

Glossary Definitions

Complainant refers to the person making a complaint of sexual misconduct, and will be referred to herein as either Complainant, or Alleged Victim, and these terms may be used interchangeably throughout this policy.

Confidential Source refers to physical and mental health professionals, including licensed counselor who provide mental health counseling to members of the university community, and those who act under the supervision of a health care employee; and individuals whose scope of employment include confidentiality requirements under Texas law.

Consent is an informed and freely and affirmatively communicated willingness to participate in a particular sexual activity. Consent can be expressed either by words or by clear and unambiguous actions, as long as those words or actions create mutually understandable permission regarding the conditions of each instance of sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity. (The definition of consent for the crime of sexual assault in Texas can be found at Texas *Penal Code Section 22.011*.)

The University will consider the following factors in determining whether consent was provided:

- 1) consent is a voluntary agreement or assent to engage in sexual activity;
- 2) someone who is incapacitated cannot consent;
- 3) consent can be withdrawn at any time;
- 4) past consent does not imply future consent;
- 5) silence or an absence of resistance does not imply consent;
- 6) consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse);
- 7) consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another;
- 8) a current or previous dating or sexual relationship is not sufficient to constitute consent;
- 9) coercion, force, or threat invalidates consent;
- 10) for effective consent to be given, one must be 17 years old in Texas; and
- 11) being intoxicated or under the influence of alcohol, drugs, or any other substance is never an excuse for engaging in sexual misconduct.

Coercion is the act of unreasonably pressuring another person into doing something against their will. Sexual coercion can involve using physical force and/or convincing another person to engage in sexual activity by use of verbal and emotional pressure including manipulation, intimidation, and/or the use of alcohol or other drugs to make someone more vulnerable. What is unreasonable will be determined on a case by case basis, considering a number of factors such as the desire to be persuaded (seduction versus coercion), the intensity, the frequency and duration of persuasion, and the isolation of individuals.

Dating Violence is violence committed by a person:

- 1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- 2) where the existence of such a relationship will be determined based on a consideration of the following factors:

- a) the length of the relationship;
- b) the type of relationship;
- c) the frequency of interaction between the persons involved in the relationship (20 U.S.C. 1092) and 34 CFR 668.46 (j) (l) (i) (B)

Domestic Violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the Victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the Victim as a spouse or intimate partner or roommate, by a person similarly situated to a spouse of the Victim under the domestic or family violence laws of the State of Texas, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the State of Texas (*Texas Family Code Section 71.004*) and 34 CFR 668.46 (a).

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 ("Have sex with me or I'll hit you." "okay, don't hit me, I'll do what you want.")

Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Incapacitation. A person is incapacitated and cannot consent to sexual activity if that person is asleep, unconscious, or otherwise unable to resist; is unaware that sexual activity is occurring; does not have the ability to make informed, rational judgements about whether or not to engage in sexual activity; and/or the person does not have the legal capacity to consent. Someone can be incapacitated due to the voluntary or involuntary use of alcohol or drugs. Drunkenness is different than incapacitation, and does not in itself, automatically indicate a violation.

Intimate Partner Violence includes both Dating and Domestic Violence, as well as any act, threat, or pattern of abusive behavior (including sexual, physical, psychological, and economic) that one person uses against a current or former partner in a sexual, dating, spousal, domestic, parenting or other intimate relationship, to gain or maintain power or control over another. Intimate Partner Violence can be a single act or a pattern of behavior within a relationship.

The determination of whether any conduct constitutes Intimate Partner Violence is whether the conduct is so severe, pervasive or persistent as to interfere with an individual's ability to learn and/or work or cause substantial emotional distress, when judged both objectively (meaning that a "reasonable person" would find the behavior to be intimidating, frightening, terrorizing, or threatening) and subjectively (meaning the impacted individual felt the behavior was intimidating, frightening, terrorizing, or threatening).

The existence of such a relationship shall be determined based on consideration of the following factors: the length of the relationship; the type of the relationship; and the frequency of interaction between the persons involved in the relationship.

New Employee refers to a faculty or staff member who has not been previously employed by the University or whose previous employment with the university was more than one year from his or her latest date of hire with the university.

Non-Consensual Sexual Contact/Fondling is the intentional sexual touching, however slight or momentary, or the use of an object to touch another in a sexual manner, 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. Non-Consensual Sexual Contact/Fondling includes but is not limited to, any intentional contact with breasts, groin, genitals, mouth or touching other bodily orifice of another individual, or making another touch you or themselves with or on any of these body parts, or any other bodily contact in a sexual manner.

Parties refers to the Complainant and Respondent

Preponderance of the Evidence means the greater weight and degree of credible evidence. Preponderance of the evidence is the standard for determining allegations of sexual misconduct under this policy. Preponderance of the evidence is satisfied if the action is more likely to have occurred than not.

Rape is the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ or another person, without the consent of the Victim.

Respondent refers to the person accused of sexual misconduct and shall be referred to herein as either Respondent, Alleged Perpetrator, Accused, or Perpetrator, and these terms may be used interchangeably throughout this policy.

Responsible Employee refers to a campus employee, including members of the campus police or security, who has the authority to redress sexual misconduct; who has the duty to report incidents of sexual misconduct to the Title IX Coordinator or other appropriate designee, or whom a student could reasonably believe has this authority or duty. Responsible employees include all administrators, faculty, staff, employees, except any employee with confidentiality obligations as described as a Confidential Source herein.

Retaliation means any adverse action threatened or taken against a person because he or she has filed, supported, or provided information in connection with a complaint of Sexual Misconduct, including but not limited to direct and indirect intimidation, threats, and harassment.

Sex Offenses are any sexual acts directed against another person, without the consent of the Victim, including instances where the Victim is incapable of giving consent.

Sexual Assault means an offense classified as rape, fondling, incest, or statutory rape under the uniform crime reporting program of the Federal Bureau of Investigation and/or under the Texas Penal Code 22.011.

Examples of sexual assault include, but are not limited to, the following non-consensual sexual activity:

- 1) sexual intercourse (vaginal or anal);
- 2) oral sex;
- 3) rape or attempted rape;
- 4) penetration of an orifice (anal, vaginal, oral) with the penis, finger or other object;
- 5) unwanted touching of a sexual nature;
- 6) use of coercion, manipulation or force to make someone else engage in sexual touching, including touching of breasts, chest, buttocks, and genitalia;

- 7) engaging in sexual activity with a person who is unable to provide consent; or
- 8) knowingly transmitting a sexually-transmitted disease to another.

Sexual Exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for his or her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited.

Examples of sexual exploitation can include, but are not limited to, the following behaviors:

- 1) prostituting another;
- 2) non-consensual electronically recording, photographing, or transmitting intimate or sexual utterances, sounds or images, including as an act of revenge, without the knowledge and consent of all parties involved;
- 3) sexual voyeurism such as watching or recording a person undressing, using the bathroom, or engaging in sexual acts in a place where they would have reasonable expectation of privacy;
- 4) threatening to disclose or disclosing a person's sexual activities, sexual orientation, gender identity, or gender expression;
- 5) administering alcohol or drugs (such as "date rape" drugs) to another person without their knowledge or consent;
- 6) going beyond the boundaries of consent (such as letting friends hide in a closet to watch another friend having consensual sex);
- 7) distributing intimate or sexual information about another person without that person's consent; or
- 8) intentionally aiding a violation of the sexual misconduct policy.

Sexual Harassment means unwelcome, sex-based verbal or physical conduct that:

- 1) in the employment context, unreasonably interferes with a person's work performance or creates an intimidating hostile, or offensive work environment; or
- 2) 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 educational institution.

Examples of conduct that may constitute a violation include but are not limited to unwanted efforts to develop a romantic or sexual relationship, requests for sexual favors, and other verbal or physical conduct based upon sex:

- a) when submission to such conduct is made either explicitly or implicitly a term or condition of instruction, employment, or participation in other University activities;
- b) when submission to or rejection of such conduct by an individual is used as a basis for evaluation in making academic or personnel decisions affecting the individual; or
- c) when such conduct has the purpose or effect of interfering with an individual's work performance or access to programs or creating an intimidating, hostile, or offensive university environment.

Sexual Intimidation includes but is not limited to:

- 1) threatening another with a non-consensual sex act;
- 2) stalking or cyberstalking; or
- 3) engaging in indecent exposure as defined in the Texas *Penal Code 21.08*.

Sexual Misconduct is a broad term encompassing a range of non-consensual sexual activity or unwelcome behavior of a sexual nature. The term includes but is not limited to sexual assault, sexual exploitation, a sexual intimidation, sexual harassment, domestic violence, dating violence, and stalking. Sexual misconduct can be committed by men or women, strangers or acquaintances, and can occur between or among people of the same or opposite sex.

Sexual Violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. All such acts are forms of Sexual Misconduct.

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- 1) fear for his or her safety or the safety of others; or
- 2) suffer substantial emotional distress (Texas *Penal Code Section 42.072*) and (20 U.S.C. 1092(a))

This applies to acts that occur between people who are currently have or have had a romantic or sexual relationship or occur because of the accused person's desire to have a romantic or sexual relationship or occur because of the accused person's desire to have a romantic or sexual relationship with the victim. Stalking includes cyberstalking.

Statutory Rape is sexual intercourse with a person who is under the statutory age of consent.

Student refers to any person who has been accepted for admission, or who is currently or was previously enrolled in the university on either a full-time or part-time basis.

Third Party refers to any person who is not a current student or employee of the university, including but not limited to vendors and invited and uninvited visitors.

Third Party Reporting refers to the submission of a complaint of sexual misconduct by a person on behalf of another person.

Title IX Coordinator is the person who has been designated by the university to coordinate efforts to comply with and implement this policy. The Title IX Coordinator is responsible for conducting the administrative investigation of reports of sexual misconduct and is available to discuss options, provide support, explain university policies and procedures, and provide education on relevant issues. The Title IX Coordinator may designate one or more Deputy Title IX Coordinators. The university will identify and provide complete contact information for their Title IX Coordinator and all Deputy Coordinators in various locations, including but not limited to the university website; the student handbook; the dean of students' office; Human Resources; and Campus Police or Security; or their equivalents.

Title IX Investigator refers to the person who conducts the Title IX investigation.

University refers to Texas Lutheran University.

University Affiliated Program or Activity refers to any program or activity, on or off campus, which is initiated, aided, authorized or supervised by the university or by an officially-recognized organization of, or within, the university.

University Premises. Buildings or grounds owned, leased, operated, controlled or supervised by the university including property that is within or reasonably contiguous to the premises owned by the university but controlled by another person, is frequently used by students, and supports institutional purposes (such as a food or other retail vendor).