

2.1.2a Sexual Violence Policy and Resolution Processes

POLICY STATEMENT

The University of St. Thomas is committed to maintaining high standards of respect and civility that are both implicit and explicit in its convictions statement. This commitment extends to creating and maintaining a learning environment that is free of sexual violence and that promotes personal dignity and fair treatment of all members of the University community.

Sexual violence is a serious breach of that commitment as well as a form of gross misconduct that compromises the integrity of human relationships and threatens the security and well being of all individuals. Not only is sexual violence unlawful but it also undermines the atmosphere of trust and respect that is essential to creating a healthy working and learning environment. In recognition of this, the University has adopted a policy that is designed to investigate and resolve such claims in a direct and thorough manner while respecting the rights of all parties involved.

SECTION I APPLICABILITY AND SANCTIONS

This policy applies to all students and employees. *Students* include all persons taking courses at the University, either full-or part-time, whether non-degree or degree seeking, pursuing undergraduate, graduate, or professional studies. This also includes persons who withdraw after allegedly violating the Student Code of Conduct who are not officially enrolled for a particular term, but intend to return to the University. Also, if a complaint has been filed regarding a student who has been notified of his/her acceptance for admissions, the University in its sole discretion may apply this policy. This policy also will apply to persons who are living in University housing, whether or not they are currently enrolled in this institution.

In determining whether the alleged conduct constitutes sexual violence, the University shall consider the record as a whole and the totality of circumstances, including the nature of the incident and the context in which the alleged incident(s) occurred. Individuals determined to have violated this policy shall be sanctioned and subject to a range of disciplinary measures up to and including termination and expulsion.

SECTION II DEFINITIONS

- A. *Sexual violence*: At St. Thomas, sexual violence is defined as any act of violence or force committed without the complainant's consent, for the purpose of satisfying the actor's sexual or aggressive impulses, including but not limited to contact of a person or a person's clothing in the genital,

groin, inner thigh, buttocks, or breast areas, or the use of threat of force or coercion which requires the victim to commit or submit to any kind of attempted sexual act. This includes a physical act that is sexual in nature, is intentional, and is committed either by:

1. physical force, violence, threat or intimidation;
2. ignoring the objections of another person;
3. causing another's intoxication or impairment through the use of drugs or alcohol in order to take advantage of another person; or
4. taking advantage of another person's incapacitation, state of intimidation, helplessness, or other inability to consent.

B. *Consent*: Consent is defined as words or actions indicating a freely given present agreement to perform a particular sexual act with the initiator.

Consent can only be given or implied by someone who acts freely, voluntarily, and with knowledge of the nature of the act involved.

Consent cannot be given by someone who:

1. Is incapacitated by drugs or alcohol
2. Is coerced into submission
3. Is not conscious
4. Is physically incapacitated
5. Is mentally incapacitated

Consent cannot be inferred from:

1. Permission for one particular act (a less intimate sexual act does not imply permission for a more intimate sexual act)
2. A prior sexual, romantic or marital relationship
3. An existing sexual, romantic or marital relationship

C. *Complainant*: The person(s) filing a complaint with the University under the Sexual Violence Policy.

D. *Respondent*: The person(s) named as the perpetrator in a complaint who is alleged to have committed an act in violation of this policy.

E. *Process Coordinator (PC)*: The person(s) designated by the University to meet with the complainant in order to review the complainant's complaint and to clarify the complainant's options within the University under this policy and outside the University within the state or local criminal authorities. The Process Coordinator has the responsibility to contact the Dean of Students if the complainant is a student or the Associate Vice President for Human Resources or the Affirmative Action Officer if the complainant is an employee.

F. *UST Investigative Officer (IO)*: The person requested by the Dean of Students, Associate Vice President for Human Resources or the Affirmative Action Officer to begin a formal investigation into the facts of the incident outlined in the complaint. The IO will interview the complainant, the respondent and other key persons in the incident. He or

she also reviews all existing documentation concerning a complaint. Upon completion of the investigation, the IO makes a written report with findings and submits this to the University official that initially requested the formal investigation. After reviewing the report, the University official forwards it to the appropriate Executive Vice President.

SECTION III IMMEDIATE ACTION

The University urges victims of sexual violence to do the following:

- A. To contact the police/Public Safety as soon as possible (see Section IV).
- B. To seek support from appropriate medical resources (see Section X).
- C. To utilize confidential on-campus and/or off-campus counseling resources (See Section IX).
- D. To pursue the Internal Resolution Processes (see Section V).

If a victim does not wish at the time to pursue an official course of action, or is unsure which action to take, he or she may contact the Personal Counseling Center. Student/employee contacts with staff psychologists are confidential, as are contacts with Student Health Services.

SECTION IV REPORTING SEXUAL VIOLENCE TO POLICE/PUBLIC SAFETY

The University urges victims of sexual violence to contact Public Safety and the police as soon as possible so that the authorities can take whatever action is necessary to preserve evidence, pursue the assailant or take other appropriate steps. On request, UST Public Safety will assist law enforcement officials in a timely fashion in obtaining, securing and maintaining evidence in connection with a sexual violence incident. The police may be contacted by dialing 911 on the nearest off-campus telephone; Public Safety may be contacted by dialing 2-5555 from any campus telephone.

It is important to realize that contacting the police and informing them of an incident is different from filing a charge. Reporting an incident of sexual violence does not mean that the victim must file charges. If the victim wishes to file a charge with local law enforcement officials, UST Public Safety will provide assistance when requested. Also, the Public Safety Department will take the initial information and contact the most appropriate University official.

SECTION V UST RESOLUTION PROCESSES

The University is aware that with incidents of sexual violence it may take weeks, months or even years before the complainant recognizes that an assault did indeed take place. A complaint of sexual violence in which an investigation is sought must be made in writing to a Process Coordinator, designated staff

member of the Dean of Students Office or Human Resources^{*}, or the Affirmative Action Officer within one (1) calendar year of the time of the incident that gave rise to the complaint or if the identity of the respondent was previously unknown, then one year from the time complainant learns the identity of the respondent. Allegations brought after the one year time limitation may be pursued, subject to the sole discretion of the Dean of Students, Associate Vice President for Human Resources, or Affirmative Action Officer.

A. Internal Resolution Processes

Complaints of sexual violence may be made by students, faculty, or staff members to the Dean of Students Office, the Department of Human Resources, the Affirmative Action Officer, or directly to a Process Coordinator. The staff member in the Dean of Students Office, Human Resources, or the Affirmative Action Officer that initially received the complaint may serve as the Process Coordinator. If a complaint is made to anyone else, the complainant risks the possibility that it will not come to the attention of the proper University officials and may, therefore, not be acted upon. Again, confidential resources are members of the Personal Counseling Center and Student Health Services. No other employees can guarantee confidentiality.

Once a complaint has been brought forth to the appropriate University staff, that staff person will inform the complainant of his/her options under this policy as follows:

1. To pursue either formal or informal resolution under this policy; and/or
2. To pursue criminal and/or civil remedies outside of the University (if not already pursued).

In the event that an individual holds dual status of student and employee and is a complainant or respondent involved in a complaint of sexual violence, the Dean of Students Office will work in collaboration with the Department of Human Resources. The two departments will advise and consult with each other to review any reported incident and to identify the appropriate next steps.

B. Interim Action

Once an official complaint is made, an interim action may be taken before the actual resolution process begins. The Dean of Students, Associate Vice President for Human Resources, or the Affirmative Action Officer may take appropriate steps to shield the complainant from unwanted contact with the respondent. These individuals have the authority to prohibit any person accused of committing sexual violence from physically entering or being on University property in addition to a change of residency, student status, or class schedule. This authority extends throughout the process and may be imposed if it is determined that the

^{*} Designated staff members from the Dean of Students Office and Human Resources are listed in Section IX.

accused constitutes a threat to the University community or any individual thereof.

C. Informal Process

Informal assistance – the complainant may talk with one of the designated Process Coordinators. This discussion will allow for a review of the various options available to the complainant including but not limited to informal discussion with the respondent in the presence of a third party. The informal process cannot result in a formal discipline sanction for the accused person. However, upon request, when deemed appropriate by the university protective action may be implemented.

At any time, the complainant has the right to end the informal process and begin the formal stage of the complaint process.

Also, the University reserves the right to pursue a formal investigation if there is a possibility that one or more members of the community may be harmed by a failure to follow-up on the incident, or it is in the University's best interest to investigate the alleged incident.

D. Formal Process: Investigation

1. If the complainant wishes to pursue a formal complaint, the complainant and the Process Coordinator (PC) will meet. At this meeting, the complainant will clearly indicate that he/she wishes to pursue a formal process for resolution of the complaint. The Process Coordinator will then fully review this policy and all necessary information and documentation with the complainant. The PC will then review information with the appropriate University official (the Dean of Students if the complainant is a student or with the Associate Vice President for Human Resources or the Affirmative Action Officer if the complainant is an employee). The appropriate University official will assign an Investigative Officer (IO) to make full inquiry into the facts and circumstances of the complaint. The Investigative Officer may request additional documentation. Complainants shall submit to the Investigative Officer a signed written complaint which clearly describes the incident(s) of sexual violence including the name of the respondent. The Investigative Officer shall investigate the complaint promptly by interviewing the complainant and respondent, as well as other relevant parties.
2. The Dean of Students, the Associate Vice President for Human Resources, or the Affirmative Action Officer will contact the respondent in writing informing him/her of a formal investigation and any allegations made against that person, his or her rights, and any conditions that may affect current status as a student/employee.
3. The IO is responsible for contacting and interviewing the parties involved along with any witnesses if available. The IO will conduct a complete and thorough inquiry into the facts and circumstances surrounding the complaint and document his or her findings. A

finding of guilt must be supported by a preponderance of evidence. A preponderance of evidence means that upon weighing the evidence, the IO believes it is more likely than not that the respondent is responsible for the violation(s) alleged. If the IO determines that the evidence does not merit sexual assault, the IO will determine whether a finding of sexual misconduct is warranted whether or not such allegation it is stated in the complaint. Upon completion of the formal investigation, the IO will submit his/her findings to the Vice President for Student Affairs if respondent is a student and the Associate Vice President of Human Resources if respondent is an employee.

4. The complainant and respondent may have one support person and/or attorney accompany them throughout the process. The support person/attorney will be allowed to consult with the individual but not participate in any of the proceedings.
5. The appropriate Vice President(s) will review the report and findings and make a determination from this information as to which action, if any, may be taken by the University.

a. If the respondent is a student:

The Vice President for Student Affairs may impose any sanction that he/she finds to be fair and proportionate to the violation and that is authorized for violations of the Code of Conduct, including disciplinary probation, suspension, and expulsion. In determining an appropriate sanction, the Vice President may consider any record of past violations of the Code of Conduct, as well as the nature and severity of the misconduct. The Vice President will consider as part of his/her decision whether the accused student poses a continuing risk to the complainant and/or University community. The University recognizes there may be occasions when a sexual act or sexual acts are committed without the intent to harm another but where, by failing to correctly assess the circumstances, a person believes unreasonably that effective consent was given without having met his/her responsibility to gain effective consent. This may be considered sexual misconduct. These findings will be taken into consideration in the determination of the range of sanctions.

Any sanction imposed shall be explained in the written decision. This determination will be sent in writing within 10 working days of receipt of the findings to both the complainant and the respondent. The determination letter will contain only the following information: the name of the accused student; whether the accused has been found guilty or not guilty of the charges of sexual violence; and the sanction imposed, if any. As guaranteed by federal law, both the accused student and the complainant have a right to this information.

b. If the respondent is an employee:

The University shall follow its Discipline and Corrective Action Policy. In the event the respondent has a dual role as both employee and student, the Associate Vice President for Human Resources or his/her designee and the Dean of Students shall consult with each other regarding possible sanctions and remedies.

Determinations of responsibility for violations of this policy and sanctions, if any, will be considered a formal adjudication of the matter by the University and subject to the reporting, disclosure and re-disclosure requirements and prohibitions under the Campus Security Act (Clery Act) and the Family Educational Right to Privacy Act (FERPA).

E. Appeal

The complainant or the respondent may request a formal appeal if either party is not satisfied with the results of the formal process as described above. A written request for an appeal must be submitted to the appropriate Executive Vice President within 15 working days following receipt of the decision rendered.

The appropriate Executive Vice President shall appoint a chair and a four-person hearing panel with one of the four members being either the University Affirmative Action Officer or the Associate Vice President for Human Resources provided he or she did not serve as the Investigative Officer of the sexual violence complaint being heard. The appropriate Executive Vice President appoints the hearing panel chair. The panel reviews all previous findings and the disciplinary action, if any, the Investigative Officer and appropriate Vice President recommended. Moreover, the panel shall also hear the case and accept and obtain evidence, testimony, and argument(s), as appropriate, concerning the allegations of sexual violence. Members of the hearing panel will include faculty, staff, and students who have been provided specialized training regarding sexual violence. Upon reasonable request by the complainant, the chair will consider ways to shield the complainant from the respondent.

After reviewing the fact-finding report and considering any new evidence, the hearing panel provides the appropriate Executive Vice President a written recommendation. That recommendation shall 1) affirm the original decision and sanction, if any; 2) affirm the original decision and reduce or increase the original sanction; or 3) reverse the original decision and, if necessary, recommend sanctions. Within 10 working days following receipt of the hearing panel's findings and recommendations, the appropriate Executive Vice President, informs the complainant and the respondent in writing of the final disposition of the complaint.

The hearing panel shall follow the University's General Grievance Hearing Procedures developed for this process. A copy of these procedures is available on the Human Resources Department or Dean of Students web

site or may be obtained directly from the University Affirmative Action Officer, Dean of Students, or the Associate Vice President for Human Resources.

SECTION VI NO RETALIATION

The University is committed to protecting the rights of both the complainant and respondent. No employee or student shall be reprimanded or retaliated against for initiating an inquiry, filing a complaint in good faith, or participating in an investigation related to a claim of sexual violence. Any conduct constituting retaliation or reprisal is a violation of this policy, which is subject to disciplinary actions up to and including dismissal and expulsion. The University may impose sanctions if it determines that an employee or student knowingly initiated in bad faith a claim of sexual violence, knowingly provided false information, or intentionally misled a University representative during an investigation of this or a related complaint.

SECTION VII CONFIDENTIALITY

The University will strive to protect, to the greatest extent possible, the confidentiality of persons reporting or accused of sexual violence. Because the University has an obligation to address sexual violence, the University cannot guarantee complete confidentiality where it would conflict with the University's obligation to meaningfully investigate or, where warranted, take corrective action. Even when some disclosure of the University's information or sources is necessary, it will be limited to the extent possible.

All persons involved in the investigation are expected to protect the confidentiality of the process and not to disseminate information about the complaint or the investigation that would cause harm to others. Complainants and respondents, especially, have an obligation to respect the privacy and confidentiality of the other person and must not disseminate information about the complaint or the investigation with the intent of harming the other person.

SECTION VIII POLICY DISSEMINATION AND TRAINING

As part of the University's commitment to maintaining a working and learning environment free of sexual violence, it shall disseminate this policy broadly to the University community through publications, Web sites, new employee orientation, new student orientation, and other appropriate communication channels. The Department of Human Resources and Division of Student Affairs shall make educational materials available to all members of the University community in order to promote compliance with this policy and familiarity with reporting procedures.

SECTION IX ACCOUNTABILITY

- A. The Executive Vice Presidents are responsible for assuring the uniform and consistent application of this policy and for rendering a decision on the findings and recommendations of the hearing panel.
- B. The Associate Vice President for Human Resources, the University Affirmative Action Officer, and the Vice President for Student Affairs and the Dean of Students are responsible for the uniform and consistent application of this policy and for investigating complaints in a timely and confidential manner.
- C. It is the responsibility of members of the Academic and Administrative Leadership and other managers and supervisors to take whatever appropriate action is necessary to prevent sexual violence and to address and report such prohibited conduct when and where it occurs. This responsibility involves assuring that employees and students are informed about the policy and their responsibility to contact the appropriate University officials when informed of or observe an incident of sexual violence.
- D. Employees and students are responsible for maintaining a working and learning environment that is free of sexual violence.

SECTION X RESOURCES

24-Hour Emergency – (651) 962-5555
 Department of Public Safety - (651) 962-5100 (non-emergency)

On-Campus Places to Report Sexual Violence	On-Campus Confidential Resources
<p><u>Department of Public Safety</u> www.stthomas.edu/psps (651) 962-5100</p> <p><u>Dean of Students</u> Room 101, Murray-Herrick Campus Center www.stthomas.edu/deanofstudents (651) 962-6050</p> <p><u>Department of Human Resources</u> Room 217, Aquinas Hall www.hr.stthomas.edu (651) 962-6510</p> <p><u>Affirmative Action Officer</u> Room 102, Aquinas Hall (651) 962-6031</p>	<p>Student Health Services www.stthomas.edu/studenthealth (651) 962-6750</p> <p>Personal Counseling Center www.stthomas.edu/personalcounseling (651) 962-6780</p>

Places to Report Sexual Violence Off-Campus	Confidential Resources Off-Campus
<p><u>Important Emergency Numbers</u> St. Paul or Minneapolis Police 911</p> <p>United Hospital, Emergency Room St. Paul, Minnesota SANE (Sexual Assault Nurse Expert) Program http://www.allina.com/ahs/aboutall.nsf/page/SANE (651) 241-8755 (directly to the emergency room)</p> <p>Regions Hospital Emergency Room SANE Program http://www.regionshospital.com/Regions/Menu/0..5847.00.html Sexual Assault/Rape Advocate 651-254-3584</p> <p>Hennepin County Medical Center (HCMC) Sexual Assault Resource Service (SARS) www.hcmc.org/a_z/sars.htm (612) 873-5832</p>	<p>RAINN (Rape, Assault, and Incest National Network) www.rainn.org (800) 656-HOPE 24-hour hotline; free and confidential</p> <p>Sexual Offense Services St. Paul, Minnesota http://www.co.ramsey.mn.us/ph/yas/sos.htm (651) 643-3006 24-hour hotline; free and confidential</p> <p>Sexual Violence Center Minneapolis, Minnesota www.sexualviolencecenter.org (612) 871-5111 24-hour hotline; free and confidential</p>