



**POLICY ON SEXUAL AND  
DISCRIMINATORY  
HARASSMENT**

Responsible Executives:  
Provost, Vice President of  
Human Resources, Vice  
President for Student Affairs  
Responsible Office:  
Office of Institutional Equity  
Approved by: University Policy  
Committee  
Issued: November 19, 2013  
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## **1. INTRODUCTION**

The University of Notre Dame strives to maintain a community characterized by a respect for others. At a minimum, this means a community that is free from Sexual and Discriminatory Harassment. Sexual and Discriminatory Harassment includes, but is not limited to, sexual assault and other sexual misconduct (as defined below). At Notre Dame, our goal is to promote respectful behavior and interactions. Our culture of respect means that no type of Sexual or Discriminatory Harassment is tolerated, and all allegations or reports of such misconduct will be investigated and addressed. This culture of respect is regularly conveyed to members of the University community, including through the education programs described in this Policy. The University is also dedicated to responding quickly and thoroughly to all reported or alleged violations of this Policy, and to enforcing the Non-Retaliation Policy to protect those who report and/or are involved in an investigation of conduct prohibited by this Policy.

## **2. POLICY STATEMENT**

The University of Notre Dame does not tolerate Sexual or Discriminatory Harassment (as defined in this Policy) by or against any member of its community, nor will it tolerate sexual or discriminatory harassing conduct that affects job or educational benefits or that interferes with an individual's work or academic performance, or that creates an intimidating, hostile, or offensive work or educational environment. Individuals who engage in conduct prohibited by this Policy may be subject to disciplinary action, up to and including termination or dismissal.

## **3. SCOPE**

This Policy applies to all faculty, staff, and students. This Policy applies to any allegation of Sexual or Discriminatory Harassment that is made in the context of an educational program or activity or that otherwise affects the University's work or educational environment. However, the University's investigation may be limited where the alleged conduct occurred outside the context of the University's programs or activities, or work or educational environment.

Nothing in this Policy restricts the University's right to address and take appropriate action with respect to conduct that, while not meeting the definitions of conduct prohibited by this Policy, is nevertheless inconsistent with the University's value of respect for others.

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#### 4. RESPONSIBLE PARTY

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The Director of the Office of Institutional Equity (or designee) is responsible for implementing and monitoring compliance with this Policy on behalf of the University. This includes coordination of training, education, communications and administration of the reporting and response procedures concerning suspected or alleged violations of this Policy.

Any inquiries regarding conduct prohibited by this Policy may be directed to the Director of the Office of Institutional Equity / Title IX Coordinator:

Director, Office of Institutional Equity  
Title IX Coordinator  
100 Grace Hall  
University of Notre Dame  
Notre Dame, IN 46556  
574-631-0444  
equity@nd.edu

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#### 5. PROHIBITION OF DISCRIMINATORY HARASSMENT

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**Discriminatory Harassment** includes offensive, unwelcome conduct or language that is based on an individual's race, color, national or ethnic origin, religion, sex, sexual orientation, age, disability, veteran status, or genetic information, and that would create an intimidating, hostile, offensive, or demeaning environment for a reasonable person and that actually creates such an environment for that individual.

Discriminatory Harassment may include the following types of misconduct, when such misconduct concerns one or more of the characteristics listed above:

- Verbal abuse, slurs, derogatory comments or insults about, directed at or made in the presence of an individual or group.
- Display or circulation of written materials or pictures that are offensive or degrading.
- Damage to, trespass on or unauthorized use of property, such as spraying or scratching of a motor vehicle, damage or theft of property.
- Physical contact, or threatening language or behavior.
- Other conduct that interferes with an individual's performance; limits participation in University activities; or otherwise creates an intimidating, hostile, or offensive University environment.

For information on how to report Discriminatory Harassment, see Section 8.

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#### 6. PROHIBITION OF SEXUAL HARASSMENT

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**Sexual Harassment** as defined and prohibited in this Policy includes sexual assault, other sexual misconduct, and the creation of a hostile environment, as described below.

## A. Sexual Assault

**Sexual assault** is any sexual intercourse by any person upon another without consent (as defined in Section 7 below). It includes oral, anal and vaginal penetration, to any degree, with any part of the body or other object. It is also referred to as “non-consensual sexual intercourse.”

Sexual assault is one of the most egregious forms of sexual harassment. Students, faculty and staff found responsible for sexual assault or other forms of sexual misconduct will be subject to discipline (in the case of faculty and staff) or Conduct Process Outcomes (as defined in du Lac, in the case of students) up to and including termination of employment or permanent dismissal from the University.

The University believes that no person should bear the effects of sexual assault alone. When a sexual assault occurs, the University’s paramount concern is for the safety, health and well-being of those impacted. The University provides a wide range of services and resources to support and assist its students, faculty and staff as soon as it receives a report of an alleged sexual assault. To learn more about these resources, please see [du Lac: A Guide to Student Life](#), the [Reporting and Response Procedure for Violations of the University’s Policy on Sexual and Discriminatory Harassment by Faculty and Staff](#), or the [Committee on Sexual Assault Prevention](#).

## B. Other Sexual Misconduct

**Other sexual misconduct** may take the form of any of the following offenses:

- **Non-consensual sexual contact**, which is any sexual touching with any part of the body or other object, by any person upon another, without consent. Sexual touching is contact of a sexual nature, however slight.
- **Domestic violence**, which is defined as physical violence or the threat of physical violence committed by a current or former spouse of an individual, by a person with whom the individual has a child in common, by a person who is cohabiting or has cohabitated with the individual as if a spouse (as determined under applicable law), or by any other person against an adult or youth who is protected from that person’s acts by applicable domestic or family violence laws.
- **Dating violence**, which is defined as physical violence or the threat of physical violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with an individual, and the existence of such a relationship shall be determined based on factors such as the length and type of relationship, and frequency of interaction between the persons involved.
- **Stalking**, which is knowingly or intentionally engaging in a course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and that actually causes the individual to feel terrorized, frightened, intimidated, or threatened.
- Other sexual misconduct offenses may also include, but are not limited to:
  - 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. recording, sharing or disseminating recordings, or threatening to share or disseminate recordings, of sexual activity or nudity without the consent of all parties involved)

### C. **Hostile Environment**

Conduct that creates a **hostile environment** includes unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or a student's status in a course, program or activity;
- Submission to or rejection of such conduct by an employee or student is used as the basis for employment or academic decisions; or
- Viewed from the perspective of both the individual and a reasonable person in the same situation, the conduct interferes with performance, limits participation in University activities, or creates an intimidating, hostile, or offensive University environment.

Examples of conduct that may create a hostile environment include:

- Unwelcome sexual jokes, language, epithets, advances or propositions;
- The display of sexually suggestive objects, pictures, magazines, posters or cartoons;
- Comments about an individual's body, sexual orientation, sexual prowess or sexual deficiencies;
- Unwelcome physical contact of a sexual nature;
- Sexually suggestive, insulting or obscene comments, gestures or conduct (such as leering or whistling);
- Offering or implying an offer of an education- or employment-related reward, such as a favorable review, grade, assignment, promotion, or continued employment, in exchange for sexual favors; or
- Taking or threatening to take an adverse education- or employment-related action, such as an unfavorable review, grade or assignment, because sexual conduct or advances are rejected.

Because of the gravity of these offenses, the University has adopted specific procedures for reporting and responding to the conduct described in this section. For information on how to report Sexual Harassment, see Section 8.

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## **7. INFORMATION ABOUT CONSENT, INTOXICATION AND INCAPACITATION**

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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; sexual contact without informed, freely given consent is sexual misconduct. There is no consent when the individual in question is under the legal age of consent. The legal age of consent in Indiana is 16.

Intoxication 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. Engaging in sexual activity with a person whom you know, or should reasonably know, to be incapacitated constitutes a violation. If there is a question about whether the complainant was incapacitated, the relevant standard is whether the respondent knew, or a sober, reasonable person in the respondent's position should have known, that the complainant was incapacitated and therefore could not consent to the sexual activity.

## **8. REPORTING AND RESPONSE PROCEDURES FOR VIOLATIONS OF THIS POLICY**

Violations of this Policy by a student must be reported in accordance with the [Reporting and Response Procedures](#) set forth in du Lac: A Guide to Student Life.

Violations of this Policy by University faculty or staff, or a third party (such as a vendor, contractor or guest) must be reported in accordance with the reporting and response procedures set forth in the *Reporting and Response Procedure for Violations of the University's Policy on Sexual and Discriminatory Harassment by Faculty and Staff*.

All University community members are expected to provide truthful information. If an investigation reveals that an individual has provided deliberately false information and/or made an accusation in bad faith or with a view to personal gain or intentionally harming another in connection with an incident, disciplinary action may be taken. This provision does not apply to information provided in good faith, even if the facts alleged are not later substantiated.

## **9. EDUCATION PROGRAMS**

The University shall provide the following educational programming designed to promote the awareness of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking.

*Primary and ongoing prevention and awareness programs.* The University shall provide primary prevention and awareness programs for all incoming students and new faculty and staff, and

ongoing prevention and awareness campaigns for current students, faculty and staff, that include the following:

- a statement that the University prohibits the offenses of sexual assault, domestic violence, dating violence, and stalking and a description of the University's policies that prohibit this conduct;
- the definition of consent, in reference to sexual activity, as defined in this Policy;
- the definitions of sexual assault, domestic violence, dating violence, and stalking under Indiana law;
- safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of sexual assault, domestic violence, dating violence, or stalking against a person other than the bystander;
- information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks;
- the possible sanctions or protective measures that the University may impose following a final determination of a University disciplinary procedure or investigation regarding allegations of sexual misconduct or other interpersonal misconduct;
- the procedures that a complainant should follow if a sex offense, sexual assault, domestic violence, dating violence, or stalking has occurred, as described in this Policy;
- the procedures for University disciplinary action in cases of alleged sexual assault, domestic violence, dating violence, or stalking, as described in this Policy;
- information about how the University will protect the confidentiality of complainants, including how publicly-available recordkeeping will be accomplished without the inclusion of identifying information about the complainant, to the extent permitted by law;
- information about existing counseling, health, mental health, victim advocacy, legal assistance, student financial aid, and other services available for student and employee complainants both on-campus and in the community; and
- information about options for, and available assistance in, changing academic, living, transportation, and working situations, if so requested by the complainant and if such accommodations are reasonably available, regardless of whether the complainant chooses to report the crime to campus police or local law enforcement.