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Sexual Misconduct

The tenets of the university's Community Standard (honesty, fairness, respect, and accountability) are essential components of healthy interpersonal relationships. When relationships become intimate, these principles become paramount. Sexual intimacy requires mutual engagement in an environment of affirmative consent. Sexual misconduct against anyone by anyone, male or female (whether acquaintance or stranger), is unacceptable. Duke University is committed to providing an environment free of personal affronts against individuals and will not tolerate sexual misconduct in its community.

Duke University has developed this policy based on these fundamental principles:

- Members of the university community are expected to maintain ethical standards of honesty and respect for others.
- Sexual misconduct encompasses a range of behaviors, from inappropriate touching to rape, which must be confronted directly by the campus community.
- The use of alcohol or other drugs can blur the distinction between consent and manipulation.
- Real or perceived power differentials between individuals may create an unintentional atmosphere of coercion.
- Educational and preventative measures are necessary components of the university's commitment to reduce sexual misconduct in its community.
- Responding effectively to reports of sexual misconduct necessitates the coordinated efforts of several campus offices including Duke Police, Office of Gender Violence Prevention and Intervention in the Women's Center, the Dean of Students Office, Residence Life and Housing Services, Counseling and Psychological Services, and Student Health.
- The university will take seriously every report of sexual misconduct it receives by conducting a careful investigation and working to ensure that both complainants and accused students are given appropriate support and fair treatment.

NOTE: Any university official informed of an allegation of sexual misconduct involving a student is expected to file a report with the Office of Student Conduct (OSC). University officials who are serving in a professional role in which communication is privileged under NC law (e.g., medical providers, therapists, rape crisis counselors, clergy) are not bound by this expectation, except as required by law.

Upon receipt of a report OSC will consider what action to take, which may include an inquiry into possible violation of the university's sexual misconduct policy and subsequent adjudication under university disciplinary processes. OSC may also refer the matter to another university office and/or notify the appropriate law enforcement agency.

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Sexual misconduct defined. Sexual misconduct is defined as any physical act of a sexual nature perpetrated against an individual without consent or when an individual is unable to freely give consent. Acts of a sexual nature include, but are not limited to, touching or attempted touching of an unwilling person's breasts, buttocks, inner thighs, groin, or genitalia, either directly or indirectly; and/or rape, forcible sodomy, or sexual penetration (however slight) of another person's oral, anal or genital opening with any object. Sexual misconduct also includes sexual exploitation, defined as taking nonconsensual, unjust sexual advantage of another for one's benefit or the benefit of another party. These acts may or may not be accompanied by the use of coercion, intimidation, or through advantage gained by the use of alcohol or other drugs.

Consent defined. The university's definition of sexual misconduct mandates that each participant obtains and gives consent in each instance of sexual activity. Consent is an affirmative decision to engage in mutually acceptable sexual activity given by clear actions or words. It is an informed decision made freely and actively by all parties. Relying solely upon non-verbal communication can lead to miscommunication. It is important not to make assumptions; if confusion or ambiguity on the issue of consent arises anytime during the sexual interaction, it is essential that each participant stops and clarifies, verbally, willingness to continue. Students should understand that consent may not be inferred from silence, passivity, or lack of active resistance alone. Furthermore, 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. Being intoxicated does not diminish one's responsibility to obtain consent.

Conduct will be considered "without consent" if no clear consent, verbal or nonverbal, is given. It should be noted that in some situations an individual's ability to freely consent is taken away by another person or circumstance. Examples include, but are not limited to, when an individual is intoxicated, "high," scared, physically or psychologically pressured or forced, passed out, intimidated, coerced, mentally or physically impaired, beaten, threatened, isolated, or confined.

The use of alcohol or other drugs. The use of alcohol or other drugs can have unintended consequences. Alcohol or other drugs can lower inhibitions and create an atmosphere of confusion over whether consent is freely and effectively given. The perspective of a reasonable person will be the basis for determining whether one should have known about the impact of the use of alcohol or drugs on another's ability to give consent. Being intoxicated or high is never an excuse for sexual misconduct.

Examples of Sexual Misconduct

Angela and Aaron have been in an ongoing relationship for a year-and-a-half and have engaged in consensual sexual intercourse. One night while becoming intimate, Angela stops and says she doesn't feel like having sex that night. Aaron continues to touch her, saying that she got him excited and it wasn't fair of her to lead him on like that. Again Angela tells him she does not want to have sex, and then is silent. Aaron decides she has given in, and proceeds to have sexual intercourse with her. *This is a violation of the Sexual Misconduct Policy. Aaron had sexual intercourse with Angela against her will. The fact*

that Angela has freely consented to sexual intercourse with Aaron in the past does NOT mean he has her consent in this situation.

Erin is talking to several of her friends in the hallway at a crowded party. Ryan, a student she knows from chemistry class, comes up behind her and places his arms around her waist. She says hi to Ryan and continues her conversation. After a while, she realized that Ryan has moved his hands up to her breasts. She turns to him and tells him to stop, saying she doesn't want to be touched in that way and that he should have more respect for her. He laughs, tells her she takes herself too seriously, and again begins to grope her. *This is a violation of the Sexual Misconduct Policy. Ryan touched Erin in a sexual way without her consent, and continued to do so after she told him to stop. This behavior is a form of sexual misconduct.*

Kristen and Myra have been intimate for a few weeks. One night, Myra calls Kristen and asks her to come over. When she arrives, Myra kisses Kristen passionately and leads her into the bedroom. They each express their excitement and desire to "hook up," and are soon making out heavily in Myra's bed. After a while, Kristen tries to engage in oral sex with Myra. Myra tells Kristen that she really likes her, but that she doesn't feel ready for that. Kristen tells Myra she's just being shy, and ignores her when she repeats that she doesn't feel ready. Finally, Kristen threatens to reveal on the Internet that Myra is a lesbian. Because Myra has not yet come out to her friends and family, she becomes frightened and silent. Kristen proceeds with oral sex. *This is a violation of the Sexual Misconduct Policy. Because of Kristen's manipulative and threatening arguments, Myra was afraid and unable to freely give her consent. Kristen did not receive consent from Myra and has committed sexual misconduct.*

Liz and Tom have been together for six months. She often tells her friends stories of Tom's sexual prowess, and decided to prove it to them. One night, she and Tom engage in consensual sexual intercourse. Without Tom's knowledge, Liz sets up her digital camera to videotape them having sex. The next evening, she uploads the video to an online videosharing site and discusses it with her friends online. *This is a violation of the Sexual Misconduct Policy. Tom's consent to engage in sexual intercourse with Liz did NOT mean Liz had obtained his consent to videotape it. This is a form of sexual exploitation.*

Andrew and Felix have been flirting with each other all night at a party. Around 12:30 a.m., Felix excuses himself to find a bathroom. Andrew notices Felix slurring his speech. Andrew wonders if Felix went to the bathroom to vomit. When Felix returns, the two begin flirting more heavily and move to a couch. As the conversation continues, the two become more relaxed and more physically affectionate. Andrew soon suggests they go back to his room, and Felix agrees. As they walk down the stairs, Andrew notices that Felix looks unstable and offers his arm for support and balance. When they get back to his room, Andrew leads Felix to the bed and they begin to become intimate. Felix becomes increasingly passive and appears disoriented. Andrew soon begins to have sexual intercourse with him. The next morning, Felix thinks they had sex but cannot piece together the events leading up to it. *This is a violation of the Sexual Misconduct Policy. Felix was clearly under the influence of alcohol and thus unable to freely consent to engage in sexual activity with Andrew. Although Andrew may*

not have known how much alcohol Felix had consumed, he saw indicators from which a reasonable person would conclude that Felix was intoxicated, and therefore unable to give consent. Andrew in no way obtained consent from Felix.

Support Services and Options for Survivors of Sexual Misconduct

A variety of support resources are available on campus and in the community to assist students in dealing with sexual or dating violence, whether it happened recently or in the past. Following is a list of helpful resources. Additional resource information is available at <http://wc.studentaffairs.duke.edu>.

Information, advocacy, counseling and emotional support. The Office of Gender Violence Prevention and Intervention (GVPI) was created to provide education, advocacy, and support for survivors of sexual and dating violence and their friends and families. GVPI works closely with other university departments to provide comprehensive information and advocacy with regard to crisis intervention, ongoing counseling, support groups, medical services, law enforcement, academics, conduct and legal concerns, and/or residential living. Appointments to meet with the GVPI coordinator can be scheduled during business hours by calling 684-3897 or by visiting the Women's Center located at 126 Few Fed Building near the bus stop across from the Allen Building. Counseling and Psychological Services (CAPS) also offers ongoing counseling services; call 660-1000 for an appointment. For 24-hour crisis information and referral, contact the GVPI information line at 681-6882, the dean-on-call (pager number 970-4169), or the Durham Crisis Response Center at 403-6562 (for 24-hour hotline). All services are confidential and do not require making a formal report to the police.

Medical concerns. For immediate and urgent medical concerns, go directly to the Emergency Department (ED) of Duke Medical Center (off Erwin Road near Trent Hall). You can call the Duke Police Department (684-2444 or 911) for transportation without having to make a report. The services available are: medical care, evidence collection, emergency contraception, and sexually transmitted disease prevention. To leave your options for pressing charges open and to be eligible for victim's assistance, a state fund which pays for hospital expenses, you will want to have evidence collected by the hospital within 96 hours of the assault. In order to receive funds from victim's assistance, you must make a police report. Another funding option for repaying hospital bills is a loan fund available through the GVPI office. This loan fund does not require that you make a police report. Contact the GVPI coordinator for more information. For less immediate medical concerns, schedule an appointment at Student Health (681-WELL). You can call GVPI for someone to accompany you if you would like. The services available are: medical care, emergency contraception and sexually transmitted disease prevention. The student health fee covers all services, except for a minimal charge for emergency contraception.

Reporting to the police. Duke Police (911 or 684-2444 from non-campus phones) will respond to emergencies and non-emergencies to provide legal assistance by intervening in cases of assault, providing transportation to the Emergency Department, taking reports of an assault, investigating and participating in appropriate legal or disciplinary action. They are responsible for notifying the community in a case of continuing danger, can issue a trespass order that requires an individual to

stay away from campus or a particular area or campus, and will provide referrals including how to obtain a restraining order. Assaults that occur off campus may fall under the jurisdiction of the Durham Police Department or other appropriate law enforcement agency. Students may contact the Durham Police directly (911 off campus or 560-4427/560-4609) or the GVPI office or Duke Police can help facilitate reporting. Blind reporting—filing a report without your name attached to it—is an available option with both Duke and Durham’s police departments.

Reporting Sexual Misconduct for University Disciplinary Action

The Office of Student Conduct in the Dean of Students Office (684-6938) receives complaints of a possible violation of this policy for adjudication through the university’s disciplinary process. Reports must be filed within two (2) calendar years from the date of the alleged incident. Complainants should submit a written statement regarding the alleged incident or e-mail conduct@duke.edu. Complainants may meet with Student Conduct staff before submitting a written statement.

Investigation. The conduct officer, or designee, may meet with the complainant to hear or clarify his/her account of the incident and review the disciplinary process. A formal investigation may be launched, which includes an initial meeting with the accused and an opportunity for the accused to also submit a written statement (generally within five business days) in response to the allegations. After written statements are received, the conduct officer or designee may ask further clarifying questions of the complainant, accused, or witnesses. A determination will be made on whether to proceed with a hearing based on sufficient information to believe that a policy violation may have occurred. During the investigation and until resolution of the matter, interim restrictions may be issued as deemed appropriate by the conduct officer or designee, including restrictions on contact between the complainant and the accused, exclusion from areas of campus, removal or relocation from residential areas, etc.

Hearing procedures. Every effort will be made to convene a hearing panel within four weeks of the formal complaint. All hearing procedures as outlined in this guide will be followed with the exception of the following. A three-person hearing panel will preside over a case that is referred to the Undergraduate Conduct Board, comprised of two faculty or staff members and one student. A finding of responsibility must be based on a unanimous vote; any sanction must be decided by a majority vote with the exception of suspension or expulsion, which must be supported unanimously. A complainant may have an advisor (a member of the university community) present during a hearing, but as with the accused’s advisor, he/she may only confer quietly or through notes with the complainant and may not address the panel.

Romantic or sexual history of either the accused or the complainant with others will not be allowed in a hearing, except that testimony offered by the accused or complainant about his/her own sexual history. If such information is offered, the other party has the right to respond to that testimony. Testimony and questions regarding any romantic or sexual history of the accused and complainant with each other are permitted.

Participants are reminded that any information shared during a hearing is confidential. The hearing panel will decide what

testimony, witnesses, or other information is relevant, and may exclude information or a witness that is deemed duplicative or immaterial. The complainant or accused should inform the conduct officer prior to the hearing of the names of any witnesses he/she wishes to testify and to what they will attest. Witnesses should avoid hearsay.

Rights of complainants. Complainants will be treated with respect and sensitivity before, during, and after the disciplinary process. The university will make all reasonable efforts to ensure the preservation of confidentiality, restricting information to those with a legitimate need for it. Complainants will be informed of the university's disciplinary process and possible outcomes. Complainants also have the right to report criminal sexual conduct to local law enforcement, which does not preclude university disciplinary action. Complainants have the right to (and are strongly encouraged to seek) counseling and support available through resources such as Gender Violence Prevention and Intervention (GVPI) in the Women's Center, Counseling and Psychological Services (CAPS), and Durham Crisis Response Center (DCRC). Complainants may request changes to academic and living situations and will be notified as to what changes are reasonably available. Complainants also have access to disciplinary advisors to guide them through the disciplinary process.

Allegations of sexual misconduct will be investigated in a thorough and timely manner. Complainants will be kept updated of the status of an investigation and the outcome of a hearing. An advisor (who is a member of the university community) may accompany complainants to any meeting with the conduct officer or to a hearing. At their request, complainants have the right to receive—within the parameters of FERPA—a copy of the written information given to a hearing panel. Complainants may offer relevant material witnesses to speak on their behalf. (Note that a hearing panel may exclude witness testimony deemed irrelevant or duplicative.) Complainants may also submit two written character references to a hearing panel before the hearing begins. Complainants will be given the opportunity to make opening and closing statements to a hearing panel.

Rights of accused students. Students accused of sexual misconduct have the same rights as any student accused of a policy violation (see "The Undergraduate Disciplinary System"), which includes the right to a 120-hour (five day) notice in advance of a hearing, the right to bring material witnesses to speak on his/her behalf (written testimony of two character witnesses may be submitted to a hearing panel before the hearing begins), and the right to ask questions (directed through the hearing panel) of any witness present. (Note that a hearing panel may exclude witness testimony deemed irrelevant or duplicative.) An accused student may request changes to academic and living situations, and will be notified as to what changes are reasonably available. Accused students can expect a presumption of innocence throughout the disciplinary process unless found responsible through an impartial and fair hearing, and will be treated with respect throughout the process.

Disciplinary advisors are made available to the accused and should be consulted at the onset of an investigation. Their role is to educate accused students about the disciplinary process and provide support. An advisor (a disciplinary advisor or any other member of the university community) may accompany the accused to a hearing, but may only confer with the accused.

Notification of hearing outcome and sanctions. The complainant and accused will receive verbal notification of the outcome of the hearing no sooner than two business days and no later than five business days after the hearing. (Note that re-disclosure by the complainant of a “not responsible” decision to anyone without the prior consent of the accused is a violation of the Family Educational Rights and Privacy Act). Notification will be individually given to the accused and complainant at approximately the same time. A written hearing report outlining the decision and rationale of the hearing panel will be later delivered to the accused. Sanctions for a finding of responsibility include, but are not limited to, expulsion, suspension, disciplinary probation, recommended counseling, and/or other educational sanctions deemed appropriate by the hearing body. Students who are found responsible for a violation of this policy have a right of appeal based on the grounds described in this guide.