



**POLICY ON
DISCRIMINATORY
HARASSMENT, SEXUAL
HARASSMENT, AND OTHER
SEX-BASED MISCONDUCT**

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 harassment. Harassment includes Discriminatory Harassment, Sexual Harassment, and Other Sex-Based 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 harassment is tolerated. Upon receiving a report of alleged violations of this Policy, the University will take prompt action, including a review of the matter and, where appropriate, an investigation and other appropriate action to stop the alleged misconduct. 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 Discriminatory Harassment, Sexual Harassment, or Other Sex-Based Misconduct (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. All such conduct is expressly prohibited, and 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 Discriminatory Harassment, Sexual Harassment, or Other Sex-Based Misconduct 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.

Academic freedom and the associated protections of tenure are fundamental to the scholarly enterprise. Because the University remains committed to the principles of academic freedom as articulated in Article IV/Section 2/Academic Freedom and Associated Responsibilities of

Faculty, protections of academic freedom will be considered in any applications of this Policy. Vigorous discussion and debate are fundamental to the University and this policy is not intended to stifle teaching or research methods or infringe upon academic freedom.

4. RESPONSIBLE PARTY

The Assistant Vice President 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 Assistant Vice President of the Office of Institutional Equity / Title IX Coordinator:

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

Some types of harassment and related misconduct may be criminal in nature and can also be reported to the Notre Dame Police Department, 911 (emergencies) or 574-631-5555 (non-emergencies).

5. DEFINITIONS

Complainant	An individual who is alleged to have been directly affected by a violation of this Policy.
Consent	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.
Formal Complaint	A document filed by a complainant or signed by the Title IX

	Coordinator alleging Sexual Harassment against a respondent and requesting that the University investigate the allegation.
Incapacitation	A physical or mental state such that a person 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.
Respondent	An individual who is alleged to have violated this Policy.

6. DISCRIMINATORY HARASSMENT

Discriminatory Harassment is (1) unwelcome conduct (2) that is based on an individual's or group's race, color, national origin, ethnicity, religion, genetic information, age, disability, or veteran status and (3) that interferes with performance, limits participation in University activities, or creates an intimidating, hostile, or offensive University environment when viewed from the perspective of both the individual and a reasonable person in the same situation.

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.

7. SEXUAL HARASSMENT

Sexual Harassment as defined and prohibited in this Policy includes conduct on the basis of sex that satisfies one or more of the following:

- An employee or agent of the University conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct.
- 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.

- Sexual Assault, which is defined as any sexual intercourse by any person upon another without Consent. It includes oral, anal and vaginal intercourse or penetration, to any degree, with any part of the body or other object. It is also referred to as “non-consensual sexual intercourse.”
- Fondling, which is defined as touching of the private body parts (*i.e.*, genitals, buttocks, and/or breasts) of another person for the purpose of sexual gratification, without Consent.
- Incest, which is defined as sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- 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.
- Domestic Violence, which is defined as physical violence or the threat of physical violence committed by a current or former spouse or intimate partner of an individual, by a person with whom the individual shares a child in common, by a person who is cohabiting with or has cohabitated with the individual as a spouse or intimate partner, by a person similarly situated to a spouse of the individual under applicable domestic or family violence laws (“Domestic Partner”). This prohibition also includes a pattern of coercive behavior used to gain or maintain power or control over a Domestic Partner, including, but not limited to verbal, psychological, economic, or technological abuse. 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 fear for his or her safety or the safety of others or suffer substantial emotional distress.

8. OTHER SEX-BASED MISCONDUCT

Other Sex-Based Misconduct may include, but is not limited to, any of the offenses listed below.

- Any sexual touching with any part of the body or other object, however slight, by any person upon another, without Consent.
- Unwelcome conduct that is either based on an individual’s or group’s sex, sexual orientation, or gender identity, or that is sexual in nature, and that interferes with performance, limits participation in University activities, or creates an intimidating, hostile, or offensive University environment when viewed from the perspective of both the individual and a reasonable person in the same situation.
- Exposing one’s own or another person’s private parts without Consent.
- Recording video or audio, photographing, disseminating, or transmitting intimate or sexual utterances, sounds or images without Consent of all parties involved.
- Allowing others to view sexual acts (whether in person, through electronic means, or via a video camera or other recording device) without the Consent of all parties involved.
- Engaging in any form of voyeurism.
- Sex-based cyber-harassment.
- Prostitution or the solicitation of a prostitute.

To the extent that alleged conduct is prohibited as Sexual Harassment as defined above, such conduct is excluded from the prohibition on Other Sex-Based Misconduct.

9. REPORTING AND RESPONSE PROCEDURES FOR VIOLATIONS OF THIS POLICY

This Policy seeks to encourage all members of the Notre Dame community to report and address incidents of Discriminatory Harassment, Sexual Harassment, and Other Sexual Misconduct. The Procedures for Resolving Allegations of Discriminatory Harassment, Sexual Harassment, and Other Sexual Misconduct as issued and updated by the Office of Institutional Equity, describe the necessary steps for resolving concerns of violations of this Policy.

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 to intentionally harm 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.

10. CONTACTS

Subject	Office or Position	Telephone Number	Office Email or URL
Policy Clarification	Office of Institutional Equity	574-631-0444	equity@nd.edu
Web Address for this Policy			http://policy.nd.edu