

Trine University Sexual Misconduct / Sexual Assault Policy

TRINE UNIVERSITY SEXUAL MISCONDUCT / SEXUAL ASSAULT POLICY

I. SEXUAL MISCONDUCT / SEXUAL ASSAULT POLICY

INTRODUCTION

Trine University believes in a zero tolerance policy for sexual misconduct. Members of the Trine University community, guests and visitors have the right to be free from sexual violence. When an allegation of sexual misconduct is brought to the administration, and a **Respondent** (or accused) is found to have violated this policy; serious sanctions will be used to ensure that such actions are never repeated. All members of the community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The Trine University Sexual Misconduct / Sexual Assault Policy has been developed to reaffirm these principles and to provide recourse for the **Complainant** (or survivor), whose individual rights have been violated. This policy has dual purposes: 1) it serves as a measure for the University to determine, after the fact, if behaviors violate community values and standards and 2) it serves as a preventative guide for students on the expectations of the University, for sexual communication, sexual responsibility and sexual respect. The requirements of this policy are blind to the sexual orientation or preference of individuals engaging in sexual activity.

OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO PHYSICAL SEXUAL MISCONDUCT

While the following policy and process is quite detailed and specific, the expectations of this community can be summarized in this simple paragraph. In order for individuals to engage in sexual activity of any type with each other, there must be clear consent. In order to give effective consent, one must be of legal age. **Sexual Consent** is permission that can be given by word or action, but non-verbal consent is less clear than talking about what is wanted and what is unwanted. Consent to one form of sexual activity cannot be automatically taken as consent to any other forms of sexual activity. Silence, without action to demonstrate permission, cannot be assumed to show consent. There is a difference between seduction and coercion. **Seduction** is luring someone into sex. **Coercion** happens when someone unreasonably pressures someone else for sex. Coercing someone into sexual activity violates this policy just as much as physically forcing someone into sex. When alcohol or other drugs are being used, someone will be considered unable to give valid consent if they cannot appreciate the who, what, when, where, why, or how of a sexual interaction. Individuals who consent to sex must be able to understand what they are doing. It is important to keep in mind that under this policy, "No" always means "No," and "Yes" may not always mean "Yes."

OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO CONSENSUAL RELATIONSHIPS

Trine University does not interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and standards of Trine University. For the personal protection of members of this community, faculty/staff-student sexual relationships are strongly discouraged. Consensual romantic or sexual relationships in which one party retains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities. This includes Resident Director's, Resident Assistant's and students over whom they have direct responsibility. There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent does not remove grounds for a charge of a violation of applicable parts of the faculty/staff handbooks.

Sexual activity includes:

- Intentional contact with the breasts, buttocks, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.
- Intercourse, in the slightest form, meaning vaginal penetration by a penis, object, tongue or finger, anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact or genital to mouth contact).

RISK REDUCTION TIPS

If found in an uncomfortable sexual situation, these suggestions may help to reduce the risk of sexual assault:

1. Make sexual limits known before things go too far.
2. Tell a sexual aggressor "NO" clearly and loudly.
3. Try to remove oneself from the physical presence of a sexual aggressor.
4. Grab someone nearby and ask for help.
5. Be responsible for personal alcohol intake/drug use and realize that alcohol and/or drugs lower sexual inhibitions and may cause vulnerability to someone who views a drunk or high person as a sexual opportunity.
6. Watch out for friends and ask that they too keep a watchful eye on their friend. A real friend should intervene if a situation is starting to look unsafe. Respect them if they do.

If initiating sexual behavior, show sexual respect to a potential partner. These suggestions may help to reduce the risk for being accused of sexual misconduct:

1. DON'T MAKE ASSUMPTIONS about consent, about someone's sexual availability, about whether they feel there is an attraction, about how far to go, or about whether they are physically and mentally able to give consent.
2. Clearly communicate all intentions to a sexual partner and give them a chance to clearly state their intentions in return.
3. Mixed messages from a partner should be a clear indication to step back, defuse the sexual tension, and communicate better. Perhaps a misreading is occurring. Perhaps a partner hasn't figured out how far he/she wants to go yet. Be respectful of the timeline with which a partner is comfortable.
4. Don't take advantage of someone's drunkenness or drugged state, even if he/she did it to themselves.
5. A power advantage may be present simply because of gender or size. Don't use that advantage realizing that a potential partner could feel intimidated or fearful.
6. Understand that consent to some forms of sexual behavior does not necessarily imply consent to other forms of sexual behavior.
7. On this campus, silence and passivity cannot be interpreted as an indication of consent. Read a potential partner carefully, paying attention to verbal and non-verbal communication and body language.

Although in campus hearing boards, legal ideas like guilt and innocence are not applicable; Trine University will never assume a student is in violation of a Trine University policy. Campus hearings are conducted to take into account the totality of all evidence available, from all relevant sources.

Trine University reserves the right to take whatever measures it deems necessary in response to an allegation of sexual misconduct in order to protect students' rights and personal safety. Such measures include but are not limited to: modification of living arrangements, interim suspension from campus pending a hearing, and reporting to the local police. Not all forms of sexual misconduct will be deemed to be equally serious offenses. Trine University reserves the right to impose differing sanctions, ranging from verbal warning to expulsion, depending on the severity of the offense. Trine University will consider the concerns and rights of both the Complainant and the Respondent.

SEXUAL ASSAULT

A sexual assault has been committed when an individual engages in sexual activity without the explicit consent of the other individual involved. Sexual activity is any touching of a sexual or other intimate part of a person for the purpose of gratifying sexual desire of either party. This includes coerced touching of the actor by the survivor as well as the touching of the survivor by the actor, whether directly or through clothing.

Sexual assault includes any forced act against one's will where sex is the weapon. This can include, but is not limited to:

- *Sexual Battery*: the unwanted touching of an intimate part of another person for the purpose of arousal by the actor
- *Sodomy*: forced anal intercourse
- *Oral Copulation*: forced oral-genital contact
- *Rape by a Foreign Object*: forced penetration by a foreign object including digits (fingers and toes)
- *Rape*: penile-vaginal intercourse against a person's will and without consent

Recent legislation also makes it a felony to engage in video voyeurism, secretly capturing images of another person in a private place without consent. Whether or not specifically stated, it is an element of every sexual assault that the sexual act was committed without consent of the survivor. Courts also have interpreted mental incapacity to include those who have consumed any alcohol or drugs.

SEXUAL MISCONDUCT OFFENSES INCLUDE, BUT ARE NOT LIMITED TO:

1. **Sexual Harassment**
2. **Non-Consensual Sexual Intercourse (or attempts to commit)**
3. **Non-Consensual Sexual Contact (or attempts to commit)**
4. **Sexual Exploitation**

1. SEXUAL HARASSMENT

Sexual harassment is defined as gender-based verbal or physical conduct that unreasonably interferes with or deprives someone of educational access, benefits or opportunities.

Three Types of Sexual Harassment

- A. **Hostile environment** includes any situation in which there is harassing conduct that is so sufficiently severe, persistent, deliberate, without bias and offensive that it alters the conditions of education or employment, from both a subjective (the alleged Complainant's) and an objective (reasonable person's) viewpoint.

The determination of whether an environment is “hostile” must be based on any of the following circumstances:

- 1) the frequency of the conduct;
- 2) the nature and severity of the conduct;
- 3) whether the conduct was physically threatening;
- 4) whether the conduct was humiliating;
- 5) the effect of the conduct on the alleged Complainant’s mental or emotional state;
- 6) whether the conduct was directed at more than one person;
- 7) whether the conduct arose in the context of other discriminatory conduct;
- 8) whether the conduct unreasonably interfered with the alleged Complainant’s educational or work performance; or
- 9) whether the statement is a mere utterance of an epithet which engenders offense to an employee or student, or offends by mere discourtesy or rudeness;
- 10) whether the speech or conduct deserves the protections of academic freedom.

B. **Quid pro quo sexual harassment** exists when there are:

- 1) Unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature; requests for sexually explicit photos or videos; and
- 2) Submission to or rejection of such conduct results in adverse educational or employment action.

C. **Retaliatory harassment** is when any adverse employment or educational action is taken against a person because of the person’s participation in a complaint or investigation of discrimination or sexual misconduct.

Examples of Sexual Harassment

- A professor insists that a student have sex with him/her in exchange for a good grade.
- A student repeatedly sends sexually oriented jokes around on an email list he/she created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.
- Explicit sexual pictures are displayed in a professor’s office, on the exterior of a residence hall door or on a computer monitor in a public space.
- Two supervisors frequently ‘rate’ several employees’ bodies and sex appeal, commenting suggestively about their clothing and appearance.

- A professor engages students in discussions in class about their past sexual experiences, yet the conversation is not in any way relevant to the subject matter of the class. The professor probes for explicit details, and demands that students answer, though they are clearly uncomfortable and hesitant.
- A student grabs another student's breast and put his/her mouth on it.

2. NON-CONSENSUAL SEXUAL INTERCOURSE is:

- *any sexual intercourse (anal, oral, or vaginal),*
- however slight,
- with any object,
- by a man or woman upon a man or a woman,
- without consent.

3. NON-CONSENSUAL SEXUAL CONTACT is:

- *any intentional sexual touching,*
- however slight,
- with any object,
- by a man or a woman upon a man or a woman,
- without consent.

CONSENT

Consent is informed, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding the conditions of sexual activity.

Consent to one form of sexual activity cannot imply consent to other forms of sexual activity. Previous relationships or consent cannot imply consent to future sexual acts.

Consent cannot be obtained by use of physical force, compelling threats, intimidating behavior, or coercion. When someone makes it clear that they do not want sex, they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure to do so beyond that point can be coercive.

If having sexual activity with someone known to be--or should be known to be--mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout), a student is in violation of this policy. **Incapacitation** is a state where one cannot make a rational, reasonable decision because they lack the ability to understand the who, what, when, where, why or how of their sexual interaction.

- Use of alcohol or other drugs will never function to excuse behavior that violates this policy.

- This policy also covers someone whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of a so-called “date-rape” drugs. Possession, use and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student for the purpose of inducing incapacity is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org/>

More Resources:

- *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.)**

4. SEXUAL EXPLOITATION

Occurs when a student takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- prostituting another student;
- non-consensual video or audio-taping of sexual activity;
- going beyond the boundaries of consent (such as letting friends hide in the closet to watch consensual sex);
- engaging in Peeping Tommery;
- "Sexting" refers to sending sexual pictures or messages via text or picture messages;
- knowingly transmitting an STI or HIV to another student.

SANCTION STATEMENT

- Any student found responsible for violating the policy on Non-Consensual Sexual Contact (where no intercourse has occurred) will likely receive a sanction ranging from warning to expulsion, depending on the severity of the incident, and taking into account any previous violations of community standards. See following Process & Procedure for Sexual Misconduct / Sexual Assault Grievances or Complaints for more information.
- Any student found responsible for violating the policy on Non-Consensual Sexual Intercourse will likely face a recommended sanction of suspension or expulsion.

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- Any student found responsible for violating the policy on sexual exploitation or sexual harassment will likely receive a recommended sanction ranging from warning to expulsion, depending on the severity of the incident, and taking into account any previous campus conduct code violations.**

**The Sexual Misconduct / Sexual Assault Hearing Board reserves the right to broaden or lessen any range of recommended sanctions in the complaint of serious mitigating circumstances or egregiously offensive behavior.

EXAMPLES

1. Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00pm until 3:00am, Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. He keeps at her, and begins to question her religious convictions, and accuses her of being "a prude." Finally, it seems to Bill that her resolve is weakening, and he convinces her to give him a "hand job" (hand to genital contact). Amanda would never had done it but for Bill's incessant advances. He feels that he successfully seduced her, and that she wanted to do it all along, but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn't want it, she could have left. **Bill is responsible for violating Trine University Non-Consensual Sexual Contact policy. It is likely that the University Sexual Misconduct/Sexual Assault Hearing Board would find that the degree and duration of the pressure Bill applied to Amanda as unreasonable. Bill coerced Amanda into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. When forced, consent is not given. Sex without consent is sexual misconduct.**
2. Jiang is a junior at Trine University. Beth is a sophomore. Jiang comes to Beth's apartment suite with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, and are soon becoming more intimate. They start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a baby-sitter when she was five, and has not had any sexual relations since, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with her, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop, but cannot. Beth is stiff and unresponsive during the intercourse. Is this a policy violation? **Jiang would be held responsible in this scenario for Non-Consensual Sexual Intercourse. It is the duty of the sexual initiator, Jiang, to make sure that he has mutually understandable consent to engage in sex. Though consent need not be verbal, it is the clearest form of consent. Here, Jiang had no verbal or non-verbal mutually understandable indication from Beth that she consented to sexual intercourse. Of course,**

wherever possible, students should attempt to be as clear as possible as to whether or not sexual contact is desired, but students must be aware that for psychological reasons, or because of alcohol or drug use, one's partner may not be in a position to provide as clear an indication as the policy requires. As the policy makes clear, consent must be actively, not passively, given.

3. Kevin and Amy are at a party. Kevin is not sure how much Amy has been drinking, but he is pretty sure it's a lot. After the party, he walks Amy to her room, and Amy comes onto Kevin, initiating sexual activity. Kevin asks her if she is really up to this, and Amy says yes. Clothes go flying, and they end up in Amy's bed. Suddenly, Amy runs for the bathroom. When she returns, her face is pale and Kevin thinks she may have thrown up. Amy gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that Amy seems pretty groggy and passive, and he thinks Amy may have passed out briefly during the sex, but he does not let that stop him. When Kevin runs into Amy the next day, he thanks her for the wild night. Amy remembers nothing, and decides to make a complaint to the Dean of Students. **This is a violation of the Non-Consensual Sexual Intercourse Policy. Kevin should have known that Amy was incapable of making a rational, reasonable decision about sex. Even if Amy seemed to consent, Kevin was well aware that Amy had consumed a large amount of alcohol, and Kevin thought Amy was physically ill, and that she passed out during sex. Kevin should be held accountable for taking advantage of Amy in her condition. This is not the level of respectful conduct expected of students.**

CONFIDENTIALITY AND REPORTING POLICY

Depending on their roles at Trine University, faculty and staff on campus may have different reporting responsibilities and confidentiality requirements. When consulting campus resources, a Complainant should be aware of confidentiality and mandatory reporting, in order to make informed choices. On campus, some resources may maintain complete confidentiality, offering options and advice without any obligation to tell anyone, unless indicated by the Complainant. Other campus resources are available for a Complainant to report crimes and policy violations, and these resources will take action when a crime is reported. Most resources on campus fall in the middle of these two extremes. Neither Trine University nor the law requires them to divulge private information that is shared with them, except in extremely rare circumstances, described below. A Complainant may seek assistance from campus resources and maintain confidentiality so the situation is not taken out of the Complainant's control or violates his/her privacy.

To Report Confidentially

If the desire is that details of the incident be kept confidential, it is best to speak with a University counselor, campus health service provider, members of the clergy and chaplains, or

off-campus rape crisis resources, who will maintain confidentiality. Campus counselors are available to help free of charge, and can be seen on an emergency basis.

Quasi-Confidential Reporting

Advice can be sought from certain resources that are ***not required to tell anyone else an individual's private, personally identifiable information*** unless there is cause for fear for safety, or the safety of others. These resources include those without supervisory responsibility or remedial authority to address sexual misconduct, such as Resident Director's, Resident Assistant's, faculty members, advisors to student organizations, career services staff, admissions officers, student activities personnel, and many others. If unsure of someone's duties and ability to maintain privacy, ask before talking to them. They will be able to indicate the best source of information. Some of these resources, such as Resident Director's, Resident Assistant's, are instructed to share incident reports with their supervisors, but not necessarily any personally identifiable information about a report unless the Complainant gives them permission, except in the rare event that the incident reveals a need to protect the Complainant or other members of the community. If personal identifiable information is shared, it will be shared with as few people as possible, and all efforts will be made to protect confidentiality to the greatest extent.

Non-Confidential Reporting Options

Students are encouraged to speak to officials of the institution to make formal reports of incidents (deans, vice presidents, or other administrators with supervisory responsibilities, and campus safety). Students have the right and can expect to have incidents of sexual misconduct to be taken seriously by Trine University when formally reported, and to have those incidents investigated and properly resolved through administrative procedures. Formal reporting does not mean that a report won't be confidential, but it does mean that people who need to know will be told, and information will be shared, as necessary, with investigators, witnesses, and the Respondent. The circle of people will be kept as tight as possible, to preserve an individual's rights and privacy.

Federal Statistical Reporting Obligations

Certain campus officials have a duty to report sexual misconduct for federal statistical reporting purposes. ***All personally identifiable information is kept confidential***, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given), and for publication in the annual Campus Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: judicial affairs, campus safety, local police, coaches, athletic directors, residence life staff, student activities staff, human resources

staff, advisors to student organizations and any other official with significant responsibility for student and campus activities.

Federal Timely Warning Reporting Obligations

Complainants of sexual misconduct should also be aware that University administrators must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. Trine University will make every effort to ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger. The reporters for timely warning purposes are exactly the same as detailed at the end of the above paragraph.

QUESTIONS AND ANSWERS

Here are some of the most commonly asked questions regarding the University's sexual misconduct policy and procedures.

Does the complaint remain confidential?

The privacy of all parties to a complaint of sexual misconduct must be strictly observed, unless it interferes with Trine University's obligation to fully investigate allegations of sexual misconduct. Where privacy is not strictly kept, it will still be tightly controlled on a need-to-know basis. Dissemination of information and/or written materials to persons not involved in the complaint procedure is not permitted. Violations of the privacy of the Complainant or the Respondent may lead to disciplinary action by Trine University.

In all complaints of sexual misconduct, the Complainant will be informed of the outcome. In some instances, the administration also may choose to make a brief announcement of the nature of the violation and the action taken, using no names. Certain university administrators are informed on a confidential basis (e.g., the President of Trine University, Dean of Students, Director of Campus Safety). If an act of alleged sexual misconduct is reported to a judicial officer of Trine University and there is evidence that a felony has occurred, local police will be notified. This does not mean charges will be automatically filed or that a Complainant must speak with the police, but Trine University is legally required to notify law enforcement authorities. Trine University also must statistically report the occurrence on campus of major violent crimes, including certain sex offenses, in an annual report of campus crime statistics. This report the Jeanne Clery Disclosure of Campus Security Policy and the Campus Crime Statistics Act. This statistical report does not include personally identifiable information.

Will a student's parents be told?

No, not unless a student tells them. Whether the student is the Complainant or the Respondent the University's primary relationship is to the student and not to the parent. In the event of major medical, disciplinary, or academic jeopardy, students are strongly encouraged to inform

his or her parents. University officials will directly inform parents when requested to do so by a student, or in a life-threatening situation.

Will a Complainant have to confront the Respondent?

Yes, if a formal complaint is filed. Sexual misconduct is a serious offense and the Respondent has the right to confront the Complainant. However, Trine University does provide options for allowing confrontation without direct contact using a room divider or using separate hearing rooms.

Does a Complainant have to name the Respondent?

Yes, if formal disciplinary actions are to be taken against the alleged perpetrator or Respondent. No, if the choice is to respond informally and not to file a formal complaint (consulting the complete confidentiality policy above will give a better understand of the University's legal obligations depending on what information shared with different University officials). See Appendix C.

What to do if accused of sexual misconduct?

DO NOT contact the alleged Complainant. Immediately contact someone in the campus community who can act as an advisor or support person. Also contact the Dean of Students, who can explain Trine University's procedures for dealing with sexual misconduct complaints. Talking to a confidential counselor at the University counseling center may also be helpful.

Does a Complainant have to pay for counseling/or medical care?

In 1978, the Indiana General Assembly enacted into law a program to provide financial assistance for Complainants of violent crimes. As the administrators of the Indiana Violent Crime Victim Compensation Fund, the Victim Compensation Division assists Complainants or their dependents with medical expenses, funeral expenses, lost wages and outpatient counseling. For Complainants of sexual assault, the fund also allows payment of expenses resulting from the collection of evidence (rape kit) as well as outpatient counseling services. Other requirements include:

- the crime must have taken place in Indiana;
- the Complainant must have incurred a minimum out-of-pocket loss of \$100;
- the crime must have been reported to the police within 72 hours (*Note: Survivors of sexual assault do not have to report the crime to police*);
- the Complainant or survivors must have been cooperative in the investigation and prosecution of the crime;
- application for benefits must be filed no later than 180 days after the crime occurred; medical expenses must be incurred within 180 days of the crime, but can be extended under certain circumstances.

What should be done regarding obtaining legal advice?

Complainants of criminal sexual assault need not retain a private attorney because legal issues will be handled through a representative from the Prosecuting Attorney's office. Obtaining a

private attorney may be necessary for the Respondent or if the Complainant is considering filing a civil action against the alleged perpetrator or Respondent.

What about changing residence hall rooms?

A request to change rooms may be made by contacting the Director of Housing. Room changes under these circumstances are considered emergencies. It is Trine University's policy that in emergency room changes, the student is moved to the first available suitable room. If the desired outcome is for the Respondent to move, the Complainant of sexual misconduct must be willing to pursue formal university Judicial Action Procedure by completing a "Notice of Complaint" form found in the Office of Student Services. The alleged perpetrator or Respondent may be moved immediately, and the permanence of this action will be based upon the outcome of the Sexual Misconduct / Sexual Assault Board Hearing. Other accommodations available may include:

- Assistance from university support staff in completing the relocation;
- Exam, paper, or assignment rescheduling;
- Taking an incomplete in a class;
- Transferring class sections;
- Temporary withdrawal;
- Alternative course completion options.

What should be done to preserve evidence of a sexual assault?

Physical evidence of a criminal sexual assault must be collected within 72 hours. If a student believes he/she has been a survivor of a sexual assault, the Complainant should go directly to **Cameron Hospital Emergency Room (416 E. Maumee Street, Angola, IN 46703) or call 911 or 260.665.2141 or Ft. Wayne Forensic Nursing Specialties Center, formerly Ft. Wayne Sexual Assault Treatment Center, (2270 Lake Avenue, Suite 201, Ft. Wayne, IN 46805) or call 260.460.0369** before washing them self or his/her clothing. The Sexual Assault Nurse Examiner (a specially trained nurse) at the Hospital is on call 24 hours a day, 7 days a week (call the Emergency Room at 260.665.2141) if wanting to first speak to the nurse; and the ER will make a referral. A Campus Safety Officer, or Trine University Counselor, can accompany a Complainant to Hospital and Campus Safety can provide transportation. If deciding to go to the hospital, local police will be called; however, there is no obligation to talk to the police or to prosecute. An exam will help to keep the option open to press charges at a later date.

The hospital staff will collect evidence, check for injuries, and address the possibility of exposure to sexually transmitted infections. If a Complainant has changed clothing since the assault, bring the clothing worn at the time of the assault to the hospital in a clean, sanitary container such as a clean paper grocery bag or wrapped in a clean sheet (plastic containers do not breathe, and may render evidence useless). If a Complainant has not changed clothes, he/she should bring a change of clothes to the hospital, if possible, as the hospital will likely keep the clothes worn as evidence. A Complainant can take a support person to the hospital,

and he/she can accompany the Complainant during the exam, if wanted. Do not disturb the crime scene—leave all sheets, towels, etc. that may bear evidence for the police to collect.

Will a student be sanctioned when reporting a sexual misconduct policy violation if he/she has illegally used drugs or alcohol?

No. The severity of the infraction will determine the nature of Trine University's response, but whenever possible Trine University will respond educationally rather than punitively to the illegal use of drugs and/or alcohol. The seriousness of sexual misconduct is a major concern and Trine University does not want any of the circumstances (e.g., drug or alcohol use) to inhibit the reporting of sexual misconduct.

Will the use of drugs or alcohol affect the outcome of a sexual misconduct complaint?

The use of drugs and/or alcohol by either party will not diminish the Respondent's responsibility. On the other hand, drugs and/or alcohol use is likely to affect the Complainant's memory and, therefore, may affect the outcome of the complaint. A person bringing complaints of sexual misconduct must either remember the alleged incident or have sufficient circumstantial evidence, physical evidence and/or witnesses to prove his/her complaint. If the Complainant does not remember the circumstances of the alleged incident, it may not be possible to impose sanctions on the Respondent without further corroborating information.

Will either party's prior use of drugs and/or alcohol be a factor when reporting sexual misconduct?

Not unless there is a compelling reason to believe that prior use or abuse is relevant to the present complaint.

What should a Complainant do if he/she is uncertain about what happened?

If a student believes that he/she has experienced a non-consensual sexual contact, but are unsure of whether it was a violation of Trine University's sexual misconduct policy, he/she should contact **Trine University Counseling Services @ 260.665.4172 or after hours, contact Campus Safety @ 260.316.1877**. Trine University Counselor can help define and clarify the event(s), and discuss available options. Trine University Counselor is obligated to keep information reported confidential.

II. Special Provisions

a. Attempted Violations

In most circumstances, University will treat attempts to commit any of the violations listed above as if those attempts had been completed.

b. Trine University as Complainant

As necessary, Trine University reserves the right to initiate a complaint, to serve as Complainant, and to initiate conduct proceedings without a formal complaint by the Complainant of misconduct.

c. False Reports

Trine University will not tolerate intentional false reporting of incidents. It is a violation of the **University Community Standards** to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

d. Immunity for Survivors/Complainants

The Trine University community encourages the reporting of University standards violations and crimes by Complainants. Sometimes Complainants are hesitant to report to University officials because they fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident. The Trine University community encourages the reporting of community standards violations, especially sexual misconduct. It is in the best interest of this community that as many Complainants as possible choose to report to University officials. To encourage reporting, University pursues a policy of offering Complainants of sexual misconduct limited immunity from being charged for policy violations related to the sexual misconduct incident. While violations cannot be completely overlooked, Trine University will provide educational options rather than punishment, in such cases.

e. Good Samaritan

The welfare of students in our community is of paramount importance. At times, students on and off-campus may need assistance. Trine University encourages students to offer help and assistance to others in need. Sometimes, students are hesitant to offer assistance to others for fear that they may get themselves in trouble (for example, a student who has been drinking underage might hesitate to help take a sexual misconduct Complainant to the Director of Campus Safety). Trine University pursues a policy of limited immunity for students who offer help to others in need. While policy violations cannot be overlooked, Trine University will provide educational options, rather than punishment, to those who offer their assistance to others in need.

f. Parental Notification

Trine University reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. Trine University may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is not-dependent, Trine University will contact parents/guardians to inform them of situations in which there is a health and/or safety risk. Trine University also reserves the right to designate which University officials have a need to know about individual conduct complaints pursuant to the Family Educational Rights and Privacy Act (FERPA).

g. Notification of Outcomes

The outcome of a campus hearing is part of the educational record of the Respondent, and is protected from release under a Family Educational Rights and Privacy Act (FERPA). However, Trine University observes the legal exceptions as follows:

- 1) Complainants in non-consensual sexual contact/intercourse, sexual exploitation, sexual harassment, stalking, and relationship violence incidents have an absolute right to be informed of the outcome and sanctions of the hearing, in writing, without condition or limitation.
- 2) Students who bring any sort of sexual misconduct complaint against faculty or staff may be informed of the outcome and sanction, because FERPA does not apply.
- 3) Trine University may release publicly the name, nature of the violation and the sanction for any student who is found in violation of a University policy that is a "crime of violence," including: arson, burglary, robbery, criminal homicide, sex offenses, assault, destruction/damage/vandalism of property and kidnapping/abduction. Trine University will release this information to the Complainant in any of these offenses regardless of the outcome.

h. Alternative Testimony Options

For sexual misconduct complaints and other complaints of a sensitive nature, whether the alleged Complainant is serving as the Complainant or as a witness, alternative testimony options will be given, such as placing a privacy screen in the hearing room, or allowing the alleged Complainant to testify from another room via closed circuit. While these options are intended to help make the Complainant more comfortable, they are not intended to work to the disadvantage of the Respondent.

i. Past Sexual History/Character

The past sexual history or sexual character of a party will not be admissible by the other party in hearings unless such information is determined to be highly relevant by the Dean of Students / Convener of the Sexual Misconduct / Sexual Assault Hearing Board. All such information sought to be admitted will be presumed irrelevant, and any request to overcome this presumption by the parties must be included in the complaint/response or a subsequent written request, and must be reviewed in advance of the hearing by the Fact-Finder (investigator), please see Procedures for Sexual Misconduct / Sexual Assault Grievances or Complaints for more information. While previous conduct violations by the Respondent are not generally admissible as information about the present alleged violation, the Dean of Students may supply previous complaint information to the Sexual Misconduct / Sexual Assault Hearing Board, or may consider it him/herself if he/she is hearing the complaint, only if:

- 1) The Respondent was previously found to be responsible;
- 2) The previous incident was substantially similar to the present allegation;
- 3) Information indicates a pattern of behavior and substantial conformity with that pattern by the Respondent.

STATEMENT OF THE COMPLAINANT RIGHTS

- The right to investigation and appropriate resolution of all credible complaints of sexual misconduct made in good faith to University administrators;
- The right to be treated with respect by University officials;
- The right of Complainant and Respondent to have the same opportunity to have others present (in support or advisory roles) during campus disciplinary hearings and meetings;
- The right to not be discouraged by University officials from reporting an assault to both on-campus and off-campus authorities;
- The right to be informed of the outcome and sanction of any disciplinary hearing involving sexual assault, usually within two business days of the end of the conduct hearing;
- The right to be informed by University officials of options to notify proper law enforcement authorities, including campus safety and local police, and the option to be assisted by campus authorities in notifying such authorities, if the Complainant so chooses. This also includes the right not to report, if this is the Complainant's desire.
- The right to be notified of available counseling, mental health or student services for Complainants of sexual assault, both on campus and in the community;
- The right to notification of, options for, and available assistance in changing academic and living situations after an alleged sexual assault incident, if so requested by the Complainant and if such changes are reasonably available (no formal complaint, or investigation, campus or criminal, need occur before this option is available).
Accommodations may include:
 - Change of an on-campus student's housing to a different on-campus location;
 - Assistance from University support staff in completing the relocation;
 - Exam, paper, or assignment rescheduling;
 - Taking an incomplete in a class;
 - Transferring class sections;
 - Temporary withdrawal;
 - Alternative course completion options.

- The right not to have irrelevant prior sexual history admitted as evidence in a campus hearing;
- The right to make a Complainant Impact Statement at the Sexual Misconduct / Sexual Assault proceeding and to have that statement considered by the Sexual Misconduct / Sexual Assault Hearing Board in determining its sanction;
- The right to a campus “No Contact” order against another student who has engaged in or threatens to engage in stalking, threatening, harassing or other improper behavior that presents a danger to the welfare of the Complainant or others;
- The right to have complaints of sexual misconduct responded to quickly and with sensitivity by campus safety;
- The right to appeal the finding and sanction(s) of the Sexual Misconduct / Sexual Assault Board hearing, in accordance with the standards for appeal established by the institution;
- The right to be informed of the names of all witnesses who will be called to give testimony, except in cases where a witness’ identity will not be revealed to the Respondent for compelling safety reasons (this does not include the name of the Complainant, which will always be revealed);
- The right to preservation of confidentiality, to the extent possible and allowed by law;
- The right to a hearing closed to the public;
- The right to petition that any member of the Sexual Misconduct / Sexual Assault Hearing Board be removed on the basis of demonstrated bias;
- The right to bring a Support Person to all phases of the investigation including the Sexual Misconduct / Sexual Assault Hearing proceeding;
- The right to present relevant witnesses to the Sexual Misconduct / Sexual Assault Hearing Board, including expert witnesses;
- The right to be fully informed of campus procedures as well as the nature and extent of all alleged violations contained within the complaint;
- The right to have Trine University compel the presence of student, faculty or staff witnesses; and the right to ask questions, directly or indirectly, of witnesses (including the Respondent), and the right to challenge documentary evidence;

- The right to be present for all testimony given and evidence presented before the Sexual Misconduct / Sexual Assault Hearing Board;
- The right to have complaints heard by a Sexual Misconduct/Sexual Assault Hearing Board who has received sexual misconduct adjudication training;
- The right to a Sexual Misconduct / Sexual Assault Hearing Board comprised of representatives of both genders;
- The right to have University policies and procedures followed without material deviation;
- The right to be informed in advance of any public release of information regarding the complaint;
- The right to not have any personal information about the Complainant released to the public, without his/her consent.

STATEMENT OF THE RESPONDENT RIGHTS

- The right to investigation and appropriate resolution of all credible complaints of sexual misconduct made in good faith to University administrators against the Respondent;
- The right to be treated with respect by University officials;
- The right to be informed of and have access to campus resources for medical and counseling services;
- The right to be fully informed of the nature, rules and procedures of the University process and procedure and to timely written notice of all alleged violations within the complaint, including the nature of the violation and possible sanctions;
- The right to a hearing on the complaint, including timely notice of the hearing date, and adequate time for preparation;
- The right not to have irrelevant prior sexual history admitted as evidence in a campus hearing;
- The right to make an impact statement at the Sexual Misconduct / Sexual Assault Board Hearing proceeding and to have that statement considered by the board in determining it's sanction;

- The right to appeal the finding and sanction of the Sexual Misconduct / Sexual Assault Board Hearing decision, in accordance with the procedures for appeal established by the institution;
- The right to be informed of the names of all witnesses who will be called to give testimony, except in cases where a witness' identity will not be revealed to the accused student for compelling safety reasons (this does not include the name of the Complainant which will always be revealed);
- The right to a hearing closed to the public;
- The right to petition that any member of the conduct body be removed on the basis of bias;
- The right to have Trine University compel the presence of student, faculty or staff witnesses; and the right to ask questions, directly or indirectly, of witnesses, and the right to challenge documentary evidence;
- The right to have complaints heard by Sexual Misconduct/Sexual Assault Board Members who have received sexual misconduct adjudication training;
- The right to have University policies and procedures followed without material deviation;
- The right to have a support person accompany and assist in the campus hearing process. This support person can be anyone, but the support person may not take part directly in the hearing itself, though they may communicate with the Respondent as necessary;
- The right to a fundamentally fair hearing;
- The right to a campus judicial outcome based solely on evidence presented during the judicial process. Such evidence shall be credible, relevant, based in fact, and without prejudice;
- The right to written notice of the outcome and sanction of the hearing;
- The right to a Sexual Misconduct / Sexual Assault Hearing Board comprised of representatives of both genders;
- The right to be informed in advance, when possible, of any public release of information regarding the complaint.