

# Trine University

## Procedures for Sexual Misconduct/Sexual Assault Grievances or Complaints

### Students Who May be Victims of Sexual Misconduct or Sexual Assault:

Trine University is committed to creating a community free from violence. The University will not tolerate sexual assault, sexual harassment, domestic violence, or stalking as defined by State and Federal laws. The survivor has the right to have any and all sexual assaults against their person treated seriously and the right to be treated with dignity. All University personnel are encouraged to immediately refer sexual assault survivors to the Director of Campus Safety or the Dean of Students.

Trine University recognizes that the decision about whether to bring allegations against another student can be complicated and challenging. This guide is meant to assist students in understanding the process by which allegations of sexual misconduct, including allegations of sexual assault, are resolved within the Trine University Student Judicial Process. Alternatively or additionally, students may choose to pursue options outside of Trine University. This document only addresses the University's internal process.

Students considering whether to or how to proceed with a complaint need to consider their emotional and physical well-being. There are support services for students available at Trine University. Any student needing help addressing personal distress is encouraged to contact Trine University Counseling Services.

NOTE: Trine University is responsible for investigating all reports of sexual misconduct.

If a student is known to be the survivor of any form of sexual misconduct, he/she is strongly urged to seek immediate assistance. Assistance can be obtained 24 hours a day 7 days a week, from:

- Angola Police Department **911 or 260.665.2121**
- Cameron Hospital (416 E. Maumee Street, Angola) **911 or 260.665.2141**
- Ft. Wayne Sexual Assault Treatment Center/Forensic Nursing Specialties (2270 Lake Ave. Suite 201, Ft. Wayne) **260.460.0369**
- Trine University Campus Safety (Conrad Hall) **260.316.1877**
- Trine University Counseling Services (Student Services) **260.665.4172** (after hours call Campus Safety **260.316.1877**.)

During business hours (8:00 am to 5:00 pm, Monday-Friday), you are strongly encouraged to contact the Dean of Students, Randy White at (260.665.4168) or [whiter@trine.edu](mailto:whiter@trine.edu), or in person in the Office of Student Services (University Center) as soon as reasonably possible to report any sexual misconduct believed to have occurred. For after-hours contact **Campus Safety 260.316.1877**.

Title IX requires that the University have a statement of policy and procedure for handling complaints of sexual misconduct. 20 U.S.C. 1092 (f) (7) and 1681 (a). This Procedure and the

preceding Policy constitutes that statement. If there are any questions regarding Title IX please contact Randy White, Trine University Title IX Coordinator.

- Title IX Coordinator:  
Randy White  
260.665.4168  
[whiter@trine.edu](mailto:whiter@trine.edu)  
(after hours Campus Safety – (260) 316.1877)
- Office for Civil Rights (OCR)  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Customer Service Hotline (800) 421.3481  
Facsimile: (202) 453.6012  
TDD#: (877) 521.2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

For extensive information about the many forms of sexual misconduct and the resources available at the University and in the local community, please consult Trine University's Student Services Resources website: [http://www.trine.edu/campus\\_life/student\\_wellness/resources](http://www.trine.edu/campus_life/student_wellness/resources).

#### A. Overview and Purpose.

Sexual misconduct, as defined by this procedure for complaints of student sexual misconduct/sexual assault comprises a broad range of behavior that will not be tolerated in the University's community of trust. Sexual misconduct/sexual assault violates federal civil rights law and may also be subject to criminal prosecution. Trine University is committed to fostering a community that promotes prompt reporting of sexual misconduct/sexual assault and timely and fair resolution of sexual misconduct/sexual assault complaints. Creating a safe and respectful environment is the responsibility of all members of the University community.

As a recipient of federal funds, the University is required to comply with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* ("Title IX"), which prohibits discrimination on the basis of sex in education programs or activities. Sexual misconduct, as defined in this process and preceding policy, is a form of sex discrimination prohibited by Title IX. Trine University is committed to providing programs, activities and an educational environment free from sex discrimination.

The individual bringing the allegation or complaint is called the Complainant (survivor). The Respondent (accused) is the student or employee who has allegedly violated the Trine University Community Standards Policy and is the individual named in the complaint.

This procedure and preceding policy is designed to provide due process while also ensuring a Complainant's protections under Title IX. The University is also required and committed to

upholding the First Amendment of the United States Constitution. Nothing in this policy is intended to abridge the rights or freedoms guaranteed by the First Amendment. For further explanation of definitions related to this procedure manual, please see the preceding policy.

I. JURISDICTION; TIMING; RETALIATION AND RELATED MISCONDUCT;  
CRIMINAL PROCEEDINGS

A. Jurisdiction.

1. Personal Jurisdiction. Any person may file a complaint of sexual misconduct/sexual assault against a current student or current employee under this policy and procedure. For purposes of determining personal jurisdiction, a “current student” means any student who is registered or enrolled at Trine University at the time of the alleged sexual misconduct (including sexual misconduct that is alleged to have occurred during any academic recess, provided that there is an expectation of such student’s continued enrollment at the University).
2. Geographic Jurisdiction. This policy and procedure applies to any allegation of sexual misconduct/sexual assault against a Trine University student, regardless of where the alleged sexual misconduct occurred. Although there is no geographical limitation to invoking this procedure, sexual misconduct that is alleged to have occurred at a significant distance from Trine University may be more difficult to investigate.

- B. Timing of Complaints and Availability of Procedures. So long as there is personal jurisdiction over the Respondent pursuant to Section I.A.1, above, there is no time limit to invoking this procedure regarding complaints of alleged sexual misconduct. Nevertheless, students are encouraged to report alleged sexual misconduct immediately in order to maximize the University’s ability to obtain evidence, and conduct a thorough, impartial, and reliable investigation.

Where the Respondent is a degree candidate, it is the responsibility of the Complainant to consult with the Office of Student Services concerning the accused student's intended date of graduation and to file a complaint in a timely manner in complaints where personal jurisdiction over the Respondent would otherwise be lost pursuant to Section I.A.1, above. In no circumstances will the University allow an impending graduation to compromise its resolution processes. The conferral of a degree may therefore be held, if necessary, until proper resolution of any sexual misconduct charges, provided that a hearing opportunity will be scheduled for the earliest possible date that can accommodate the parties and their witnesses.

- C. Retaliation. It is a violation of University standards to retaliate against any person making a complaint of sexual misconduct/sexual assault or against any person cooperating in the investigation of (including testifying as a witness) to any

allegation of sexual misconduct/sexual assault. For these purposes, “retaliation” includes intimidation, threats, harassment and other adverse action against any such Complainant or third party. This includes any use of electronic media used to intimidate, threaten or harass. Retaliation should be reported promptly to the Dean of Students and may result in disciplinary action.

- D. Other Related Misconduct. In accordance with this procedure, the Sexual Misconduct/Sexual Assault Hearing Board is empowered to hear allegations of, and to impose sanctions for, sexual misconduct *and* sexual assault *and* any violations of the University’s Community Standards of Conduct directly related to the alleged sexual misconduct or any alleged violations of the preceding policy. Such related misconduct may include, without limitation, violations of the rules of privacy as articulated herein, violations of the Dean's directive(s) discussed below, and/or violations of other Standards of Conduct that occurred in the course of the alleged sexual misconduct/sexual assault. University students, who appear before the Sexual Misconduct/Sexual Assault Hearing Board, whether as parties to the proceedings or as witnesses, are expected to provide truthful testimony.
- E. Effect of Criminal Proceedings. Because sexual misconduct may constitute *both* a violation of University policy *and* criminal activity, the University encourages students to report alleged sexual misconduct promptly to local law enforcement agencies. Criminal investigations may be useful in the gathering of relevant evidence, particularly forensic evidence. Because the standards for finding a violation of criminal law are different from the standards for finding a violation of this policy, criminal investigations or reports are *not* determinative of whether sexual misconduct has occurred. In other words, conduct may constitute sexual misconduct under this policy even if law enforcement agencies lack sufficient evidence of a crime and therefore decline to prosecute. The filing of a complaint of sexual misconduct under this policy is independent of any criminal investigation or proceeding. The University will not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation; however, the University’s investigation may be delayed temporarily while the criminal investigators are gathering evidence. The University will take interim measures to protect the Complainant and the University community if necessary.

## II. THE PROCESS: INITIAL STEPS

- A. Initial Statement. To bring a complaint forward against a student or employee, the Complainant must submit an initial, written statement detailing the allegations. This statement is the first opportunity for the Complainant to describe the event and the allegations. It is among the most important documents considered in the process. Once submitted, the initial statement may not be amended, and will be used by the University as the Complainant’s best recollection of the events. The statement must be written by the Complainant; it is unacceptable for Complainant to submit a statement written by others, including parents, support persons, or attorneys. However, Complainants are encouraged to share a draft of the

statement with a support person who is well-positioned to discuss, among other matters, the statement's style, organization, length, and clarity, while also anticipating questions it may raise for the Investigator. Any subsequent information may be submitted to the Investigator during the Investigative process prior to the Hearing. **A complaint concerning sexual misconduct/sexual assault should be reported in a timely manner to ensure adequate documentation and investigation.**

1. *The Complainant's Statement* should communicate the Complainant's account of the event and its context, as well as the Complainant's reflections:
    - a. *Tell the story in full.* The Complainant should state the facts of the incident in full detail. The Complainant should take care to distinguish between what he/she knows first-hand from what he/she may have learned later from others. As noted above, this initial statement will be viewed as the Complainant's most accurate recollection of the events in question.
    - b. *Describe the context.* It is important for the Complainant to give his/her perception of the Respondent's conduct and the context in which the incident occurred, including its location, and any witnesses to it.
    - c. *Reflect on the event.* It is helpful for the Complainant to provide any conclusions he/she has drawn about the incident, stating clearly why the Complainant believes the Respondent's actions may have violated a rule or Community Standard.
  2. The Complainant should attach to this statement a descriptive list of all sources of information (e.g., persons, correspondence, records, etc.) that he/she believes should be considered along with a brief explanation of why he/she believes the inquiries would be relevant and helpful to the process. The Complainant should identify sources of supporting information but not attempt to obtain this information on their own. The Investigator will direct the solicitation of any statements or documents sought as part of the process.
- B. Intake Meeting with the Complainant. Upon notice of any allegation of sexual misconduct or sexual assault, the Dean of Students will first schedule an individual intake meeting with the Complainant in order to provide to the Complainant a general understanding of this policy and procedure and to identify forms of support or immediate interventions available to the Complainant (e.g., referrals to appropriate law enforcement agencies; referrals for medical treatment at the below resources). The intake meeting may also involve a discussion of any accommodations that may be appropriate concerning the Complainant's academic, University housing, and/or University employment arrangements.

*RESOURCES for medical treatment and support:*

1. Angola Police Department **911** or **260.665.2121**
2. Cameron Hospital (416 E. Maumee Street, Angola) **911** or **260.665.2141**
3. Ft. Wayne Sexual Assault Treatment Center/Forensic Nursing Specialties (2270 Lake Ave. Suite 201, Ft. Wayne) **260.460.0369**
4. Trine University Campus Safety (Conrad Hall) **260.316.1877**
5. Trine University Counseling Services (Student Services) **260.665.4172**  
(after hours call Campus Safety **260.316.1877**)

C. Complainant Wishes to Pursue Formal or Informal Resolution. At the initial intake meeting with the Complainant, the Dean of Students will seek to determine how the Complainant wishes to proceed, i.e., whether the Complainant wishes to pursue the *Investigative process*, (See Section III. below) *Administrative Resolution* (See below) or does not wish to pursue resolution of any kind. If the Complainant wishes to proceed with either the *Investigative process* or *Administrative Resolution*, the Dean of Students will determine the name of the Respondent, and the date, location and nature of the alleged sexual misconduct, and will schedule an individual intake meeting with the Respondent in order to provide to him or her a general understanding of this policy and procedure and to identify forms of support or immediate interventions available to him or her, as described above.

1. Administrative Resolution. Administrative Resolution is the only judicial mechanism in which both parties have control over the outcome of the dispute. This option will be sufficient for some individuals and not adequate for others. In Administrative Resolution, the Respondent and Complainant can be offered a resolution which avoids the hearing process. In some cases, the Respondent may enter into an agreement with the Dean of Students to accept responsibility, partial responsibility, or not to contest an allegation, thus waiving his or her right to the hearing process and agreeing to an outcome or sanction which is not subject to appeal. This agreement will be presented by the Dean of Students to the Sexual Misconduct/Sexual Assault Hearing Board for review. There are options in Administrative Resolution such as changing living arrangements, academic class schedules, providing options for completing work or leaves of absence.

2. Investigative process. Refer to Section III. below of this document for details regarding the Investigative process.

D. Notification of the Respondent. If a student is named as a Respondent in a complaint, the Dean of Students will notify him/her that a complaint has been brought against them. If an employee is named as a Respondent in a complaint, the Director of Human Resources will notify him/her that complaint has been brought against them. The Dean of Students will provide him/her with a copy of the "Notice of Complainant" form, (see appendix A) and outline the procedural

steps in addition to the confidentiality policies. At this point, the Respondent will not have access to the full initial statement of the Complainant. Only the time, location, date, and basic description of the allegations against him/her will be provided.

1. *Respondent's Statement.* Prior to seeing the full initial statement of the Complainant, the Respondent will be asked to provide a written statement responding to the basic allegations. The "Respondent's Statement" (see appendix B) must be provided to the Dean of Students within five business days of notification of the charges. After the Respondent submits the statement, he/she will be given the "Notice of Complaint" description, and the "Respondent's Statement" will be given to the Complainant. Like the Complainant's statement, the "Respondents Statement" should be the Respondent's full recollection of the incident. It cannot be amended. The Respondent's statement should include a descriptive list of sources of information that the Respondent believes are relevant to the case and may provide additional information for the Investigator. If a Respondent declines to provide a written response statement, then the Respondent may not view the Complainant's full statement.
  - a. It is possible that both the Respondent and Complainant may list the same person to speak about their version of events. Be aware that witnesses should not be intimidated, threatened, or improperly influenced in any way, and should only be encouraged to speak the truth.
  - b. Complainants or Respondents who share their statements with anyone not authorized to see it, at any time during the process, will have violated confidentiality, and will be subject to disciplinary action.
- E. Complainant Does Not Wish to Pursue Resolution. If the complainant does not wish to pursue the *Investigative Process* or *Administrative Resolution* and/or requests that his or her complaint remain confidential, Title IX nevertheless requires the University to investigate and take reasonable action in response to the Complainant's request. The Dean of Students will inform the Complainant that the University's ability to respond may be limited. In such cases, Title IX requires the University to evaluate the Complainant's request(s) for no action in the context of the University's commitment to provide a reasonably safe and non-discriminatory environment for all students and employees. In order to make such an evaluation, the Dean of Students may conduct a preliminary investigation into the alleged sexual misconduct and may weigh the Complainant's request(s) against the following factors:
  1. The seriousness of the alleged sexual misconduct;
  2. whether there have been other complaints of sexual misconduct against the same Respondent;

3. and how much evidence is available and can be shared under FERPA without the involvement of the Complainant. The Dean of Students will inform the Complainant if the University cannot ensure confidentiality. Even if the University cannot take disciplinary action against the Respondent because the Complainant insists on confidentiality or that the complaint not be resolved, Title IX nonetheless requires the University to take prompt and effective action to limit the effects of the alleged sexual misconduct and to prevent its recurrence. The Dean of Students reserves the authority to issue a “*No-Contact*” order and the other interim measures described below.

F. Interim Measures. In *all* complaints of alleged sexual misconduct, *regardless of whether the Complainant wishes to pursue the Investigative Process, Administrative Resolution or no resolution of any kind*, the University will undertake an appropriate inquiry and take immediate action to support and protect the Complainant, including taking appropriate interim steps before the final outcome of the investigation and hearing, if any. Accordingly, at or after the intake meeting, the Dean of Students may impose a “no-contact” order, which typically will include a directive that the parties refrain from having contact with one another, directly or through proxies, whether in person or via electronic means, pending the investigation and, if applicable, the hearing. The Dean of Students, as Title IX Coordinator, also may take any further protective action that he or she deems appropriate concerning the interaction of the parties pending the hearing, which may include directing appropriate University officials to alter the students’ academic, University housing, and/or University employment arrangements, or other appropriate protections. Title IX requires that, when taking such steps to separate the Complainant and the Respondent a school must minimize the burden on the Complainant and thus should not remove the Complainant from his or her classes or housing while allowing the Respondent to remain. Violation(s) of the Dean of Student's directive and/or protective actions will constitute related offenses that may lead to additional disciplinary action.

### III. INVESTIGATION PROCESS

The following section provides more detailed information regarding the *Investigative Process* and information pertaining to the Sexual Misconduct/Sexual Assault Hearing process. It is intended as a procedural guideline for those involved in a disciplinary proceeding, whether as Complainant, Respondent, Witness, etc. Some complaints address issues that, while they may be offensive or hurtful to the Complainant, would not be considered to be a punishable offense, even if proven. In these situations the Dean of Students may decide not to proceed with the complaint.

A. Contact with Participants. When the Office of Student Services receives a complaint alleging sexual misconduct, the University will ban any communication between the participants in the case. This prohibits any attempt to contact or respond to any communication from each other, either directly or through others. This is called a “No Contact Order”. Any violation of the “No Contact Order”

including any attempts to harass, threaten, or intimidate participants by any means including electronic media, will be grounds for separate disciplinary action, up to and including possible removal from campus.

- B. Confidentiality. All information from the investigation related to a sexual misconduct/sexual assault allegation must be treated as confidential. These confidentiality obligations are intended to help protect the privacy of all participants, as well as the integrity of the disciplinary process. Confidentiality will remain in full force even after the conclusion of the disciplinary case. The Jeanne Clery Disclosure of Campus Security Policy and the Campus Crime Statistics Act requires that colleges and universities disclose information about all acts of sexual misconduct. This report will *not* disclose any identifying details such as names, ages, or specific locations. Once a report has been filed, for the safety of the campus community, the University is also required to notify the campus community of all allegations in a timely manner. Identifying details will be kept confidential. Students with questions or concerns about their disciplinary cases and questions about the persons with whom they may discuss the disciplinary case should consult with the Dean of Students.

Disclosure of such information to anyone other than the Dean of Students or the Investigator, support person or confidential counselor is strictly prohibited and may subject the person responsible for the disclosure to disciplinary action. Individuals with whom a student has shared disciplinary case materials are prohibited from disclosing them to others without the permission of the Dean of Students, and any disclosure by such individuals may subject the student who disclosed them to disciplinary action.

- C. Serious Criminal Conduct. Trine University's student judicial process does not attempt to create a courtroom environment and attorneys for students are not permitted to participate. However, participants should seek legal advice about how the disciplinary process could impact any criminal case in which they are or may become involved. Ordinarily the Office of Student Services will continue to conduct its own review of a complaint, even if the alleged misconduct is also being pursued through the criminal justice system.
- D. Support Person. Students involved in the Investigation process as Complainants or Respondents may be more comfortable navigating the process with the help of a support person. This is a person whom the student trusts to provide him/her with advice and support during the process. The support person does not participate in the process, and may not speak on behalf of the Complainant or Respondent. He or she may accompany the Complainant or Respondent to any part of the judicial process. The support person can be a friend, parent, or faculty member. He or she must agree to maintain the confidentiality of the process (see appendix C). The Complainant and Respondent will not be represented by the same support person. Generally attorney involvement in campus hearings is not encouraged, but students can be allowed to bring attorneys to hearings where suspension or

expulsion is possible or where criminal charges may be filed against the accused or already pending. The attorney may not take part directly in the hearing itself, though they may communicate with the Respondent or Complainant as necessary. If the Respondent intends to have an attorney present, the alleged survivor must be informed at least 48-hours in advance and reminded that he/she also has the right to have an attorney present. The Dean of Students also needs to be informed at least 48-hours in advance if either party intends to have an attorney present.

- E. Investigator Interviews and the Role of the Note-Taker. Complainants and Respondents will always meet at separate times with the Investigator and will never be asked to confront one another. The University will assign a Note-Taker to every session with an Investigator. The Note-Taker will record each session with the Investigator in order to ensure accuracy of statements. The Investigator will be able to read the Note-Taker's notes to the Complainant or Respondent, but will not provide a copy of the notes. The Complainant and Respondent may take his or her own notes while listening to the summary of the Investigator. The Note-Taker's role is for documentation purposes only.

Materials provided to the Investigator may be shared with the Complainant and the Respondent during their respective interviews. The Complainant's or Respondent's support person may accompany the Complainant or Respondent to all the meetings with the Investigator but may not participate in the conversation. Similarly, a University chosen Note-Taker will be present at, but will not participate, in the interviews of all Investigative sessions in the case. Witnesses are not allowed to bring support persons to their interviews. The Investigator will conduct additional interviews, or review other relevant sources of information, including persons not already interviewed. Witnesses who are no longer on campus or in the Angola area may be interviewed by phone.

\* *In summary:*

1. When an Investigator is interviewing a Complainant or Respondent; the Investigator, the Complainant or Respondent, his or her support person (if desired), and a University assigned Note-Taker will be present.
2. When an Investigator is interviewing a witness; the Investigator, the witness and a University assigned Note-Taker will be present and sessions will be audio recorded to ensure accuracy.

- F. Admissibility of evidence. It is important to remember that one of the principal advantages of the *Investigative process* is the absence of a face-to-face confrontation and a de-emphasis on the "admissibility" of evidence. The *Investigative process* is intended to arrive at the truth of the matter, without the formalities associated with rules and procedures specifically designed by lawyers to manage courtroom litigation. This allows for a student to address some issues and to present documents without the fear of the opposing party hearing or seeing any information. It is up to the Investigator to determine what is relevant and

probative in the investigation. It is up to Trine University to make sure that the Investigator understands the protocols that govern what information can be considered.

1. *Sexual History:*

In a sexual assault case, the past sexual history of either party cannot be used in any way as a defense of the Respondent's alleged behavior. Investigators will be instructed that they may not consider either party's sexual history with others in determining whether a Respondent sexually assaulted the Complainant. Questions and discussion about the sexual history between the Complainant and the Respondent will be allowed. Prior sexual activity between the two parties will not be interpreted to have reduced the responsibility of the Respondent to respect and abide by the willingness of the Complainant to engage in unwanted sexual activity.

2. *Medical records and Counseling Records:*

The University will not require any student to release his or her counseling records to the other party or to the Board as part of the hearing process. The University will not require a counselor to participate in a hearing. The Complainant or the Respondent may include his or her own medical records or documents as part of the list of materials that he or she would like the Investigator to consider if directly relevant to the allegation of sexual assault or sexual misconduct. In these instances, this evidence will be treated like any other evidence in the case. The Investigator determines that it would be probative to include such documents or conversations about them in the investigation, the Investigator may ask a student if he or she is willing to provide them.

3. *Verification of Professional Services Sought:*

In the absence of actual records or the presence of a medical professional as a witness, a student may testify to the fact that he or she sought medical, mental health, or other professional services as a result of the incident in the complaint. The student must provide verification of the dates, times, and person providing the services. The verification may not include details of the counseling or other services, or details of any conclusions made by the practitioner.

4. *Interactions with the Investigator:*

The Investigator will interview both the Complainant and Respondent, and may, at his or her discretion, interview others who were identified as potential sources of information. This meeting is an opportunity for the participant to discuss his or her recollection of the event in question, supplement any written statements already submitted, voice any concerns, and to work with the Investigator to determine what information may be available for the next phase of the investigation. After conferring with the Investigator about what was said in the various interviews, the Complainant

and the Respondent may ask to meet with the Investigator to clarify material or statements made to the Investigator. All information shared with participants or their support persons must be treated confidentially. It is the participants' responsibility to enforce confidentiality with their support persons.

5. *Investigator's Report and Recommendation:*

Once the interviews are complete, the Investigator will evaluate the information obtained during the investigation and provide his or her report and recommendation to the Dean of Students. Prior to the Dean of Student's receipt of the Investigator's report, a Complainant may withdraw an allegation, and a Respondent may accept responsibility for the alleged misconduct. Either action will, under most circumstances, end the process. Once an allegation is withdrawn, it cannot be filed again within the University judicial process at a later time. Once a Respondent accepts responsibility, such acceptance cannot be withdrawn.

If a complaint involved allegations of conduct that is of a particularly serious nature, or if similar allegations have been brought by others about the same Respondent, the University may decide to move forward with a charge in the interest of community safety, even if the Complainant elects to drop the complaint.

G. Dean of Student's Decision. After reviewing the report and recommendations of the Investigator, the Dean of Students may:

1. Make a decision after consulting with the Sexual Misconduct/Sexual Assault Hearing Board.
2. Seek further information prior to making a decision.

If the Respondent, after receiving notice of the complaint, does not deny the allegation, or if the evidence is indisputable, a sanction may be imposed without a hearing. These decisions may be made by the Sexual Misconduct Hearing Board or the Dean of Students.

If asked to do so by the Dean of Students, the Investigator will conduct additional interviews of the Complainant, Respondent, or other relevant sources of information, including persons not already interviewed. Witnesses who are no longer on campus or in the Angola area may be interviewed by phone.

*\* NOTE: There will be a four person Hearing Board to judge the strength of the evidence in cases involving issues of sexual misconduct/sexual assault only when the student denies the allegation. This committee consists of gender equal faculty and staff members of the University who generally work in upper administration. If the committee is unanimous in finding the evidence to be indisputable, a Dean of Student's decision will be made. If the vote is not unanimous, the case can only progress forward through the hearing process.*

- H. Notice of Hearing. If a hearing is granted the Dean of Students will commence the Hearing Board process by providing written notice to both parties (the "Notice of Hearing") stating: (1) the date, time, and place of the pre-hearing meeting at which preliminary matters will be discussed, and (2) the names of the Board Members selected to serve as the Sexual Assault/Sexual Misconduct Hearing Board. A participant has a right to a fair and impartial board. Normally, the names of the Hearing Board Members who will consider a sexual misconduct / sexual assault complaint will be given to the parties five days prior to the hearing. A Board Member will be replaced if one of the parties in the case is able to demonstrate to the Dean of Students, at least three days before the scheduled hearing, that the Board Member is not in a position to be objective. The Dean of Students will judge whether a Board Member whose objectivity is questioned should remain on the Hearing Board. The mere fact that a Board Member has taught or is teaching a class in which one of the parties was or is enrolled is not per se grounds for disqualification of the Board Member.
- I. Delivery of Notice of Hearing. The Notice of Hearing will be delivered, at the Dean of Student's discretion, by email or in person, and will be considered effective immediately upon delivery. The hearing will take place promptly (within **5-10 business days**) following delivery of the Notice of Hearing. The parties are expected to cooperate in the scheduling of the hearing. If either party fails to appear at the scheduled hearing, the Dean of Students may postpone the proceedings or direct that the Sexual Misconduct/Sexual Assault Hearing Board proceed and determine the complaint on the basis of the evidence available, provided the absent party was duly notified of the scheduled hearing date, as outlined above.
- J. Hearing Date. While there is no rigidity in the scheduling of a hearing, one can expect that a hearing or other judicial option will take place within **5-10 business days** of the initial complaint. If a date cannot be found within those two weeks, the hearing will be scheduled for the soonest possible date. The judiciaries may consider University holidays and Board availability or other factors in choosing a hearing date. It is often impossible to avoid time conflicts with other University activities. A hearing will not be postponed because of such conflicts. However, the Dean of Students will provide written verification of students' involvement in a disciplinary process to a faculty member or coach if deemed necessary.

Once the date for a hearing has been chosen, there will be no postponement unless one of the parties involved in the case is faced with an emergency or University personnel have an unavoidable conflict. Rescheduling of the hearing after such a conflict will be at the discretion of the Dean of Students or the appropriate judiciary. No postponement will be granted for witness conflicts. Efforts will be made to avoid scheduling a hearing during exam periods.

- K. Sexual Misconduct/Sexual Assault Hearing Board Members. Members of the Sexual Misconduct/Sexual Assault Hearing Board may consist of faculty or University staff of both genders. Students are not to be Board Members in any cases of sexual misconduct or sexual assault. The Board Members are informed about the issues involved, the standards used, and the fair process requirements.

#### IV. HEARING PROCEDURES

In general, hearings will follow this order, although by agreement of all parties involved, modifications may be made to facilitate the process. The University will assign a Note-Taker to every hearing.

- A. Pre-Hearing Submissions: Each party shall provide the Convener/Dean of Students with a brief written statement describing their positions, a list of witnesses they propose to call, and copies of documents and a description of any other evidence they propose to present at the hearing **three (3) business days** prior to the hearing date. In the absence of good cause as determined by the Convener/Dean of Students at his or her sole discretion, parties may not introduce witnesses, documents, or other evidence at the hearing that were not provided to the Convener/Dean of Students by this deadline. The parties are also responsible for the attendance of their witnesses at the hearing. Each party will also be given a list of witnesses.
- B. Pre-Hearing Meeting and Determination of Witnesses: The Convener/Dean of Students will seek to schedule a pre-hearing meeting **no less than five (5) business days** prior to the hearing date. At the meeting, the Convener/Dean of Students will review hearing procedures with the parties. The Convener/Dean of Students will also review the list of proposed witnesses to assist the parties in eliminating redundant testimony. At the meeting, the Convener will provide each party with a copy of the Complainant's and Respondent's statements, list of witnesses, and identification or copies of documents or other evidence submitted by the other party.
- C. Pre-Hearing Discussion: Once a Board Member has been named to a Sexual Misconduct Hearing Board, he or she may not privately discuss the merits of the case with the parties or with anyone acting on the parties' behalves. The Convener/Dean of Students will provide the Board Members with a copy of the Notice of Complaint, the Investigative report, and position statements submitted by the parties.
- D. Negotiated Resolution: The Convener/Dean of Students may propose a resolution of a complaint of sexual misconduct /sexual assault and request an *Administrative Resolution* with the consent of the Complainant at any time in cases where the Respondent wishes to acknowledge guilt and agree to a sanction.

- E. Conduct of the Hearing: Although parties are not asked to swear or affirm an oath, all written and oral participation must be authentic and truthful. Any demonstrated fabrication or tampering with evidence will be subject to disciplinary action. Note that a party or witness will always have the right to refrain from responding to particular questions. However, the Sexual Misconduct/ Sexual Assault Hearing Board is permitted to draw negative inference from a party's or witness's refusal to answer questions. The Board will determine whether a violation has occurred based on the testimony and evidence presented.

*\* As a non-adversarial process the hearing will not follow a courtroom model. The Convener/Dean of Students will determine the order of the witnesses and resolve any questions of procedure arising during the hearing. The University will have arranged for all necessary witnesses to be present, or to have provided written statements in lieu of attending the hearing. This may be done as necessary to accommodate a witness who cannot be present, or whom the Convener/Dean of Students determines may remain anonymous. The parties should help to ensure that their proposed witnesses are present. The Hearing Board will review in advance of the hearing all the written materials provided to them by the Convener/Dean of Students in accordance with paragraph above. The parties will not be expected to repeat undisputed details or non-material circumstances that would merely duplicate the written materials. Only the Convener/Dean of Students and the Hearing Board members may question the individual parties and any witnesses. However, both parties may ask the Convener/Dean of Students to pose additional questions or inquire further into specific matters by submitting these requests in writing. If necessary, a brief recess may be granted to allow both sides an opportunity to prepare and submit such requests. The Convener/Dean of Students is empowered to disallow any questions that are irrelevant or redundant. After all witnesses have been questioned, each party may make a closing statement and request a short recess to prepare it. If the Hearing Board determines that unresolved issues exist that would be clarified by the presentation of additional evidence, the Convener/Dean of Students may recess the hearing and reconvene it in a timely manner. A recess may not be based on the failure of witnesses to appear without good cause or on the proposed introduction of documents or other evidence that should have been presented at the pre-hearing meeting.*

F. Order of Events during Hearing:

1. **Opening statement of the Complainant (limited to five minutes)**
2. **Opening statement of the Respondent (limited to five minutes)**
3. **Questioning of each party by the Board**
4. **Questioning of the Complainant's witnesses by the Board**
5. **Questioning of the Respondent's witnesses by the Board**
6. **Final questioning by the Board**
7. **Closing statement of the Respondent (limited to ten minutes)**
8. **Closing statement of the Complainant (limited to ten minutes)**

\*There may be circumstances where the Convener/Dean of Students may change the order of events, allow witnesses to be taken out of order, or allow additional witnesses to be called. The evidence to be presented and when applicable, the list of witnesses, is

required prior to the scheduled hearing. Moreover, the Sexual Misconduct/Sexual Assault Hearing Board has discretion to ask clarifying questions throughout the proceeding

- G. Testimony by the Respondent: The Respondent shall have the right not to testify; however, the exercise of that right shall not preclude the Hearing Board from proceeding and determining the complaint on the basis of the facts and circumstances presented.
- H. Testimony by Alternate Means: In appropriate circumstances, including cases where parties or witnesses are otherwise unable to participate in the hearing, the University is able to provide testimony by closed-circuit technology, Skype, etc. The availability of testimony by alternate means will be at the sole discretion of the Dean of Students.
- I. Recording: The Convener/Dean of Students will arrange for the hearing to be audio recorded through the Office of Student Services.
- J. Standard of Proof. The Department of Education's Office of Civil Rights has interpreted Title IX to require schools to evaluate evidence of alleged sexual misconduct under a "*preponderance of the evidence*" standard. A preponderance of the evidence means that the information shows it is "*more likely than not*" that the Respondent violated this policy. The Respondent will be found to be responsible for the alleged sexual misconduct if the Sexual Misconduct/Sexual Assault Hearing Board, by a majority vote, concludes that such sexual misconduct more likely occurred than not based upon careful review of all information presented.
- K. Impact Statement. If the Hearing Board determines that the Respondent is responsible for sexual misconduct, i.e., that the sexual misconduct more likely occurred than not, the Complainant may present the Board with a verbal or written Impact Statement. The Respondent will be provided an opportunity to respond to the Impact Statement. The Hearing Board is not bound by these statements in determining a sanction. Witnesses are not permitted at the Impact Statement phase of the hearing; however, the Convener/Dean of Students reserves discretion to permit the presence of other persons.
- L. Findings. Findings should be reached by the Hearing Board within **2 business days** of the conclusion of the hearing. If the Respondent has been charged with "Sexual Assault," the Hearing Board shall determine whether that charge has been established to have more likely occurred than not. If the Hearing Board determines that the evidence does not merit a finding of Sexual Assault, the Board then shall consider whether "Sexual Misconduct" has been proven to have more likely occurred than not, whether or not stated in the Notice of Complaint. The Respondent will be informed of the findings first, and then the Complainant. Each party will be informed separately and at different times so that they do not encounter each other.

- M. Sanction. The Hearing Board may impose any sanction that it finds to be fair and proportionate to the violation and that is authorized for violations of the University Community Standards, up to and including disciplinary probation, suspension, or expulsion. In determining an appropriate sanction, the Hearing Board may consider any record of past violations of the University Community Standards, as well as the nature and severity of the misconduct. The Hearing Board will consider, as part of its deliberations, whether the Respondent poses a continuing risk to the Complainant and/or University community. The University expects all cases involving a conviction of Sexual Assault to involve consideration of the sanctions up to and including suspension or expulsion. Any sanction imposed shall be explained or supported in the written decision of the Hearing Board.
- N. Decision. Within **two (2) business days** from the conclusion of the hearing (or such longer time as the Convener/Dean of Students may determine for good cause), the Convener/Dean of Students will provide the parties, with a copy of the Hearing Board's written decision.
- O. Effective Date of Sanction. Sanctions imposed by a Hearing Board shall not be effective until any timely administrative appeal of the decision is completed. However, if advisable to protect the welfare of the Complainant or the University community, the Hearing Board may include in its determination letter that any probation, suspension, or expulsion is effective immediately and shall continue in effect until such time as the Dean of Students may determine otherwise. The President may suspend the determination pending exhaustion of appeal, or allow the student to attend classes or other activity on a supervised or monitored basis. The President's decision may not be appealed. A student cannot receive a degree while a pending disciplinary case against him or her remains unresolved, or until his or her status in the University is restored to good standing, and ordinarily may not participate in commencement or related activities or exercises.
- P. Transcript Notation in Complaints of Suspension or Expulsion. If the Sexual Misconduct/Sexual Assault Hearing Board imposes a sanction of suspension or expulsion, then, following exhaustion of any appeals, the Dean of Students will notify the University Registrar to place a notation on the student's transcript reading "Disciplinary Suspension" or "Disciplinary Expulsion," as the case was determined.
- Q. Privacy of the Hearing Process; Determination Letter; Memorandum Opinion. In order to comply with FERPA and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the hearing process is not open to the general public. Accordingly, documents prepared in anticipation of the hearing (including the Investigator's report, the Notice of Hearing, and the pre-hearing submissions

referenced in above), documents, testimony, or other information introduced at the hearing, and any transcript of the hearing itself may not be disclosed outside of the hearing proceedings, except as may be required or authorized by law. Following the hearing, the Hearing Board will issue two documents to the Respondent and the Complainant: a determination letter and a memorandum opinion. Each such document will be issued concurrently to the Respondent and the Complainant.

1. The determination letter will contain only the following information:
  - a) Name of the Respondent;
  - b) whether the Respondent has been found *responsible* or *not responsible* for specific violation(s) of the sexual misconduct policy;
  - c) the sanction imposed, if any.

As guaranteed by Federal law, both the Respondent and the Complainant have a right to this information. University policy neither encourages nor discourages further disclosure of the determination letter by either student. The memorandum opinion will contain an explanation of the Hearing Board's reasoning for its determination. The memorandum opinion is both an education record and private record of the hearing and may not be disclosed, except where disclosure is authorized or required by law.

- R. Appeals. Either party may appeal the Hearing Board's decision to the President of the University in writing within **three (3) business days** from the date of the Hearing Board's decision. All appeals will be governed by the procedures of the Sexual Misconduct/Sexual Assault Hearing Board.

**\*Outcomes determined through *Administrative Resolution* where the accused party has waived his or right to a judicial hearing are not subject to appeal.**

## V. THE APPEAL PROCESS

- A. Filing an Appeal. Both parties are entitled to appeal a disciplinary decision, with the exceptions described at the beginning of this report about *Administrative Resolutions*. The appeal, including the basis of the appeal, must be filed in writing within **three (3) calendar days** of the notification of the disciplinary decision. The appeal must specifically state the basis for the appeal (see below) and the information/evidence in support of the appeal. In exceptional circumstances, upon written request to the Dean of Students, an extension may be given for late submission of this material. Otherwise, materials submitted after the deadline will not be considered. An appeal of a disciplinary decision, regardless of which judiciary or University official issued the decision, must fall into one of the following categories:

- a. Denial of Fair Process. The question before the President will be whether or not the process used by the Sexual Misconduct/Sexual Assault Hearing Board provided an opportunity for the case to be considered fairly. There are some cases where a deviation or change from the general procedures outlined in the judicial process will have occurred but where the deviation or change will not have affected the outcome of the hearing. In such cases, there is no denial of fair process. Only the Sexual Misconduct/Sexual Assault Hearing Board, not either party, will respond before the President to the issues raised in the appeal.

If the President determines that there was not an opportunity for fair process in the hearing, the decision of the Sexual Misconduct/Sexual Assault/Hearing Board will be vacated and a new hearing will occur before the same Sexual Misconduct/Sexual Assault Hearing Board. The President does not hear the complaint.

- b. New Evidence. Occasionally, evidence becomes available after the Sexual Misconduct/Sexual Assault Hearing Board hears and decides a case. When such evidence could have substantially affected the outcome of the hearing before the Hearing Board, the President may vacate the Hearing Board's decision and have the same Hearing Board hear the new evidence and issue another decision. The party against whom the evidence is being introduced will be able to argue before the President that the evidence is not new and/or that the evidence could not have substantially affected the outcome of the hearing.
- c. Severity of the Consequence (for responding party only). The party subject to the disciplinary action will be able to argue that the consequence assigned is inconsistent with the outcomes for those who were found to be responsible for a substantially similar violation or offense. In this type of appeal, some or all representatives of the original Hearing Board (or the decision maker in the absence of a hearing) will be present to argue the rationale for the consequence assigned.

It is up to the President to determine whether the appeal statement clearly identifies and explains one or more of the above reasons for the appeal. In the absence of such demonstration, the appeal will be denied. The appeal is not an opportunity to argue that the initial decision was wrong or a reason for a new *Investigative process*.

The documents provided to the President will include the initial complaint and response forms, the outcome letter from the Sexual Misconduct/Sexual Assault Hearing Board and the appeal letter. Other documents may be admitted at the discretion of the Convener/Dean of Students.

- B. Dismissal of an Appeal. All appeals must be filed within the stated time limits and must set forth the basis for the appeal as well as the information/evidence to support an appeal. The President may decide not to accept an appeal that does not comply with the requirements noted above, or it may take other action to bring the appeal into compliance.

# Trine University

## NOTICE OF COMPLAINT

Anyone wishing to make a complaint against an individual, several individuals, or an organization in the Trine University community must complete a *Notice of Complaint*. The *Notice of Complaint* should be filed with the Dean of Students in the Office of Student Services. A copy of the complaint will be made available to the individual(s) about whom you are complaining, who will be asked to respond, in writing. A copy of the response will be given to you. Please refer to the Judicial Process for a more detailed description of this process.

COMPLAINT: \_\_\_\_\_  
\_\_\_\_\_

Name of Person Making Complaint:  
\_\_\_\_\_

Person(s) or Organization about whom the complaint is being made:  
\_\_\_\_\_

Date Submitted to the Dean of Students in Student Services:  
\_\_\_\_\_

Signature of Complainant: \_\_\_\_\_

\*Date Signed: \_\_\_\_\_

\*Class Year: \_\_\_\_\_

\*Phone: \_\_\_\_\_

\*Local Address: \_\_\_\_\_  
\_\_\_\_\_

**\*\*\*NOTE:** A copy of this form will be given to the responding party. Omit personal identifying items if you do not want this info disclosed.

**\*\*\*\*** I understand that under the provisions of the Federal Privacy Act of 1974 (FERPA), as amended, my University records will not be released without my approval.



# Trine University

## RESPONDENT'S STATEMENT

(Response to a **Notice of Complaint**)

An individual named in a **Notice of Complaint** is asked to complete a **Respondent's Statement**. Completion of Part II of the statement is **optional**, but it is encouraged since it may be helpful in resolving the situation described in the complaint without formal adjudication.

---

Name of Respondent: \_\_\_\_\_

Response to the Complaint of: \_\_\_\_\_

Date Response is Required: \_\_\_\_\_

Allegation: \_\_\_\_\_

### Part I:

In response to the complaint referred to, I state the following is indicated by my initials below:

\_\_\_\_\_ I agree completely with the complaint.

\_\_\_\_\_ I agree with some of the allegation(s) made in the complaint, but it is not accurate in its entirety.

\_\_\_\_\_ I disagree completely with the allegation(s) made in the complaint.

### Part II.

Beginning on the next page, please provide an explanation of your response in Part I.

Signature of the Respondent: \_\_\_\_\_

Date Signed: \_\_\_\_\_

\*Class Year: \_\_\_\_\_

\*Phone: \_\_\_\_\_

\*Local Address: \_\_\_\_\_

**\*NOTE: A copy of this Respondent's Statement will be given to the complaining Party. Omit these items if you do not want this information disclosed.**



## Appendix C: Confidentiality Statement

### *CONFIDENTIALITY Statement for cases involving Sexual Misconduct/Sexual Assault:*

Any information or written material related to a disciplinary case must be treated as confidential. Disclosure of such information to anyone other than the Dean of Students or the Investigator, support person or confidential counselor is strictly prohibited and may subject the person responsible for the disclosure to disciplinary action. Individuals with whom a student has shared disciplinary case materials are prohibited from disclosing them to others without the permission of the Dean of Students, and any disclosure by such individuals may subject the student who disclosed them to disciplinary action.

These confidentiality obligations are intended to help protect the privacy of all participants, as well as the integrity of the disciplinary process. Confidentiality will remain in full force even after the conclusion of the disciplinary case, with the exception of generic reporting of the case and its outcome to the community and in the University's annual unified crime report. Students with questions or concerns about their disciplinary cases and questions about the persons with whom they may discuss the disciplinary case should consult with the Dean of Students.