

University of St. Thomas Policies

SEXUAL MISCONDUCT AND SEXUAL ASSAULT

Policy Number: G.02.06

SCOPE

All Students, Faculty, and Staff

INTRODUCTION

Sexual misconduct of any kind or any form of violence is inconsistent with the University's values and incompatible with the safe, healthy environment that the University of St. Thomas community expects. All members of this community share responsibility for creating and maintaining an environment which promotes the safety and dignity of each individual. The most egregious form of sexual harassment and misconduct is sexual assault, which is an affront to justice that will not be tolerated at the University of St. Thomas. Federal laws view sexual misconduct, sexual assault, and related violence as forms of sexual harassment and discrimination prohibited under Title VII of the Civil Rights Act, Title IX of Education Amendments of 1972, and the Violence Against Women Reauthorization Act. Sexual misconduct, sexual assault, and related violence also violates state law as well as University policy. Employees, students, or guests found responsible for sexual misconduct, sexual assault, or related violence will ordinarily face outcomes up to and including dismissal from the University and may include criminal prosecution.

The University believes that no person should bear the effects of sexual misconduct, sexual assault, or related violence alone. When sexual misconduct, sexual assault or some form of related violence occurs, the University's paramount concern is for the safety, health and well-being of those impacted. To support and assist employees and students, the University provides a wide range of services and resources. Please see the section below on Resources for Medical, Counseling and Pastoral Care.

SEXUAL MISCONDUCT OFFENSES

Sexual misconduct offenses that are prohibited are:

- **Non-consensual sexual contact**, which is any sexual touching with any object, by any person upon another, without consent. Sexual touching is contact of a sexual nature, however slight.
- **Non-consensual sexual intercourse**, which is any sexual intercourse by any person upon another without consent. It includes oral, anal and vaginal penetration, to any degree, with any object. It is referred to as "sexual assault" in this policy.

Other forms of sexual misconduct include, but are not limited to:

- Sexual harassment
- Sexual exploitation
- Sexual intimidation and indecent exposure
- Sexual exhibitionism
- Sex-based cyber-harassment
- Prostitution or the solicitation of a prostitute
- Peeping or other voyeurism
- Going beyond the boundaries of consent, e.g., by allowing others to view consensual sex or the non-consensual video, photography or audiotaping of sexual activity.
- Distribution of pornographic material

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Sexual Harassment

Sexual harassment is gender-based verbal or physical conduct (male/female, female/male, or same-sex) that has the purpose or effect of either unreasonably interfering with an individual's work or academic performance or creates an intimidating, hostile, or offensive working or educational environment.

Three Types of Sexual Harassment

Hostile Environment includes any situation in which there is harassing conduct that is sufficiently severe, pervasive/persistent and patently offensive so that it alters the conditions of education or employment, from both a subjective (the alleged victim's) and an objective (reasonable person's) viewpoint. The determination of whether an environment is "hostile" must be based on all of the circumstances. These may include:

- The frequency of the conduct
- The nature and severity of the conduct
- Whether the conduct was physically threatening
- Whether the conduct was humiliating
- The effect of the conduct on the alleged victim's mental or emotional state
- Whether the conduct was directed at more than one person
- Whether the conduct arose in the context of other discriminatory conduct
- Whether the conduct unreasonably interfered with the alleged victim's educational or work performance

Quid Pro Quo sexual harassment exists when unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature occurs and then submission to or rejection of such conduct results in adverse educational or employment action.

Retaliation involves harassment or intimidation of a person that includes but is not limited to verbal or physical threats or actual violence against the person or his/her property, adverse or educational or employment consequences, ridicule, taunting, bullying, or ostracism.

Not all workplace or educational conduct that may be described as "harassment" affects the terms, conditions or privileges of employment or education. For example, a mere utterance of an ethnic, gender-based or racial epithet that creates offensive feelings in an employee or student would not normally affect the terms and conditions of their employment or education.

Contact the Human Resources Department regarding allegations of sexual harassment involving an employee, Student Affairs regarding allegations of sexual harassment involving a student, or the Title IX Coordinator.

Sexual Exploitation

Sexual exploitation is when someone takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit or to benefit anyone other than the one being exploited. Examples include non-consensual electronically recording, photographing or transmitting intimate or sexual utterances, sounds or images without the knowledge and consent of all parties involved and voyeurism (spying on others who are in intimate or sexual situations).

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Sexual Intimidation

Sexual intimidation involves threatening another with a non-consensual sex act such as engaging in indecent exposure. Violence against another person can take many forms. Violence, in the context of this policy, includes domestic violence, dating violence and stalking.

Domestic Violence

Domestic violence is a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner.

Dating Violence

Dating violence is a violent act committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

Stalking

Stalking is a pattern of repeated and unwanted attention, harassment, contact or any other course of conduct directed at a specific person that would cause a reasonable person to feel fear.

CONSENT

Consent means informed, freely given agreement, communicated by clearly understandable words or actions, to participate in each form of sexual activity. Consent cannot be inferred from silence, passivity, or lack of active resistance. A current or previous dating or sexual relationship is not sufficient to constitute consent, and consent to one form of sexual activity does not imply consent to other forms of sexual activity. By definition, there is no consent when there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological. A person who is the object of sexual aggression is not required to physically or otherwise resist the aggressor; the lack of informed, freely given consent to sexual contact constitutes sexual misconduct.

Intoxication or being under the influence of illegal drugs is not an excuse for failure to obtain consent.

An incapacitated person is incapable of giving consent. A person is incapacitated if that person is in a physical or mental state such that he or she lacks the ability to make a knowing and deliberate choice to engage in the sexual interaction. For the purposes of this policy, a person who is asleep or unconscious is incapacitated, without exception. A person may also become incapacitated due to other factors, which may include the use of alcohol and/or drugs to such a degree that the person no longer has the ability to make a knowing or deliberate choice to engage in the sexual interaction.

Persons who are considered sober and reasonable would be capable of giving consent for sexual interaction. When there is a question of whether consent was obtained, this is the model to apply in considering whether the respondent should have known that the complainant had the capacity to give consent.

Under this policy “No” always means “No” and “Yes” may not always mean “Yes.”

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PRIVACY AND CONFIDENTIALITY

Confidential Resources

Employees and students may access confidential, professional mental health counseling assistance at the University's office of Counseling and Disability Services. Assistance through Counseling and Disability Services will remain confidential except within the following limiting circumstances:

- Risk of probable imminent physical or emotional harm to self or physical harm to another;
- Having cause to believe that a child, elderly individual or an individual with a disability has been or may be abused, neglected or exploited physically, emotionally or sexually;
- If there is a report by a patient/client or former patient/client of sexual exploitation by a mental health service provider;
- If a court-ordered subpoena demands release of information.

Confidential support is also offered by off-campus community health providers and/or off-campus rape crisis resources.

Within Campus Ministry, priests, deacons, and religious sisters and brothers will also honor an employee's or student's request for confidentiality. These individuals will honor confidentiality unless there is an imminent danger to the employee, student or to others. However, an employee's or student's disclosure during the sacrament of confession will not be revealed by the priest for any reason, which is a sacred obligation protected by law.

Parameters of Confidentiality and Mandated Title IX Investigations

In all instances and to the extent possible, the University will protect the privacy of all parties to a report of sexual misconduct or sexual assault. That said, under federal law, University officials (with the exception of those listed under Confidential Resources, above) who receive a report of sexual assault, whether from the employee or student involved or a third party, must share that information with the appropriate University authorities for investigation and follow-up. The University is obligated under the law to investigate the complaint, to take action to eliminate sexual misconduct, sexual harassment, and sexual assault, prevent its recurrence and address its effects. An administrative investigation under Title IX must be initiated if the University has enough information to reasonably determine key facts, e.g., time, date, location and names of parties involved in an alleged incident. This administrative investigation will be conducted by the Title IX Coordinator or his/her designee, and will include a review of obtained statements, interviews with both parties, interviews with witnesses as appropriate, and review of relevant documentary evidence. The University is obligated to conduct this investigation regardless of the complainant's requests.

REPORTING SEXUAL MISCONDUCT AND SEXUAL ASSAULT

To report an incident of sexual misconduct or sexual assault, please call the University of St. Thomas Security Department at (713) 525-3888 or call 911. The University Security Department is available 24 hours a day, 7 days a week. During business hours, you may also call or email the Title IX Coordinator or his/her designee at (713) 525-3813 or titleixcoord@stthom.edu.

Additional University Steps in Responding to a Complaint of Sexual Misconduct or Sexual Assault

1) Assignment of a Case Coordinator

Whenever the University receives a report of sexual misconduct or sexual assault, the complainant will be referred to a designated individual who will serve as a resource person to the complainant to identify, explain and navigate the complainant's reporting options and the available support

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services. This can include referrals to counseling, educational support, pastoral care, and medical treatment, and information about University and legal processes. The designated individual can also provide assistance in rearranging class schedules, extracurricular activities and housing and on-campus dining arrangements; to the extent that a student's requests are reasonable and can be accommodated, every effort will be made to do so. Where appropriate, the goal of any adjustment will be to minimize the burden on the complainant's educational program. Similarly, a respondent will also be assigned a designated individual, to provide him or her with support, information and assistance.

2) No Contact Orders Issued to the Complainant and the Respondent

Upon receipt of a report of alleged sexual harassment, misconduct, or sexual assault in which the respondent is a current University of St. Thomas employee or student, the Title IX Coordinator shall issue "no contact" orders to the complainant and respondent.

Intimidation or Threats to Inhibit Reporting

The University strongly encourages employees and students to report any incident of sexual harassment, misconduct or sexual assault. The University of St. Thomas takes such reports very seriously. Any actual or threatened retaliation or any act of intimidation to prevent or otherwise obstruct the reporting of sexual harassment, misconduct or sexual assault or the participation in proceedings relating to sexual harassment, misconduct or sexual assault by a respondent or third party is itself prohibited and will result in immediate action by the Title IX Coordinator or his/her designee. A complainant or witness who is threatened in any way should immediately report these concerns to the appropriate Vice President, Dean, or the Title IX Coordinator.

Timely Warning to Campus

In an effort to provide timely notice to the University of St. Thomas community, and in the event of a serious crime against people that occurs on campus, where it is determined that the incident may pose a serious, ongoing threat to members of the University of St. Thomas community, a mass email may be sent to all students and employees on campus and is posted on the University of St. Thomas website. Crime alerts may also be posted by the University in the residence halls and various other buildings on campus. Updates to the University of St. Thomas community about any particular case resulting in a crime alert may be distributed via email, text through the University's emergency management system, and/or may be posted on the University of St. Thomas website.

Reporting Options

An employee or student has the option to pursue a criminal complaint with the appropriate law enforcement agency, to pursue a complaint through the University Title IX Coordinator, or to pursue both processes consecutively or concurrently. Regardless of the option chosen the University will initiate an administrative investigation under Title IX.

Option 1: Criminal Complaint

The University encourages employees and students to report all incidents of sexual harassment, misconduct or sexual assault to the police. If the incident occurred on University of St. Thomas property, University of St. Thomas Security Department is the appropriate agency with which to file a report. Off-campus incidents will likely fall in the jurisdiction of the Houston Police Department, Constable's Office, or Harris County Sheriff's Department. The University's Security Department can assist in contacting the appropriate law enforcement agency.

Incidents of sexual harassment, misconduct or assault involving employees or students that are reported to the University of St. Thomas Security Department will also be referred to the Title IX Coordinator,

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the Provost and Vice President, Academic Affairs, or the Vice President, Student Affairs for follow-up and administrative investigation.

The administrative investigation conducted by the Title IX Coordinator or his/her designee is distinct from the criminal investigation and flows from the University's obligation under Title IX or the Violence Against Women Reauthorization Act to ensure that it is providing a safe environment for all employees and students. If a complainant wishes to pursue a criminal complaint exclusively, the complainant may choose to temporarily defer the administrative investigation by making a formal written request to the Title IX Coordinator, Provost and Vice President, Academic Affairs, or Vice President, Student Affairs, which may delay the administrative investigation and the University's ability to respond. The University may continue its administrative investigation where it has reason to believe that the alleged harasser may be an imminent threat to the safety of the complainant and/or other employees or students. At any time, the complainant may choose to rescind the deferral by making a formal written request to the Title IX Coordinator, electing to resume the administrative investigation. The University will maintain documentation of the date of deferral. Information obtained through the criminal investigation may be used for consideration in the University's investigation.

If an employee or student pursues a criminal complaint, a member of the Security Department will request that the Harris County District Attorney's Office keep the University informed and immediately advise of its decision whether to prosecute the complaint. The University will maintain documentation of the date of the request to the District Attorney's Office. In cases where the District Attorney's Office declines prosecution, a member of the Security Department will provide written notice to the complainant and Title IX Coordinator of the decision.

Option 2: University Conduct Process

Sexual harassment or misconduct involving employees and students, including sexual assaults, whether or not they have been reported to a police agency, should also be reported to the University for investigation and resolution through University processes.

If an employee or student reports an incident of sexual harassment, misconduct or sexual assault to the University, the Title IX Coordinator, Provost and Vice President, Academic Affairs, or Vice President, Student Affairs or his/her designee will conduct an administrative investigation. An administrative investigation will include a review of obtained statements, interviews with both parties, interviews with witnesses as appropriate, and a review of relevant documentary evidence. Once the investigation is complete, the Title IX Coordinator or his/her designee, in conjunction with a review by the Provost and Vice President, Academic Affairs, and/or the Vice President, Student Affairs, will make a determination based on the merits of the investigation.

Option 3: Simultaneous Processes

An employee or student has the option to pursue a criminal complaint with the appropriate law enforcement agency, to pursue an investigation by the University, or to pursue both processes consecutively or concurrently. In all cases, the Title IX Coordinator must be notified of the incident and/or complaint.

Written Notice of Reporting Options

Employees and students who report alleged sexual harassment, misconduct or sexual assault will be provided with written notice of the above referenced reporting options. The University, through the Title IX Coordinator or his/her designee, must also obtain written acknowledgment from the employee or student of her/his decision regarding which options, if any, the employee or student wishes to pursue.

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Other Potential Policy Violations

At times, employees or students are hesitant to report the occurrence of a sexual assault to University officials because they are concerned that they themselves, or witnesses to the misconduct, may be found responsible with other policy violations, e.g., parietyals or alcohol violations. These behaviors are not condoned by the University, but the importance of dealing with alleged sexual harassment, misconduct or sexual assault outweighs the University's interest in addressing lesser violations. Accordingly, in these cases, the University may not subject an employee or student to further review for other issues that may surface as part of the investigation of a complaint of sexual harassment, misconduct or sexual assault.

Sanctions

The University reserves the right to take whatever measures it deems necessary in response to an allegation of sexual harassment, misconduct or assault in order to protect employees' and students' rights and personal safety. Such measures include, but are not limited to, modification of work arrangements, living arrangements, interim suspension from campus pending a hearing, and report to local law enforcement. Not all forms of sexual misconduct will be deemed to be equally serious offenses, although all allegations are taken seriously, and the University reserves the right to impose differing sanctions ranging from oral warnings to, in the case of employees, termination, or in the case of students, expulsion, depending on the severity of the offense. The University will consider the concerns and rights of both the complainant and the person accused of sexual harassment, misconduct, or assault.

Resources for Medical, Counseling and Pastoral Care

It is especially important for employees and students who have been sexually assaulted to seek immediate and appropriate medical treatment. Individuals who have been sexually assaulted can secure immediate help by going to a local hospital emergency room or contacting an off-campus rape crisis hotline. Texas law allows an individual to go directly to a medical facility for a sexual assault exam without police involvement. In a crisis situation, Counseling and Disability Services' professional mental health counselors can be reached after hours by contacting the Security Department at (713) 525-3888 to request that a counselor contact him or her directly.

While the University's staff is unable to perform procedures related to the collection of evidence for the purposes of pursuing criminal prosecution, they can provide assistance and support when a student requests or requires transportation to the hospital. Major hospitals in close proximity to the University have trained sexual assault teams available 24 hours a day, seven days a week. Emergency Room staff may ask if the employee or student wishes to speak to the police or other law enforcement personnel; this decision is up to the employee or student.

The University is staffed by trained professionals who can provide specialized support and assistance to employees and students who have been assaulted. These services are available at any time, whether it is days, months, or years after the incident. Confidentiality is offered by two University departments. Through the office of Counseling and Disability Services, current students may seek counseling and/or information and referral to off-campus resources; current employees may seek a counseling consultation and/or information and referral to off-campus resources. Counseling and Disability Services can be reached at (713) 525-2169 or (713) 525-6953. After regular business hours, call (713) 525-3888. Within Campus Ministry, priests, deacons, and religious sisters and brothers are able to provide pastoral counseling support. These individuals will honor an employee's or student's request for confidentiality unless there is an imminent danger to the employee, student or to others. However, an employee's or student's disclosure during the sacrament of confession will not be revealed by the priest for any reason, which is a sacred obligation protected by law. Campus Ministry can be reached at (713) 525-3589 or at campusministry@stthom.edu.

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In addition to utilizing the confidential services of Campus Ministry and Counseling and Disability Services, employees or students may directly contact the Title IX Coordinator, the Provost and Vice President, Academic Affairs, or the Vice President, Student Affairs.

Bystander Intervention

One of the most effective methods of preventing sexual assault is through bystander intervention. Some people might be concerned that they are being encouraged to place themselves in jeopardy to stop crimes in progress. This is not the case. There may be observable signs that occur prior to sexual misconduct that would lead a witness to suspect an employee or student could be in an unsafe situation. Bystander intervention encourages people to watch for those behaviors and situations that appear to be inappropriate, coercive and/or harassing.

Ways to Intervene

There are steps one can take if he/she observes or suspects an employee or student is in an unsafe situation. Having the courage to intervene may prevent an assault from occurring. Possible steps for a bystander to take are listed below to include:

- Making up an excuse to get the person out of a potentially dangerous situation;
- Letting an individual know that his/her actions may lead to serious consequences;
- Remaining with a person who may be in trouble, despite another individual's efforts to isolate or entice that person;
- Employing a group dynamic to alert an individual that his/her behavior is inappropriate;
- Taking steps to curb someone's use of alcohol before problems occur;
- Calling the authorities when the situation warrants.

Title IX Coordinator

The designated Title IX Coordinator for the University is the Director, Human Resources, located in the Human Resources Office at 3818 Graustark, Houston, TX 77006. The contact telephone number is (713) 525-3813.

APPROVED: Dr. Robert Ivany

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