



## **Texas Christian University Policy**

**Policy Title:** Prohibited Discrimination, Harassment, Sexual Misconduct, and Retaliation

**Policy Subject:** Prohibited Discrimination, Harassment, Sexual Misconduct, and Retaliation

**Division:** The Office of Institutional Equity (OIE)

**Policy Number:** 1.008

### **I. Applicability**

This policy replaces relevant parts of its predecessor, TCU's [OIE Policy Prohibited Discrimination, Harassment, and Related Conduct - Prior Policy](#) (Prior Policy). The Prior Policy still applies when resolving reports where the alleged misconduct occurred up to and including August 13, 2020. This policy applies to reports of potential misconduct where the alleged misconduct occurred on or after August 14, 2020.

#### **A. Individuals Covered by this Policy**

This policy applies to the following members of the TCU community: students (as defined in the [Code of Student Conduct](#)); employees and administrators; trustees; third-party consultants, vendors and contractors when they are doing business with TCU; individuals who perform services for TCU as volunteers; and visitors, guests and other third parties under circumstances within TCU's control. Any employee or student who engages in conduct prohibited by this policy may be subject to disciplinary action and sanctions up to and including termination or expulsion from the University. TCU will take steps to prevent retaliation against anyone making a good faith report and to prevent the recurrence of any harassment and to correct its potential discriminatory effects on a complainant and, if applicable, the TCU community.

#### **B. Jurisdiction**

This policy applies to conduct that takes place:

- On the campus or TCU premises;
- In the context of any TCU-related or sponsored education program or activity, regardless of location;
- Through the use of TCU-owned or provided technology resources; or
- Off-campus when the conduct is likely to have an adverse effect on TCU and/or the pursuit of its objectives, members of the TCU community, or is likely to create, continue or contribute to a hostile environment.

## **II. Policy Statement and Purpose**

Texas Christian University (TCU) is committed to providing a positive learning, living and working environment free from discrimination and harassment. In support of this commitment, in this policy TCU prohibits a range of behaviors, including unlawful discrimination, harassment, and related sexual and other misconduct based on age, race, color, religion, sex, pregnancy, sexual orientation, gender, gender identity, gender expression, national origin, ethnic origin, disability, predisposing genetic information, covered veteran status, and any other basis protected by law, except as permitted by law. TCU also prohibits retaliation against an individual for making a good faith report under this policy, for participating in proceedings under this policy, or for opposing in a reasonable manner conduct believed to be prohibited by this policy.

This policy is a part of TCU's framework of efforts to comply with Title IX of the Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in the University's programs and activities and retaliation; the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), as amended by the Violence Against Women Reauthorization Act of 2013 (VAWA); Title VII of the Civil Rights Act of 1964 (Title VII); Title VI of the Civil Rights Act of 1964 (Title VI); Chapter 21 of the Texas Labor Code; the Age Discrimination Act of 1967, the Americans with Disabilities Act (ADA) and the ADA Amendments of 2008, Sections 503 and 504 of the Rehabilitation Act of 1973 (Section 504), the Genetic Information Non-Discrimination Act of 2008 (GNA), Executive Order 11246, Vietnam Veteran's Readjustment Assistance Act of 1974 and other applicable laws.

## **III. Policy Definitions**

- A. Consent.** For purposes of this policy, consent to sexual activity is: action(s) or words that a reasonable person would understand to communicate voluntary permission among participants to engage in mutually agreed upon sexual activity. Consent cannot be obtained through force, threat of force, coercion, intimidation, or by taking advantage of another person's incapacitation. An individual is incapacitated and cannot give consent if a reasonable person would conclude, based on the information available, that the individual is not capable of giving consent because the individual is mentally and/or physically helpless, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. A person may not be capable of giving consent as a result of the consumption of alcohol and/or other drugs, or due to a temporary or permanent physical or mental health condition.
- B. Unreasonable Conduct.** Unreasonable conduct is conduct that is more than merely subjectively offensive or harmful. For conduct to be considered unreasonable under this policy, the conduct must be objectively offensive, or offensive to a reasonable person of similar identity.

## **IV. Policy**

TCU prohibits the following conduct:

**A. Discrimination:** The unlawful treatment of an individual based on the individual's age, race, color, religion, sex, pregnancy, sexual orientation, gender, gender identity, gender expression, national origin, ethnic origin, disability, predisposing genetic information, covered veteran status, and any other basis protected by law that unreasonably interferes with or limits an individual's ability to participate in or to realize the intended benefits of an institutional activity, employment, receipt of reasonable accommodations or other resource. Failure to provide reasonable accommodations, consistent with state and Federal law, to qualified persons with disabilities.

**B. Harassment:** A form of discrimination that is unwelcome verbal or physical conduct based on an individual's age, race, color, religion, sex, pregnancy, sexual orientation, gender, gender identity, gender expression, national origin, ethnic origin, disability, predisposing genetic information, covered veteran status, and any other basis protected by law, when (a) submitting to or enduring such Unreasonable Conduct is made implicitly or explicitly a term or condition of a person's instruction, academic standing, employment, or participation in any TCU program, activity, or benefit, (b) submission to or rejection of such Unreasonable Conduct is used, implicitly or explicitly, as the basis for decisions affecting an individual's education (e.g., admission, academic standing, grades, assignment); employment (e.g., hiring, advancement, assignment); or participation in a TCU program, activity or benefit, (c) in the employment context, such Unreasonable Conduct, if repeated, would unreasonably interfere with a person's work performance or create an intimidating, hostile, or offensive work environment, or (d) in the education context, such conduct if repeated would be sufficiently severe, persistent, or pervasive that the conduct would unreasonably interfere with the student's ability to participate in or benefit from educational programs or activities at TCU.

**C. Sexual Misconduct:** Conduct on the basis of sex that satisfies one or more of the following:

1. **Quid Pro Quo:** A TCU employee conditioning the provision of an aid, benefit, or service of TCU on an individual's participation in unwelcome sexual conduct;
2. **Sexual Harassment:**
  - a. In the employment context: Unreasonable Conduct that, if repeated, would unreasonably interfere with a person's work performance or create an intimidating, hostile, or offensive work environment;
  - b. In the education context: Unreasonable Conduct that, if repeated, would be sufficiently severe or pervasive that the conduct would unreasonably interfere with the student's ability to participate in or benefit from educational programs or activities at TCU.
3. **Sexual Assault:** Any sexual act directed against another person without their consent, including instances where the person is incapable of giving consent.

**Sexual Assault** includes:

- a. **Non-Consensual Sexual Contact:**<sup>1</sup> For purposes of this policy, it is the touching of another person's breasts, buttocks, groin, genital, or other intimate parts for the purpose of sexual gratification without consent. Touching may be over or under clothing and may include the touching another, one person forcing another to touch them or to touch another person, or one person making another touch their own body.
  - b. **Non-Consensual Sexual Intercourse:**<sup>2</sup> For purposes of this policy, it is the penetration, no matter how slight, or attempted penetration of the vagina or anus, with any body part or object, or the oral penetration by a sex organ of another person, without consent. This includes: Vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation (mouth to genital contact).
  - c. **Incest:**<sup>3</sup> Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - d. **Statutory Rape:**<sup>4</sup> Sexual intercourse with a person who is under the statutory age of consent.
4. **Dating Violence:**<sup>5</sup> For purposes of this policy, it is violence, including but not limited to sexual or physical abuse or threat of such abuse, which occurs between individuals who are or has been in a social relationship of a romantic or intimate nature. In determining the existence of such a relationship, consideration will be given to the length and the type of relationship and the frequency of interaction between the persons involved in the relationship. Dating violence does not include acts covered under the definition of domestic violence.
5. **Domestic Violence:**<sup>6</sup> For purposes of this policy, it is a felony or misdemeanor crime of violence committed:
- by a person against their current or former spouse or intimate partner;
  - by one person against another person when the two individuals share a child in common;
  - by one person against another person with whom they have or has cohabitated with as a spouse or intimate partner;
  - by a person, similarly situated to a spouse of the person against whom the violence was directed, under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;
  - by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

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<sup>1</sup> See [34 CFR 668.46\(a\)](#) for the source of this definition.

<sup>2</sup> See [34 CFR 668.46\(a\)](#) for the source of this definition.

<sup>3</sup> See [34 CFR 668.46\(a\)](#) for the source of this definition.

<sup>4</sup> See [34 CFR 668.46\(a\)](#) for the source of this definition.

<sup>5</sup> See [34 CFR 668.46\(a\)](#) for the source of definition. For the definition of dating violence under the Texas Family Code, see [Texas Family Code, §71.0021](#).

<sup>6</sup> See [34 CFR 668.46\(a\)](#) for the source of this definition. Texas statutes do not define domestic violence. For the definition of family violence under the Texas Family Code, see [Texas Family Code, §71.004](#).

6. **Stalking:**<sup>7</sup> For purposes of this policy, it is engaging in a course of conduct directed at a specific person which would cause a reasonable person (under similar circumstances and with similar identities) to (1) fear for their safety or the safety of others or (2) suffer significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling. For purposes of this definition, a “course of conduct” means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property. Examples can include, but are not limited to, threats of harm to self, others, or property; pursuing or following a person; non-consensual (unwanted) communication by any means; sending unwanted gifts; trespassing; and surveillance or other related types of observation. Stalking also includes cyber-stalking through electronic media, like the internet, social networks, blogs, cell phones, or text messages.

**D. Sexual Exploitation:** Purposely or knowingly doing any of the following:

1. Observing and/or watching other(s) engaged in intimate behaviors including, but not limited to, undressing, sexual activity, using the bathroom, bathing, or other actions usually considered to be of a private nature, without the other person’s knowledge or consent (often referred to as voyeurism);
2. The actual act or threat of recording, photographing, transmitting, showing, viewing, streaming, or distributing pictures, video or audio of another person in a sexual act or in any other intimate/private activity without the knowledge and consent of all persons involved in the activity;
3. Exceeding the boundaries of consent (e.g., allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person’s consent).
4. Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV), a sexually transmitted disease (STD) or infection (STI) without informing the other person of the infection;
5. Administering alcohol or drugs (such as “date rape” drugs) to another person without their knowledge or consent; or
6. Exposing one’s genitals in non-consensual circumstances.
7. Any attempt to purposely or knowingly engage in any of the above referenced conduct constitutes the act of sexual exploitation for purposes of this policy.

**E. Complicity:** Any act that knowingly aids, facilitates, promotes, or encourages another person to engage in conduct that violates this policy.

**F. Retaliation:** Action taken against any person because the individual filed a good faith report or formal complaint alleging conduct of the type prohibited by this policy

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<sup>7</sup> See [34 CFR 668.46\(a\)](#) for definition of stalking. For the definition of stalking under the Texas Penal Code, see [Texas Penal Code, §42.072](#).

or because the individual has testified, assisted or otherwise participated in an investigation of conduct of the type prohibited by this policy or in related proceedings. Retaliation can take many forms, including, but not limited to, adverse action or violence, threats, acts of intimidation, other acts of harassment or discrimination. Retaliation is a separate and distinct violation under the policy and the law. Any person found to have violated this policy of non-retaliation is subject to disciplinary action up to and including termination or expulsion.

#### **G. False Information and Complaints.**

1. **False Information** - Providing false information or hindering a University investigation are prohibited and can result in disciplinary action up to and including termination or expulsion.
2. **False Complaints** - Any person who knowingly and intentionally files a false complaint or files a claim in bad faith under this policy is subject to disciplinary action up to and including dismissal from the University.

### **V. Duty To Report.**

#### **A. All Community Members**

1. It is the responsibility of each community member to promptly report violations or concerns about violations of laws, regulations and University policies that come to their attention.
2. **Mandatory Reporters** - Employees have a mandatory duty to report to the Office of Institutional Equity (OIE) any violations related to the prohibitions enumerated in this policy. Failure to do so will result in a report to TCU Human Resources and may result in disciplinary action, up to and including termination, and/or civil and criminal charges in some circumstances. **Under Texas law, if an employee learns of incidents of Sexual Harassment or Harassment that is based on sex and fails to timely report the incident to TCU's Title IX Coordinator, Texas law may require TCU to terminate the employee, and the employee may be subject to criminal prosecution.**<sup>8</sup>

#### **B. Special Duty to Report**

1. Individuals in positions of authority who hold a supervisory position at the University have a special duty to report alleged violations of this policy. Therefore, when a supervisor receives a report of conduct that may violate this policy or has reason to believe that a violation of this policy has occurred, the supervisor has a mandatory duty to contact the Office of Institutional Equity (OIE) and report the conduct or possible occurrence.
2. An individual in position of authority who is made aware of, or in the exercise of reasonable care should have known of, a violation of this policy by a person under their authority or supervision and fails to take appropriate action is subject to disciplinary action and may be subject to legal action.

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<sup>8</sup> See [Texas Senate Bill 212](#) for information on reporting requirements.

**C. Exceptions.** Individuals who are considered Confidential Resources are exempt from this obligation when they receive information in the context of providing professional services to a student. For purposes of this policy, Confidential Resources are University officials who can maintain legally-protected confidentiality within the University for the individual who shared the information. The following University employees serve as TCU's Confidential Resources: licensed mental health professionals at the Counseling Center; licensed medical professionals at the Health Center; TCU Title IX Confidential Advocate(s); and ordained University Chaplains in the Office of Religious and Spiritual Life. Licensed physicians on TCU's Sports Medicine staff are also Confidential Resources for student-athletes when they receive information in the context of providing professional services.

## **VI. Enforcement**

Any employee or student who engages in conduct prohibited by this policy may be subject to disciplinary action and sanctions up to and including termination or expulsion from the University. TCU will take steps to prevent retaliation against anyone making a good faith report and to prevent the recurrence of any harassment and to correct its potential discriminatory effects on a complainant and, if applicable, the TCU community.

## **VII. Administrative Responsibility**

The Office of Institutional Equity is responsible for administering and interpreting this policy.

## **VIII. Policy History**

Issued: 08/24/2020

Revised: 10/18/2020

Revised: 9/28/2022

## **IX. Related Policies and Information**

In addition to this policy, the conduct of students, employees and other TCU community members may be governed by other TCU policies, including but not limited to:

- [Handbook for Texas Christian University Faculty and Staff](#)
- [HR 2.070 Code of Conduct Policy](#)
- [HR 1.006 Consensual Relationships Policy](#)
- [Code of Student Conduct](#)
- [Policies and Procedures for Students with Disabilities](#)
- [Student Handbook](#)
- [OIE Policy 1.009 Responding to Reports of Prohibited Discrimination Harassment Sexual Misconduct and Retaliation](#) (for conduct occurring after August 13, 2020)
- [OIE Policy Prohibited Discrimination, Harassment, and Related](#)

[Conduct - Prior Policy](#) (for conduct occurring before August 14, 2020)

REG\_FERPA-Student Privacy Act Policy

**Additional information regarding discrimination, harassment, sexual misconduct, and retaliation.**

Additional information about illegal discrimination, harassment, sexual misconduct, and retaliation may also be obtained from the U.S. Department of Education or U.S. Equal Employment Opportunity Commission office listed below:

U.S. Department of Education	U.S. Equal Employment Opportunity Commission
Dallas Office	Dallas Office
Office for Civil Rights	207 S. Houston St., 3 <sup>rd</sup> Floor
U.S. Department of Education	Dallas, TX 75202
1999 Bryan Street, Suite 1620	Tele: 1-800-669-4000
Dallas, Texas 75201-6810	Fax: 214-253-2720
Tele: 214/661-9600 or 800-421-3481	TTY: 1-800-669-6820
FAX: 214/661-9587; TDD: 800-877-8339	<a href="http://www.eeoc.gov">www.eeoc.gov</a>
<a href="mailto:OCR.Dallas@ed.gov">OCR.Dallas@ed.gov</a>	

**Other University Units and Resources**

Contact information for other University units and resources mentioned in this policy may be found below:

- Dr. Jonathan Benjamin-Alvarado  
Chief Inclusion Officer and Senior Advisor to the Chancellor  
The Harrison 3009  
817-257-5566  
[j.ba@tcu.edu](mailto:j.ba@tcu.edu)
- Office of Institutional Equity  
The Harrison 1800  
817-257-8228  
[oie@tcu.edu](mailto:oie@tcu.edu)
- Ms. Sharon F. Gooding, Director  
Office of Institutional Equity  
The Harrison 1802  
817-257-4748  
[s.gooding@tcu.edu](mailto:s.gooding@tcu.edu)
- Ms. Andrea McDew, Title IX Coordinator  
The Harrison 1803  
817-257-4969  
[a.vircks@tcu.edu](mailto:a.vircks@tcu.edu)
- Dean of Students Office



The Harrison, Suite 1600  
817-257-7926

- Dr. Mike Russel, Assoc. Vice Chancellor for Student Affairs  
The Harrison, Suite 1600  
817-257-7926  
[m.russel@tcu.edu](mailto:m.russel@tcu.edu)
- Dr. Karen Bell Morgan, Dean of Students  
The Harrison, Suite 1600  
817-257-7926  
[k.morgan@tcu.edu](mailto:k.morgan@tcu.edu)
- Ms. Andrea Nordmann, Chief University Compliance Officer  
The Harrison 3209  
817-257-5520  
[a.nordmann@tcu.edu](mailto:a.nordmann@tcu.edu) or [askcompliance@tcu.edu](mailto:askcompliance@tcu.edu)
- Ms. Yohna Chambers, Vice Chancellor and Chief Human Resources Officer  
2701 W. Berry St. Fort Worth TX 76129  
817-257-5103  
[y.chambers@tcu.edu](mailto:y.chambers@tcu.edu)

### Resources for Complainants and Respondents

Resources for Complainants and Respondents, including for survivors of Sexual Assault or other sexual misconduct may be found below:

On Campus	Off Campus Community Resources
TCU Police 3025 Lubbock Ave. Fort Worth TX 76129 817-257-7777	Fort Worth Police 817-335-4222
Counseling & Mental Health Center Jarvis Hall, Suite 232 817-257-7863 817-257-7233 (24/7 Hotline) <a href="http://www.counseling.tcu.edu">www.counseling.tcu.edu</a>	Women's Center of Tarrant County 1723 Hemphill Street Fort Worth TX 76110 817-927-2737
TCU Confidential Advocate Leah Carnahan 817-257-5225 <a href="mailto:l.carnahan@tcu.edu">l.carnahan@tcu.edu</a>	John Peter Smith Hospital 1500 S. Main Fort Worth TX 76104 817-702-3431

TCU Dean of Students Office TCU Box 297010 The Harrison, Suite 1600 Fort Worth TX 76129 817-257-7926	
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**X. Appendix**

There are no appendices in this policy.

**XI. Approved By and Approval Date**

Approved by Chancellor: August 24, 2020; Approved by the Board of Trustees, November 6, 2020; Approved by the Board of Trustees, November 11, 2022