One partner can revoke their consent at any time. Revocation must be clearly communicated verbally and/or non- verbally. Once a partner has

- revoked consent, the sexual activity must stop. If sexual activity continues after the other partner has revoked their consent, a sexual assault has occurred.
- e. Education Program or Activity – Includes locations, events, or circumstances over which the University exercised substantial control over both the Respondent and the context in which the Title IX Sexual Misconduct allegedly occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the University.
 - f. Employee – Any person who receives a W-2 or 1042-S from the University, including full- and part-time faculty, staff, and students. An employee is working in the course and scope of their employment if the Employee is performing duties in the furtherance of the University’s interests.
 - g. Formal Complaint – Document filed by a Complainant or signed by the University’s Title IX Coordinator alleging Sexual Misconduct against a Respondent and requesting that the University investigate the allegation of Sexual Misconduct.
 - h. Grievance Process – The process of addressing Formal Complaints of Sexual Misconduct before the imposition of any disciplinary or other actions that are not Supportive Measures against a Respondent.
 - i. Incapacitation – A state of being that prevents an individual from having capacity to give consent. Incapacitation includes, but is not limited to:
 - i. Age: A minor cannot consent to engage in sexual activity. In Texas, the legal age of consent is 17.
 - ii. Intellectual or other Disability: A person with a mental disorder or other cognitive issue which prohibits them from making an informed decision lacks capacity to consent to engage in sexual activity.
 - iii. Physical Incapacitation: A person who is asleep, unconscious, and/or intoxicated to the point of no longer understanding or controlling their actions cannot consent to engage in sexual activity.
 - j. Informal Resolution – An alternative to the Grievance Process that may be offered and facilitated by the University following the filing of a Formal Complaint and upon the voluntary, written consent of the parties
 - k. Investigative Report – A report that summarizes the relevant evidence based upon the completion of an Investigation conducted under the Grievance Process.
 - l. Public Indecency – Engaging in private or sexual acts in a publicly viewable location, such that it is offensive to accepted standards of decency including, but not limited to:
 - i. Exposing one’s genitals or private areas;
 - ii. Public urination;
 - iii. Defecation; and/or
 - iv. Public sex acts.
 - m. Reporting Party – A person or entity (in the case of the University), other than the Complainant, who reports an alleged violation of this policy.
 - n. Respondent – An individual who has been reported to be the perpetrator of conduct that could constitute Sexual Misconduct.
 - o. Sex Discrimination – An act that deprives a member of the University Community of their rights of access to campuses and facilities and of participation in education, services, programs, operations, employment, benefits, or opportunities with the

university on the basis of the person's sex.

p. Non-Title IX Sexual Misconduct

i. Interpersonal Violence – For purposes of this policy, Interpersonal Violence is:

1. Domestic or Family Violence – Abuse or violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person with whom the Complainant is cohabiting (or has cohabited) with a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the state of Texas, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Texas.
2. Dating Violence – Abuse or violence, or a threat of abuse or violence, committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship will be determined based on the type and length of the relationship and the frequency of interaction between the persons involved in the relationship. A casual acquaintanceship or ordinary socializing between two individuals does not constitute a romantic or intimate relationship. This definition does not include acts covered under Domestic or Family Violence.

ii. Sexual Assault – Sexual contact or intercourse with a person without the person's consent, including sexual contact or intercourse against the person's will or in a circumstance in which the person is incapable of consenting to the contact or intercourse. Sexual Assault includes:

1. Nonconsensual Sexual Contact – Intentional sexual touching, however slight, with any object or part of one's body of another's private areas without consent. Sexual Contact includes:
 - a. Intentional contact with the breasts, buttock, groin, or genitals;
 - b. Touching another with any of these body parts;
 - c. Making another touch you or themselves with or on any of these body parts; or
 - d. Any other intentional bodily contact in a sexual manner

iii. Nonconsensual Sexual Intercourse – Sexual penetration or intercourse, however slight, with a penis, tongue, finger, or any object, and without consent. Penetration can be oral, anal, or vaginal. This can include intentional removal of a condom or other protective measure during intercourse without the consent of the partner.

iv. Sexual Exploitation – Taking nonconsensual or abusive sexual advantage of another for the benefit of oneself or a third party. Prohibited behavior includes, but is not limited to:

1. Purposeful recording, distribution, or dissemination of sexual or intimate images or recordings of another person without that person's full knowledge or consent;
2. Sexual voyeurism;

3. Inducing another to expose one's genitals or private areas;
 4. Prostituting another; or
 5. Knowingly exposing someone to or transmitting a sexually transmitted disease without the party's full knowledge and consent.
- v. Sexual Harassment – Means unwelcome, sex-based verbal or physical conduct that in the education 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.
 - vi. Stalking – A course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or would cause that person to suffer substantial emotional distress. A "course of conduct" means two or more acts in which a person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person or interferes with a person's property. "Substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling
- q. Sexual Misconduct – A broad term encompassing all forms of gender-based harassment or discrimination and unwelcome behavior of a sexual nature. The term includes sexual harassment, nonconsensual sexual contact, nonconsensual sexual intercourse, sexual assault, sexual exploitation, stalking, public indecency, interpersonal violence, sexual violence, and other misconduct based on sex.
 - r. Supportive Measures – Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.
 - s. Title IX Sexual Misconduct – Conduct that allegedly occurred against a person in the United States, in a University's Education Program or Activity, on the basis of sex, and that satisfies one or more of the following:
 - i. Sexual Harassment that is:
 1. Quid Pro Quo. A University employee conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
 2. Severe, Pervasive, and Objectively Offensive Conduct. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity. Without limiting the foregoing, the following types of conduct are deemed to meet this severe, pervasive, and objectively offensive standard:
 - a. "Sexual Assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v);
 - b. "Dating Violence" as defined in 34 U.S.C. 12291(a)(10)
 - c. "Domestic Violence" as defined in 34 U.S.C. 12291(a)(8) or
 - d. "Stalking" as defined in 34 U.S.C. 12291(a)(30).
 - t. University Community – All faculty, staff, and students of and visitors to any University premises or University-affiliated activity.