

Breakdown of SHSM Policy Violation Definitions

Based on UT System's Model Policy for Sexual Misconduct (dated 8/9/22)



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Institutional Sexual Misconduct Policy (Example)

Prohibits sex discrimination, sexual harassment, retaliation, and other prohibited conduct under the policy, including:

- Sex Discrimination
- Sexual Harassment
 - Sexual Assault
 - Dating Violence
 - Domestic Violence
 - Stalking
- Retaliation
- Sexual Exploitation
- Other Inappropriate Sexual Conduct
- False Information & False Complaints
- Interference with the Grievance Process
- Failure to Report (for Responsible Employees)

Policy Differences Note: For the purposes of this training, the UTS Model Policy for Sexual Misconduct will be the primary policy reference. UT Institutional policies may have some differences.



Source:
UT System Model Policy for Sexual Misconduct

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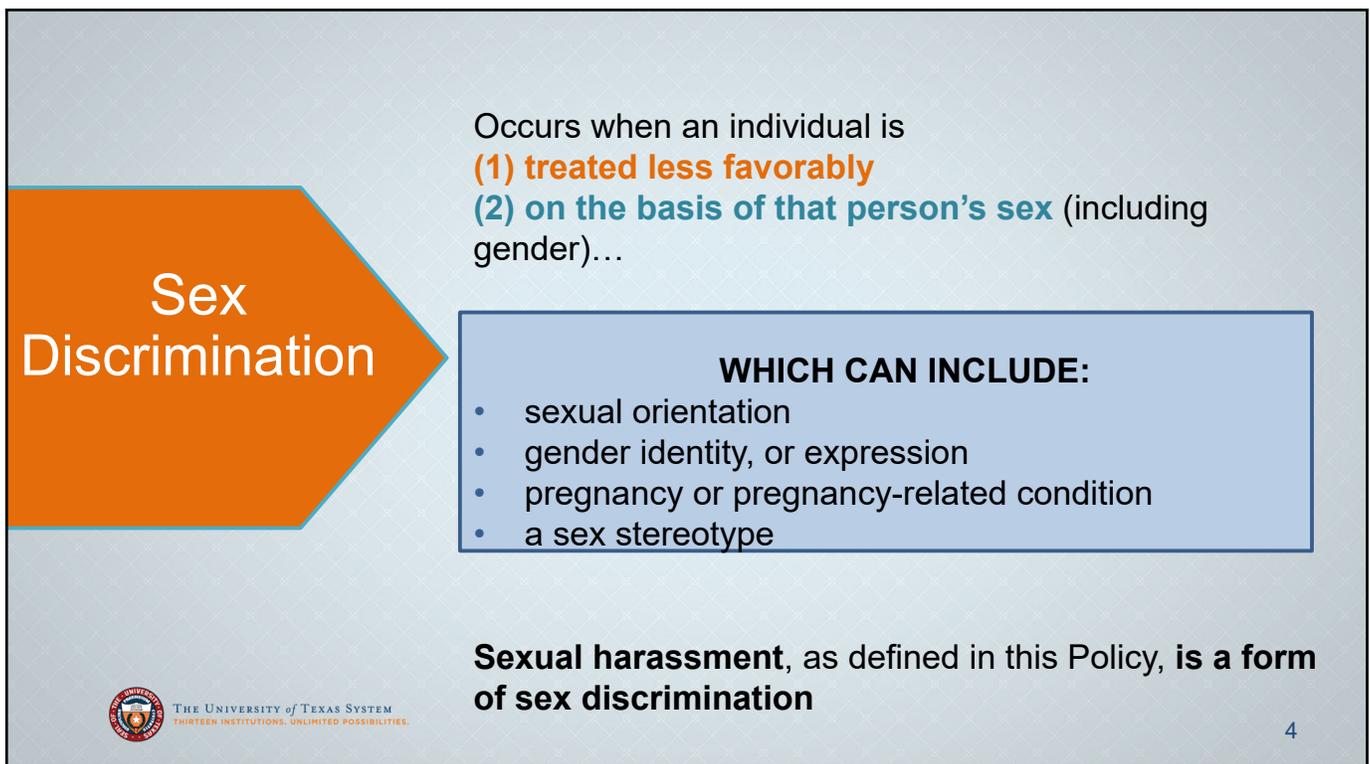
Sex Discrimination

Occurs when an individual is treated less favorably on the basis of that person's sex (including gender), which may also include on the basis of sexual orientation, gender identity, or expression, pregnancy or pregnancy-related condition, or a sex stereotype. Sexual harassment, as defined in this Policy, is a form of sex discrimination

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Sex Discrimination

Occurs when an individual is
(1) treated less favorably
(2) on the basis of that person's sex (including gender)...

WHICH CAN INCLUDE:

- sexual orientation
- gender identity, or expression
- pregnancy or pregnancy-related condition
- a sex stereotype

Sexual harassment, as defined in this Policy, is a form of sex discrimination

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Sexual Harassment

Conduct on the basis of sex that satisfies one or more of the following:

- a) Quid pro quo: An employee of the institution conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
- b) 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; or
- c) "Sexual assault," "dating violence," "domestic violence," or "stalking" as defined in the Policy.

Subsections (a) and (c) in this definition are not evaluated for severity, pervasiveness, offensiveness, or denial of equal educational access, because such conduct is sufficiently serious to deprive a person of equal access. Therefore, any instance of quid pro quo sexual harassment and any instance of sexual assault, dating violence, domestic violence, and stalking are considered sexual harassment under this Policy.



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Sexual Harassment

(1) **Conduct on the basis of sex** that satisfies one or more of the following:

(a) Quid pro quo:
 (2) **an employee of the institution** (3) **conditioning the provision of an aid, benefit, or service of the University** (4) **on an individual's participation in unwelcome sexual conduct;**

(b) "Hostile Environment":
 (2) **Unwelcome conduct** determined by a **reasonable person** to be so (3) **severe,** (4) **pervasive, and** (5) **objectively offensive** that it **effectively denies a person equal access to the University's education program or activity**

(c) Sex Offenses:
 "Sexual assault,"
 "dating violence,"
 "domestic violence,"
 or "stalking" as defined in the Policy.

Subsections (a) and (c) in this definition are not evaluated for severity, pervasiveness, offensiveness, or denial of equal educational access, because such conduct is sufficiently serious to deprive a person of equal access. Therefore, **any instance of quid pro quo sexual harassment and any instance of sexual assault, dating violence, domestic violence, and stalking are considered sexual harassment under this Policy.**



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SH (b) Element Examples

- **"Severe":** Physically threatening or humiliating; effects of the alleged conduct to a reasonable person (using a "reasonable person" standard)
- **"Pervasive":** Frequency, duration of the alleged conduct
- **"Objectively offensive":** To a reasonable person (using a "reasonable person" standard)
- **"Reasonable person" standard:** An objective test to denote a hypothetical person who exercises average care, skill, and judgment in conduct under similar circumstances as a comparative standard.

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Sexual Assault

An offense that meets the definition of rape, fondling, incest, or statutory rape:

- a) Rape: The causing of penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- b) Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- c) Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- d) Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.



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Sexual Assault

An offense that meets the definition of **rape, fondling, incest, or statutory rape**:

Rape:

(1) The causing of penetration, no matter how slight, (2) of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, (3) without the consent of the victim.

Fondling:

(1) The touching of the private body parts of another person (2) for the purpose of sexual gratification, (3) without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

Incest:

(1) Sexual intercourse between (2) persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape:

(1) Sexual intercourse with a (2) person who is under the statutory age of consent.



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Consent

A voluntary, mutually understandable agreement that clearly indicates a willingness to engage in each instance of sexual activity.

Consent to one act does not imply consent to another. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Consent can be withdrawn at any time. Any expression of an unwillingness to engage in any instance of sexual activity establishes a presumptive lack of consent.

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 his or her own free will to choose whether or not to have sexual activity.

A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Even in the context of a relationship, there must be a voluntary, mutually understandable agreement that clearly indicates a willingness to engage in each instance of sexual activity.



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Establishing Consent...

Consent is not effective if [the sexual activity] results from:

- Physical force;
- Threat of physical force;
- Intimidation;
- Coercion;
- Incapacitation; or
- Any other factor that would eliminate an individual's ability to exercise his or her own free will to choose whether or not to have sexual activity



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Intimidation Definition

Unlawfully placing another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.



Source:
UT System Model Policy for Sexual Misconduct

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Coercion Definition

The use of unreasonable pressure to compel another individual to initiate or continue sexual activity against an individual's will. Coercion can include a wide range of behaviors, including psychological or emotional pressure, physical or emotional threats, intimidation, manipulation, or blackmail that causes the person to engage in unwelcome sexual activity. A person's words or conduct are sufficient to constitute coercion if they eliminate a reasonable person's freedom of will and ability to choose whether or not to engage in sexual activity.



Source:
UT System Model Policy for Sexual Misconduct (2022)

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Incapacitation Definition

Incapacitation is the inability, temporarily or permanently, to give consent because the individual is mentally and/or physically helpless, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. An individual may be incapacitated if they are unaware at the time of the incident of where they are, how they got there, or why or how they became engaged in a sexual interaction.

When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. When drug use is involved, incapacitation is a state beyond being under the influence or impaired by use of the drug. Alcohol and other drugs impact each individual differently, and determining whether an individual is incapacitated requires an individualized determination.



Source:

UT System Model Policy for Sexual Misconduct

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Incapacitation Definition (Cont.)

After establishing that a person is in fact incapacitated,
the University asks:

1. Did the person initiating sexual activity know that the other party was incapacitated?
And if not...
2. Should a sober, reasonable person in the same situation have known that the other party was incapacitated?

If the answer to either of these questions is “YES,” consent was absent and the conduct is likely a violation of this Policy.



Source:

UT System Model Policy for Sexual Misconduct

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Dating Violence

Violence 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 the consideration of the following factors:

- a) The length of the relationship;
- b) The type of relationship; and
- c) 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. It does not include acts covered under the definition of domestic violence.



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Dating Violence

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Length of the relationship

Type of relationship

Frequency of interaction between the persons involved in the relationship

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It does not include acts covered under the definition of domestic violence.



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Domestic Violence

Includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the domestic or family violence laws of the state of Texas, including the use or attempted use of physical abuse or sexual abuse, 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, by a person who:

- a. is a current or former spouse or intimate partner of the victim, or a person similarly situated to a spouse of the victim;
- b. who shares a child in common with the victim;
- c. is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; or
- d. commits acts against an adult or youth victim who is protected from those acts under the domestic or family violence laws of the state of Texas



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Domestic Violence

Includes

(1) felony or misdemeanor crimes committed by a **(2) current or former spouse or intimate partner of the victim** under the domestic or family violence laws of the state of Texas, including

- The use or attempted use of physical or sexual abuse; 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, by a person who:
 - a. is a current or former spouse or intimate partner of the victim, or a person similarly situated to a spouse of the victim;
 - b. who shares a child in common with the victim;
 - c. is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; or
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Economic Abuse

In the context of **Dating Violence** and **Domestic Violence**, means behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, or manipulation to:

- Restrict a person's access to money, assets, credit, or financial information;
- Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage; or
- Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or failing or neglecting to act in the best interests of a person to whom one has a fiduciary duty.



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Technological Abuse

An act or pattern of behavior that occurs within **Sexual Assault, Domestic Violence, Dating Violence, or Stalking**, and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor, except as otherwise permitted by law, another person, that occurs using any form of technology, including but not limited to: internet enabled devices, online spaces and platforms, computers, mobile devices, cameras and imaging programs, apps, location tracking devices, communication technologies, or any other emerging technologies.



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Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

For the purposes of this definition:

- **Course of conduct** means two or more acts, including, but not limited to, acts in which the stalker 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.
- **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the victim.
- **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.



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Stalking

Engaging in a

(1) **course of conduct**

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Retaliation

Any adverse action (including, but is not limited to, intimidation, threats, coercion, harassment, or discrimination) taken against someone because the individual has made a report or filed a Formal Complaint; or who has supported or provided information in connection with a report or a Formal Complaint; participated or refused to participate in a Grievance Process under this Policy; or engaged in other legally protected activities.



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Retaliation

(1) **Any adverse action** including, but is not limited to:

- Intimidation
- Threats
- Coercion
- Harassment
- Discrimination

(2) **taken against someone because the individual has engaged in one or more of the following:**

- Made a report or filed a Formal Complaint
- Supported or provided information in connection with a report or a Formal Complaint
- Participated or refused to participate in a Grievance Process under this Policy
- Engaged in other legally protected activities.



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Retaliation Analysis

Possible questions and/or issues to consider further:

- a) Did the complaining party participate in **protected activity** that is covered under a retaliation provision?
- b) Did the complaining party experience a form of **adverse action**?
- c) If yes to (A and B), was the adverse action taken **BECAUSE OF** protected activity in which the complaining party was engaged in? (Causal connection?)
- d) Did the person of concern offer a non-retaliatory or non-discriminatory **reason** for the action taken?
- e) If yes to (D):
 - Was this reason **legitimate**; or
 - Was this reason possibly **pretext** for retaliation or discrimination?



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Sexual Exploitation

Conduct where an individual takes non-consensual or abusive sexual advantage of another for their own benefit, or to benefit anyone other than the one being exploited. Examples of sexual exploitation include, but are not limited to, engaging in sexual voyeurism; forwarding of pornographic or other sexually inappropriate material by email, text, or other channels to non-consenting students/groups; the intentional removal of a condom or other contraceptive barrier during sexual activity without the consent of a sexual partner; threatening to “out” someone based on sexual orientation, gender identity, or gender expression; threatening to harm oneself if the other party does not engage in the sexual activity; threatening to disclose someone’s highly personal images; threatening to disclose sensitive details about one’s sexual preferences, habits, and/or experiences; and threatening to expose someone’s prior sexual activity to another person; and any activity that goes beyond the boundaries of consent, such as recording of sexual activity, letting others watch consensual sex, or knowingly transmitting a sexually transmitted disease (STD) to another.



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Sexual Exploitation

(1) Conduct where an individual
(2) takes non-consensual or abusive sexual advantage of another
(3) for their own benefit, or to benefit anyone other than the one being exploited.

Examples of sexual exploitation include, but are not limited to:

- Engaging in sexual voyeurism;
- Forwarding of pornographic or other sexually inappropriate material by email, text, or other channels to non-consenting students/groups;
- The intentional removal of a condom or other contraceptive barrier during sexual activity without the consent of a sexual partner;
- Threatening to “out” someone based on sexual orientation, gender identity, or gender expression;
- Threatening to harm oneself if the other party does not engage in the sexual activity;
- Threatening to disclose someone’s highly personal images;
- Threatening to disclose sensitive details about one’s sexual preferences, habits, and/or experiences;
- Threatening to expose someone’s prior sexual activity to another person; or
- Any activity that goes **beyond the boundaries of consent**, such as recording of sexual activity, letting others watch consensual sex, or knowingly transmitting a sexually transmitted disease (STD) to another.



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Other Inappropriate Sexual Conduct

Conduct on the basis of sex that does not meet the definition of “sexual harassment” under this Policy but is prohibited inappropriate or unprofessional sexual conduct. Such conduct is: 1) If verbal conduct (including through electronic means), unwanted statements of a sexual nature intentionally stated to a person or group of people, that are objectively offensive to a reasonable person and also so severe or pervasive that they created a Hostile Environment, as defined in this Policy. The type of verbal conduct (if all other elements are met) may include, but is not limited to: a) Unwelcome sexual advances (including explicit or implicit proposition(s) of sexual contact or activity); b) Requests for sexual favors (including overt or subtle pressure); c) Gratuitous comments about an individual’s sexual activities or speculation about an individual’s sexual experiences; d) Gratuitous comments, jokes, questions, anecdotes or remarks of a sexual nature about clothing or bodies; e) Persistent, unwanted sexual or romantic attention; or f) Deliberate, repeated humiliation or intimidation. 2) If physical conduct, conduct that is objectively offensive to a reasonable person and also so severe or pervasive that it created a Hostile Environment, as defined in this Policy. The type of physical conduct (if all other elements are met) may include, but is not limited to: a) Unwelcome intentional touching of a sexual nature; b) Deliberate physical interference with or restriction of movement; c) Exposure to sexually suggestive visual displays such as photographs, graffiti, posters, calendars or other materials; or d) Consensual sexual conduct that is unprofessional and inappropriate, and created a Hostile Environment. Whether or not the unprofessional or inappropriate conduct is sexual in nature will be determined by examining the totality of the circumstances, whether a reasonable person subjected to the conduct would construe the conduct as sexual in nature, and whether the individual subject to the conduct construed it as sexual in nature



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Other Inappropriate Sexual Conduct

(1) Conduct on the basis of sex that
(2) does not meet the definition of “sexual harassment” under this Policy but is
(3) prohibited inappropriate or unprofessional sexual conduct such as:

| Verbal Conduct: | Physical Conduct: |
|--|---|
| May include, but is not limited to: a) Unwelcome sexual advances (including explicit or implicit proposition(s) of sexual contact or activity); b) Requests for sexual favors (including overt or subtle pressure); c) Gratuitous comments about an individual’s sexual activities or speculation about an individual’s sexual experiences; d) Gratuitous comments, jokes, questions, anecdotes or remarks of a sexual nature about clothing or bodies; e) Persistent, unwanted sexual or romantic attention; or f) Deliberate, repeated humiliation or intimidation | May include, but is not limited to: a) Unwelcome intentional touching of a sexual nature; b) Deliberate physical interference with or restriction of movement; c) Exposure to sexually suggestive visual displays such as photographs, graffiti, posters, calendars or other materials; or d) Consensual sexual conduct that is unprofessional and inappropriate, and created a Hostile Environment |

Whether or not the unprofessional or inappropriate conduct is **sexual in nature** will be determined by examining **(a) the totality of the circumstances**, whether a **(b) reasonable person** subjected to the conduct would construe the conduct as **sexual in nature**, **and** whether the **(c) individual** subject to the conduct construed it as **sexual in nature**.



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False Information and False Complaints

Any person, who in bad faith, knowingly files a false complaint under this Policy or provides materially false information is subject to disciplinary action up to and including dismissal or separation from the University. A determination that a Respondent is not responsible for allegations of Sexual Misconduct does not imply a report, Formal Complaint, or information provided was false. Similarly, a determination that a Respondent is responsible for a policy violation does not imply that a Respondent's statements disclaiming responsibility were false.



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False Information and False Complaints

Any person, who

(1) in bad faith

(2) knowingly files a false complaint under this Policy or provides materially false information

is subject to disciplinary action up to and including dismissal or separation from the University.

What **DOES NOT** imply a report, Formal Complaint or information provided was false:

- A determination that a Respondent is not responsible for allegations of Sexual Misconduct; or
- A determination that a Respondent is responsible for a policy violation.



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“Bad Faith” Examples

In the context of a person filing a false complaint or providing materially false information “**in bad faith**”:

- a) Has absolutely **no basis** for the act;
- b) Did so **deliberately** (e.g. knowingly, intentionally); **and**
- c) Did so **maliciously** (e.g. with ill will, with intent to do harm)

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“Knowingly” Examples

In the context of a person “**knowingly**” filing a false complaint or providing materially false information:

- Showing **intent to deceive**;
- A design to **induce belief in a falsity or to mislead**; or
- Acted **with knowledge or awareness of the falsity**

...and **not** because of mistake, accident, or some other reasonable reason.

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Inference with the Grievance Process

Any person who interferes with the Grievance Process is subject to disciplinary action up to and including dismissal or separation from the University. Interference with a Grievance Process may include, but is not limited to:

- a) Attempting to coerce, compel, or prevent an individual from providing testimony or relevant information;
- b) Removing, destroying, or altering documentation relevant to the Grievance Process; or
- c) Knowingly providing false or misleading information to the Title IX Coordinator, investigator or hearing officer, or encouraging others to do so.



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Inference with the Grievance Process

Any person who **(1) interferes with the Grievance Process** is subject to disciplinary action up to and including dismissal or separation from the University.

Interference with a Grievance Process may include, but is not limited to:

Attempting to **coerce, compel, or prevent an individual from providing testimony** or relevant information;

Removing, destroying, or altering documentation relevant to the Grievance Process; or

Knowingly providing false or misleading information to the Title IX Coordinator, investigator or hearing officer, or encouraging others to do so.



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Failure to Report For Responsible Employees

If a Responsible Employee knowingly fails to promptly report to the Title IX Coordinator all information concerning an incident the employee reasonably believes constitutes Sexual Misconduct (including stalking, dating violence, sexual assault, or sexual harassment) committed by or against a student or employee at the time of the incident, the employee is subject to disciplinary action, including termination.

The duty to report acts reasonably believed to be stalking, dating violence, sexual assault, and sexual harassment arises from state law. The University goes further and requires Responsible Employees to report all acts reasonably believed to be any type of Sexual Misconduct, as defined in this Policy. It is important to note that for purposes of Failure to Report, the definition of sexual harassment, as defined under state law, is broader than the definition of sexual harassment under this Policy and is defined as: Unwelcome, sex-based verbal or physical conduct that:

- (a) in the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or
- (b) 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 at a postsecondary institution.



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Failure to Report For Responsible Employees

If a **(1) Responsible Employee**
(2) knowingly fails to promptly report to the Title IX Coordinator
(3) all information concerning an incident
(4) the employee reasonably believes constitutes Sexual Misconduct (as defined in the Policy)
(5) committed by or against a student or employee at the time of the incident
 is subject to disciplinary action, including termination.

The University requires Responsible Employees to report all acts reasonably believed to be any type of Sexual Misconduct, as defined in the Policy.

It is important to note that for purposes of Failure to Report, the definition of sexual harassment, as defined under state law, is broader than the definition of sexual harassment under this Policy and is defined as:

(1) Unwelcome, sex-based verbal or physical conduct that:

- (a) in the **employment context**, **(2) unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or**
- (b) in the **education context**, is **(2) sufficiently severe, persistent, or pervasive** that the conduct **(3) interferes with a student's ability to participate in or benefit from educational programs or activities** at a postsecondary institution.



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“Knowingly” Examples

In the context of a person **“knowingly”** fails to promptly report:

- Deliberately
- Intentionally
- With knowledge or awareness

...and **not** because of mistake, accident, or some other reasonable reason.

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