Sexual Misconduct Reporting and Resolution Procedures

INTRODUCTION

The University believes in a zero tolerance procedure for sexual misconduct. Members of the University community, guests and visitors have the right to be free from sexual violence. When an allegation of sexual misconduct is brought to the administration, and a respondent is found to be in violation, serious sanctions will be used to ensure that such actions are never repeated. All members of the community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The University Sexual Misconduct Reporting and Resolution Procedure has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This procedure has dual purposes. It serves as a measure for us to determine, after the fact, if behaviors trespass on the rights of others. It also should serve as a guide for you on the expectations we have, preventatively, for sexual communication, sexual responsibility and sexual respect.

OVERVIEW OF EXPECTATIONS WITH RESPECT TO PHYSICAL SEXUAL MISCONDUCT

While the information below is quite detailed and specific, the expectations of this community can be summarized in this simple sentence:

In order for individuals to engage in sexual activity of any type with each other, there must be clear consent.

Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is less clear than talking about what you want and what you don’t. Consent to some form of sexual activity cannot be automatically taken as consent to any other sexual activity. Silence, without actions demonstrating permission, cannot be assumed to show consent. There is a difference between seduction and coercion. Coercing someone into sexual activity violates this procedure just as much as physically forcing someone into sex. Coercion happens when someone unreasonably pressures someone else for sex. When alcohol or other drugs are being used, someone will be considered unable to give valid consent if they cannot appreciate the “who, what, when, where, why, or how” of a sexual interaction. Individuals who consent to sex must be able to understand what they are doing. “No” always means “No,” and “Yes” may not always mean “Yes.”

In campus proceedings, legal ideas like guilt and innocence are not applicable; rest assured that University will never assume a student is in violation of university procedure. In fact, campus proceedings are conducted to take into account the totality of all evidence available, from all relevant sources.

The university reserves the right to take whatever measures it deems necessary in response to an allegation of sexual misconduct in order to protect students’ rights and personal safety. Such measures include, but are not limited to, modification of living arrangements, modification of living arrangements, interim suspension from campus pending a resolution, and reporting to the local police. Not all forms of sexual misconduct will be deemed to be equally serious offenses, and the university reserves the right to impose differing sanctions, ranging from warning to 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 misconduct.
SEXUAL MISCONDUCT OFFENSES INCLUDE, BUT ARE NOT LIMITED TO:

1. Sexual Harassment
2. Non-Consensual Sexual Intercourse (or attempts to commit same)
3. Non-Consensual Sexual Contact (or attempts to commit same)
4. Sexual Exploitation

Definitions and Examples

CONSENT:
Consent is clear sexual permission. It is informed, knowing and voluntary. In order to give effective consent, one must be of legal age. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding the conditions of sexual activity.

Consent to one form of sexual activity cannot imply consent to other forms of sexual activity.

Previous relationships or consent cannot imply consent to future sexual acts.

Consent cannot be procured by use of physical force, compelling threats, intimidating behavior, or coercion. Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

If you have sexual activity with someone you know to be, or should know to be, mentally or physically incapacitated, you are in violation of this procedure. Incapacitation is a state where one cannot make a rational, reasonable decision because they lack the ability to understand the “who, what, when, where, why or how” of their sexual interaction.

SEXUAL ACTIVITY:
Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.
Intercourse however slight, meaning vaginal penetration by a penis, object, tongue or finger, anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact or genital to mouth contact).

SEXUAL HARASSMENT:
Verbal or physical conduct that unreasonably interferes with or deprives someone of educational access, benefits or opportunities.

Three Types of Sexual Harassment:

A. Hostile Environment includes any situation in which there is harassing conduct that is sufficiently severe, pervasive/persistent and patently/objectively offensive that it alters the conditions of
education or employment, from both a subjective (the alleged victim’s) and an objective (reasonable person’s) viewpoint.

B. **Quid pro quo sexual harassment** exists when there are:

1) Unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature; and

2) Submission to or rejection of such conduct results in adverse educational or employment action.

C. Retaliatory harassment is any adverse employment or educational action taken against a person because of the person’s participation in a complaint or investigation of discrimination or sexual misconduct.

**NON-CONSENSUAL SEXUAL INTERCOURSE:**

Non-Consensual Sexual Intercourse is
- Any sexual intercourse (anal, oral, or vaginal),
- however slight,
- with any object,
- by a man or woman upon a man or a woman,
- without consent (see definition).

**NON-CONSENSUAL SEXUAL CONTACT:**

Non-Consensual Sexual Contact is
- Any intentional sexual touching,
- however slight,
- with any object,
- by a man or a woman upon a man or a woman,
- without consent (see definition).

**SEXUAL EXPLOITATION**

Occurs when a student takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:
- prostituting another student;
- non-consensual video or audio-taping of sexual activity;
- going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);
- engaging in voyeurism (Peeping Tommery); and or
- knowingly transmitting an STI or HIV to another student.
SANCTION STATEMENT

Any student found responsible for Non-Consensual Sexual Contact (where no intercourse has occurred) will likely receive a sanction ranging from warning to expulsion, depending on the severity of the incident, and taking into account any previous campus conduct code violations.*

Any student found responsible for Non-Consensual Sexual Intercourse will likely face a recommended sanction of suspension or expulsion.*

Any student found responsible for sexual exploitation or sexual harassment will likely receive a recommended sanction ranging from warning to expulsion, depending on the severity of the incident, and taking into account any previous campus conduct code violations.*

*The University reserves the right to broaden or lessen any range of recommended sanctions in the complaint of serious mitigating circumstances or egregiously offensive behavior. Neither a hearing committee nor any appeals body or officer will deviate from the range of recommended sanctions unless compelling justification exists to do so.

CONFIDENTIALITY AND REPORTING PROCEDURE

Different people on campus have different reporting responsibilities, and different abilities to maintain your confidentiality, depending on their roles at the university.

When consulting campus resources, victims should be aware of confidentiality and mandatory reporting, in order to make informed choices. On campus, some resources may maintain your complete confidentiality, offering you options and advice without any obligation to tell anyone, unless you want them to. Other resources are expressly there for you to report crimes and procedure violations, and they will take action when you report your victimization to them. Most resources on campus fall in the middle of these two extremes. Neither the university nor the law requires them to divulge private information that you share with them, except in extremely rare circumstances, described below. You may seek assistance from them without starting a chain of events that takes things out of your control, or violates your privacy.

To Report Confidentially

If you desire that details of the incident be kept confidential, you should speak with on-campus mental health counselors, campus health service providers or off-campus rape crisis resources, who will maintain confidentiality. Campus mental health counselors are available to help you, and can be seen on an emergency basis. In addition, you may speak on and off-campus with members of the clergy and chaplains, who will also keep reports made to them confidential.

Quasi-Confidential Reporting

You can seek advice from certain resources who are not required to tell anyone else your private, personally identifiable information unless there is cause for fear for your safety, or the safety of others. These resources include those without supervisory responsibility or remedial authority to address sexual misconduct, such as RAs, faculty members, advisors to student organizations, career services staff, admissions officers, student activities personnel, and many others. If you are unsure of someone’s
duties and ability to maintain your privacy, ask them before you talk to them. They will be able to tell
you, and help you make decisions about who can help you best. Some of these resources, such as RAs,
are instructed to share incident reports with their supervisors, but they do not share any personally
identifiable information about your report unless you give permission, except in the rare event that the
incident reveals a need to protect you or other members of the community. If your personally
identifiable information is shared, it will be shared with as few people as possible, and all efforts will be
made to protect your confidentiality to the greatest extent.

Non-Confidential Reporting Options

You are encouraged to speak to officials of the institution to make formal reports of incidents (deans,
vice presidents, or other administrators with supervisory responsibilities, campus security, and human
resources). You have the right and can expect to have incidents of sexual misconduct to be taken
seriously by the university when formally reported, and to have those incidents investigated and
properly resolved through administrative procedures. Formal reporting does not mean that your report
won’t be confidential, but it does mean that people who need to know will be told, and information will
be shared as necessary with investigators, witnesses, and the accused.
The circle of people will be kept as tight as possible, to preserve your rights and privacy.

RISK REDUCTION TIPS

If you find yourself in an uncomfortable sexual situation, these suggestions may help you to reduce your
risk:

1.  If you have limits, make them known before things go too far.

2.  Tell a sexual aggressor “NO” clearly and loudly, like you mean it.

3.  Try to extricate yourself from the physical presence of a sexual aggressor.

4.  Grab someone nearby and ask for help.

5.  Be responsible for your alcohol intake/drug use and realize that alcohol/drugs lower your
sexual inhibitions and may make you vulnerable to someone who views a drunk or high person
as a sexual opportunity.

6.  Watch out for your friends and ask that they watch out for you. A real friend will get in your
face if you are about to make a mistake. Respect them if they do.

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to
your potential partner.

These suggestions may help you to reduce your risk for being accused of sexual misconduct:

1.  DON’T MAKE ASSUMPTIONS. About consent. About someone’s sexual availability. About
whether they are attracted to you. About how far you can go. About whether they are
physically and mentally able to consent to you.
2. Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.

3. Mixed messages from your partner should be a clear indication that you should step back, defuse the sexual tension, and communicate better. Perhaps you are misreading them. Perhaps they haven’t figured out how far they want to go with you yet. You need to respect the timeline with which they are comfortable.

4. Don’t take advantage of someone’s drunkenness or drugged state, even if they did it to themselves.

5. Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size. Don’t abuse that power.

6. Understand that consent to some forms of sexual behavior does not necessarily imply consent to other forms of sexual behavior.

7. Silence and passivity cannot be interpreted by you as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

This procedure incorporates language suggested by Tom Trager, Associate Counsel to the University of Colorado, Boulder, and Brett Sokolow, from NCHERM. The Consensual Relationships procedure is adapted from Duke University.