

SAP 08.01.01.T1.03 Sexual and Other Gender-Based Misconduct



Approved: November 3, 2014
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Rule Statement

Members of the Tarleton State University community, guests and visitors have the right to be free from sexual and gender-based misconduct. All members of the university community are expected to conduct themselves in a manner that does not infringe upon the rights of others. This Standard Administrative Procedure (SAP) defines university expectations and establishes a mechanism for determining when those expectations have been violated.

Reason for Rule

This SAP has been developed to reaffirm Tarleton's commitment to maintaining a work and learning environment that is free from sexual and gender-based misconduct and to provide recourse for those individuals whose rights have been violated.

Procedures and Responsibilities

1. CONSENT

The university's expectations of consent can be summarized as follows:

- 1.1 In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing and voluntary consent prior to and during sexual activity. Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you do and do not want sexually. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. In order to give effective consent, one must be of legal age.
- 1.2 Silence—without actions demonstrating permission--cannot be assumed to show consent.
- 1.3 Coercing someone into sexual activity violates this SAP. Coercion happens when someone is pressured unreasonably for sex.

- 1.4 Use of alcohol or other drugs will never function as a defense for any behavior that violates this SAP. A person under the influence of alcohol or other drugs is considered to be unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how). Individuals who consent to sex must be able to understand what they are doing. Also, a person is unable to give consent whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of rape drugs. Possession, use and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc., are prohibited. Administering one of these drugs to another person is a violation of this SAP. More information on these drugs can be found at <http://www.911rape.org/>
- 1.5 Under this SAP, “No” always means “No,” and “Yes” may not always mean “Yes.” Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a “no.”
- 1.6 Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent.
- 1.7 The sexual orientation and/or gender identity of individuals engaging in sexual activity is not relevant to allegations under this rule.

2. SEXUAL MISCONDUCT

- 2.1 **Sexual Harassment:** Sexual harassment is unwelcome, gender-based verbal or physical conduct that is sufficiently severe, persistent or pervasive that it unreasonably interferes with, denies or limits someone’s ability to participate in or benefit from the university’s educational program and/or activities, and is based on power differentials (quid pro quo), the creation of a hostile environment, or retaliation.
 - 2.1.1 Hostile Environment includes any situation in which there is harassing conduct that is sufficiently severe, pervasive and objectively offensive. In the investigation of a hostile environment report, the university will consider:
 - 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;
 - whether the statement is a mere utterance of an epithet which engenders offense in an employee or student, or offends by mere discourtesy or rudeness;
 - whether the speech or conduct deserves the protections of academic freedom or the First Amendment.

2.1.2 *Quid pro quo* sexual harassment exists when there are unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature, and submission to or rejection of such conduct results in adverse educational or employment action.

2.1.3 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. Examples include:

- an attempt to coerce an unwilling person into a sexual relationship;
- to repeatedly subject a person to egregious, unwelcome sexual attention;
- to punish a refusal to comply with a sexual based request;
- to condition a benefit on submitting to sexual advances;
- sexual violence;
- intimate partner violence, stalking;
- gender-based bullying.

2.1.4 Examples of Sexual Harassment:

- Offensive sexual flirtations, advances, or propositions, including propositions of sex for grades;
- Faculty led classroom discussions about sexual experiences not in any way germane to the subject matter of class.
- Verbal abuse of a sexual nature or threat of physical sexual harm;
- Graphic verbal comments about an individual's body or sexual behaviors;
- Sexually degrading words used to describe an individual;
- Unwelcome touching or physical contact;
- The display of sexually suggestive objects, videos, posters, or pictures;
- Whistling, obscene gestures, suggestive or insulting sounds; and
- Unwelcome, repeated requests for dates.

2.2 **Nonconsensual Sexual Contact:** Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a man or a woman upon a man or a woman that is without consent and/or by force. Sexual contact includes 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.

2.3 **Nonconsensual Sexual Intercourse:** Nonconsensual sexual intercourse is any sexual intercourse, however slight, with any object, by a man or woman upon a man or a woman that is without consent and/or by force. Intercourse includes 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), no matter how slight the penetration or contact.

- 2.4 **Sexual Exploitation:** Sexual exploitation occurs when a student takes nonconsensual 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:
- Invasion of sexual privacy
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 - Prostituting another person;
 - Nonconsensual video or audio taping of sexual activity;
 - Going beyond the boundaries of consent (such as letting someone hide in a closet to watch you having consensual sex);
 - Engaging in voyeurism;
 - Knowingly transmitting an STI or HIV to another person;
 - Exposing one's genitals in nonconsensual circumstances; inducing another to expose their genitals;
 - Sexually-based stalking and/or bullying.

3. OTHER GENDER-BASED MISCONDUCT

- 3.1 Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
- 3.2 Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of gender;
- 3.3 Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- 3.4 Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the university community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);
- 3.5 Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally (that is not speech or conduct otherwise protected by the First Amendment).
- 3.6 Violence between those in an intimate relationship to each other;
- 3.7 Stalking, defined as repetitive and/or menacing pursuit, following, harassment and/or interference with the peace and/or safety of a member of the community; or the safety of any of the immediate family of members of the community.

4. REPORTING SEXUAL MISCONDUCT

Any Tarleton employee, student or visitor who believes he or she has been subjected to sexual misconduct, or has cause to know an employee, student or visitor was subjected to sexual misconduct, should promptly report the incident to his or her supervisor, Department of Employee Services, Student Judicial Affairs, or the university's Title IX Coordinator. Tarleton SAP 08.01.01.T1.01 describes the complaint and appeal process for complaints of sexual misconduct or other gender-based discrimination.

5. SANCTIONS

Any employee, student or visitor found in violation of sexual misconduct may receive sanctions ranging from probation to expulsion for students, disciplinary action up to termination for employees or expulsion from campus for visitors. Sanctions are dependent on the severity of the incident, taking into account any previous conduct violations. Neither the investigators nor any appeals body or officer will deviate from the range of recommended sanctions unless compelling justification exists to do so.

Related Statutes, Policies, or Requirements

[Tarleton SAP 08.01.01.T1.01, Complaint and Appeal Process for Complaints Alleging Discrimination, Sexual Harassment and Related Retaliation](#)

[System Regulation 08.01.01, Civil Rights Compliance](#)

Contact Office

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Approved:

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