



## Policies and Regulations

NEPN Code: JICK-R/STI

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### Students

#### Sex/Gender Harassment, Discrimination and Misconduct

##### Title IX Coordinator

Southeast Tech's Title IX Coordinator oversees compliance with all aspects of the sex/gender harassment, discrimination and misconduct policy. Questions about this policy should be directed to the Title IX Coordinator. Anyone wishing to make a report relating to discrimination or harassment may do so by reporting the concern to the Title IX Coordinator.

Name: Tracy Noldner  
Title: Executive Director of Student Affairs & Institutional Effectiveness/Title IX Phone: (605) 367-7487  
Email: Tracy.Noldner@southeasttech.edu

Individuals experiencing harassment or discrimination always have the right to file a formal grievance with government authorities:

Office for Civil Rights (OCR)  
Kansas City Office  
U.S. Department of Education  
One Petticoat Lane  
1010 Walnut Street, Suite 320  
Kansas City, MO 64106  
Telephone: (816) 268-0550  
Fax: (816) 268-0559  
Email: [OCR.KansasCity@ed.gov](mailto:OCR.KansasCity@ed.gov)  
Web: <http://www.ed.gov/ocr>

U.S. Department of Justice Civil Rights Division  
950 Pennsylvania Avenue, N.W.  
Educational Opportunities Section, PHB  
Washington, D.C. 20530  
By e-mail to: [education@usdoj.gov](mailto:education@usdoj.gov)  
By telephone at (202) 514-4092 or 1-877-292-3804 (toll free)

In the event that in incident involves alleged misconduct by the Title IX Coordinator, reports should be made directly to the President of Southeast Tech.

### **Overview of Policy Expectations with respect to physical sexual misconduct**

See Appendix A

### **Overview of Policy Expectations with respect to consensual relationships**

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 may not remove grounds for a later charge of a violation of applicable Southeast Tech policies. Southeast Tech does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the institute. For the personal protection of members of the community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student, supervisor-supervisee) are generally discouraged.

Consensual romantic or sexual relationships in which one party maintains 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 timely attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift the student out of being supervised or evaluated by someone with whom they have established a consensual relationship. While no relationships are prohibited by this policy, failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee.

### **Sexual Violence – Risk Reduction Tips**

See Appendix G

#### **Sexual Misconduct Offenses Include, but are not limited to:**

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

## 1. SEXUAL HARASSMENT

Sexual Harassment is:

- unwelcome,
- sexual, sex-based and/or gender-based verbal, written, online and/or physical conduct.

Anyone experiencing sexual harassment at Southeast Tech is encouraged to report it immediately to the Title IX Coordinator or an administrator. Remedies, education and or/training will be provided in response.

Sexual harassment may be disciplined when it takes the form of quid pro quo harassment, retaliatory harassment and/or creates a hostile environment.

A hostile environment is created when sexual harassment is:

- sufficiently severe, or
- persistent or pervasive, and
- objectively offensive that it:
  - Unreasonably interferes with, denies or limits someone's ability to participate in or benefit from Southeast Tech's educational and/or employment, social and/or residential program.

Quid Pro Quo Harassment is:

- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature
- By a person having power or authority over another constitutes sexual harassment when:
  - Submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational or employment progress, development or performance.
  - This includes when submission to such conduct would be a condition for access to receiving the benefits of any educational or employment program.

Examples of possible Sexual Harassment can be found in Appendix B.

## 2. NON-CONSENSUAL SEXUAL CONTACT

Non-Consensual Sexual Contact is:

- Any intentional sexual touching,
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force

Sexual Contact includes:

- Intentional contact with the breasts, buttock, 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; or
- Any other intentional bodily contact in a sexual manner.

### 3. NON-CONSENSUAL SEXUAL INTERCOURSE

Non-Consensual Sexual Intercourse is:

- Any sexual intercourse
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force.

Intercourse includes:

- vaginal or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.

### 4. SEXUAL EXPLOITATION

Sexual exploitation occurs when one person 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 the other sexual misconduct offenses.

For examples of sexual exploitation, see Appendix C.

### ADDITIONAL APPLICABLE DEFINITIONS

- Consent:
  - Consent is
    - Clear, and
    - knowing, and
    - affirmative, conscious and voluntary
    - words or actions,
    - that give permission for specific sexual activity.
  - 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 willingness to engage in (and the conditions of) sexual activity.
  - Previous relationships or prior consent cannot imply consent to future sexual acts.

- Consent can be withdrawn once given, as long as that withdrawal is clearly communicated.
- In order to give consent, one must be of legal age.
- Sexual activity with someone you know to be or should know to be incapacitated constitutes a violation of this policy.
  - Incapacitation can occur mentally or physically, from developmental disability, by alcohol or other drug use, or blackout.
  - The question of what the responding party should have known is objectively based on what a reasonable person in the place of the responding party, sober and exercising good judgment, would have known about the condition of the reporting party.
  - Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).
  - This policy also covers a person whose incapacity results from mental disability, sleep, unconsciousness, involuntary physical restraint, or from the taking of 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 person is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org/>)
- Force: Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcomes free will or resistance or that produces consent.
  - Coercion is unreasonable pressure for sexual activity. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
  - NOTE: There is no requirement for a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.
- Use of alcohol or other drugs will never function to excuse any behavior that violates this policy.
- This policy is applicable regardless of the sexual orientation and/or gender identity of the individuals engaging in sexual activity.

- For reference to the pertinent state statutes on sex offenses, please see [http://legis.sd.gov/Statutes/Codified\\_Laws/DisplayStatute.aspx?Type=Statute&Statute=22-22](http://legis.sd.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=22-22)

For examples of Non-Consensual Sexual Contact and Non-Consensual Sexual Intercourse, please see Appendix D.

### **Other misconduct offenses (will fall under Title IX when sex or gender-based)**

1. Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
2. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits, or opportunities on the basis of sex or gender;
3. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
4. Hazing, defined as an act against a student or coercing a student into committing an act that creates a risk of harm to a person, in order for the student to be initiated into or affiliated with a student organization (school, group, club, team, activity, event, etc.) or for any other purpose (as defined further in the Hazing Policy – JICFA/STI JICFA-R/STI).
5. Bullying, defined as
  - a. Repeated and/or severe
  - b. Aggressive behavior
  - c. Likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally
  - d. That is not speech or conduct otherwise protected by the 1<sup>st</sup> Amendment.
6. Intimate Partner Violence, defined as physical harm, bodily injury, or attempts to cause physical harm or bodily injury, the infliction of fear of imminent physical harm or bodily injury, or a pattern of abusive behaviors between one or more partners in an intimate relationship.
  - a. A boyfriend shoves his girlfriend into a wall upon seeing her talking to a male friend. This physical assault based in jealousy is a violation of the Intimate Partner Violence definition.
  - b. An ex-girlfriend shames her female partner, threatening to out her as a lesbian if she doesn't give the ex another chance. Psychological abuse is a form of Intimate Partner Violence.
  - c. A student refuses to wear a condom and forces his girlfriend to take hormonal birth control though it makes her ill, in order to prevent pregnancy.
  - d. Married employees are witnessed in the parking lot, with one partner slapping and scratching the other in the midst of an argument.
7. Stalking
  - a. Stalking 1:

- i. A course of conduct
      - ii. Directed at a specific person
      - iii. On the basis of actual or perceived membership in a protected class
      - iv. That is unwelcome, AND
      - v. Would cause a reasonable person to fear
    - b. Stalking 2:
      - i. Repetitive and Menacing
      - ii. Pursuit, following, harassing and or interfering with the peace and/or safety of another
    - c. Examples of Stalking – See Appendix E
8. Any other Southeast Tech policy may fall within this section when a violation is motivated by the actual or perceived membership of the reporting party's sex or gender.

### **Retaliation**

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity (subject to limitations imposed by the 1<sup>st</sup> Amendment and/or Academic Freedom). Retaliation against an individual for an allegation, for supporting a reporting party or for assisting in providing information relevant to an allegation is a serious violation of Southeast Tech policy.

### **Sanctions**

The following sanctions may be imposed upon any member of the community found to have violated the Sex/Gender Harassment, Discrimination and Misconduct Policy. The following are typical sanctions that may be imposed upon students or organizations singly or in combination.

#### **Student Sanctions (see Southeast Tech's Catalog & Handbook for additional sanctioning information)**

- **Warning**
- **Probation**
- **Suspension**
- **Expulsion**
- **Transcript Notation**
- **Organizational Sanctions**
- **Other Actions**

#### **Employee Sanctions (listed below and defined in the Employee Handbook)**

- **Warning – Written or Verbal**
- **Performance Improvement Plan**
- **Required Counseling**

- **Required Training or Education**
- **Demotion**
- **Suspension without Pay**
- **Suspension with Pay**
- **Termination**

### **Sanctioning for Sexual Misconduct**

- Any person found responsible for violating the Non-Consensual Sexual Contract policy (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident, and taking into account any previous disciplinary violations.\*
- Any person found responsible for violating the Non-Consensual Sexual Intercourse definition will likely face a recommended sanction of suspension or expulsion (student) or suspension or termination (employee).\*
- Any person found responsible for violating the Sexual Exploitation or Sexual Harassment policies will likely receive a recommended sanction ranging from warning to expulsion or termination, depending on the severity of the incident, and taking into account any previous disciplinary violations.\*

\* The decision-making body reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the initial hearing officers nor any appeals body or officer will deviate from the range or recommended sanctions unless compelling justification exists to do so.

### **Confidentiality, Privacy and Reporting**

#### **Confidentiality and Reporting of Offenses Under This Policy**

All Southeast Tech employees (faculty, staff, and administrators) are expected to immediately report actual or suspected discrimination or harassment to appropriate officials, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality—meaning they are not required to report actual or suspected discrimination or harassment to appropriate Institute officials—thereby offering options and advice without any obligation to inform an outside agency or individual unless a victim has requested information to be shared. Other resources exist for a victim to report crimes and policy violations and these resources will take action when an incident is reported to them. The following describes the two reporting options at Southeast Tech:



## **Confidential Reporting**

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with on-campus licensed professional counselors.

The following are off-campus resources for confidential reporting:

- Licensed professional counselors
- Local rape crisis counselors
- Domestic violence resources
- Local or state assistance agencies
- Clergy/Chaplains

All of the above individuals/agencies will maintain confidentiality except in extreme cases of immediate threat or danger, or abuse of a minor. Campus counselors are available to help free of charge and can be seen on an emergency basis during normal business hours. These employees will submit timely, anonymous, aggregate statistical information for Clery Act purposes unless they believe it would be harmful to a specific client, patient or parishioner.

## **Formal Reporting Options**

All Southeast Tech employees have a duty to report, unless they fall under the “Confidential Reporting” section above. Reporting parties may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared by the employee with the Title IX Coordinator. Employees must share all details of the reports they receive. Generally, climate surveys, classroom writing assignments, human subjects research, or events such as Take Back the Night marches or speak-outs do not require reporting to the Title IX Coordinator by employees; however, remedial actions may result without formal institutional action.

If a victim does not wish for his/her name to be shared, does not wish for an investigation to take place, or does not want formal resolution to be pursued, the victim may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. In cases indicating pattern, predation, threat, weapons and/or violence, Southeast Tech will likely be unable to honor a request for confidentiality. In cases where the victim requests confidentiality and the circumstances allow the Institute to honor that request, the Institute will offer interim supports and remedies to the victim and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have reports taken seriously by the Institute when formally reported, and to have those incidents investigated and properly resolved through these procedures.

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told. Information will be shared as necessary with investigators, witnesses

and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party's rights and privacy.

Reports to the Title IX Coordinator can be made via e-mail, phone or in person at the contact information below:

Tracy Noldner ([Tracy.Noldner@southeasttech.edu](mailto:Tracy.Noldner@southeasttech.edu))

Executive Director of Student Affairs & Institutional Effectiveness/Title IX Coordinator

(605) 367-7487

Failure of a non-confidential employee, as described in this section, to report an incident or incidents of sex or gender harassment or discrimination of which they become aware, is a violation of Southeast Tech policy and can be subject to disciplinary action for failure to comply with institute policies.

### **Additional Policy Provisions**

a. Attempted Violations

In most circumstances, Southeast Tech will treat attempts to commit any of the violations listed in the Gender-Misconduct definition as if those attempts had been completed.

b. False Reports

Southeast Tech will not tolerate intentional false reporting of incidents. It is a violation of the Student Code of Conduct to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

c. Amnesty for Victims and Witnesses

The Southeast Tech community encourages the reporting of misconduct and crimes by victims and witnesses. Sometimes, victims and witnesses are hesitant to report to Southeast Tech officials or participate in resolution processes because they fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident. It is in the best interests of this community that as many victims as possible choose to report to institute officials, and that witnesses come forward to share what they know. To encourage reporting, Southeast Tech pursues a policy of offering victims of misconduct and witnesses amnesty from minor policy violations related to the incident.

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 victim to the Campus Security). Southeast Tech pursues a policy of amnesty for students who offer help to others in need.

d. Parental Notification

Southeast Tech reserves the right to notify parents/guardians of students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. Southeast Tech also reserves the right to designate which institute officials have a need to know about individual conduct reports pursuant to the Family Educational Rights and Privacy Act.

## **Investigation and Appeal**

For investigation and appeal information, the applicable Southeast Tech Policy/regulations will be followed: AC/STI, AC-R/STI Nondiscrimination/Equal Opportunity; JIAA/STI, JIAA-R/STI Harassment (Student); GBAA/STI, GBAA-R/STI Harassment (Personnel)

For commonly asked questions regarding Southeast Tech's sexual misconduct policy and procedures, please see Appendix F.

## **APPENDIX A:**

### **OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO PHYSICAL SEXUAL MISCONDUCT**

The expectations of our community regarding sexual misconduct can be summarized as follows:

- In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing and voluntary consent prior to and during sexual activity.
- Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want sexually and what you do not.
- Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity.
- Previous consent does not imply consent to sexual activity in the future.
- Silence or passivity—without actions demonstrating permission—cannot be assumed to show consent.
- Consent, once given, can be withdrawn at any time. There must be a clear indication that consent is being withdrawn.

Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy in the same way as physical forcing someone into sex. Coercion happens when someone is pressured unreasonably for sex.

Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing. Under the policy, “No” always means “No”, and “Yes” may

not always mean “Yes”. Anything but a clear, knowing and voluntary consent to any sexual activity is the equivalent to a “no”.

**APPENDIX B:  
EXAMPLES OF POSSIBLE SEXUAL HARASSMENT**

- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student consents to the request.
- A student repeatedly sends sexually oriented jokes around on an e-mail list s/he created, even when asked to stop, causing one recipient to avoid the sender on campus.
- Explicit sexual pictures are displayed in a professor’s office or on the exterior of a student housing apartment door.
- Two staff members frequently ‘rate’ several employees’ bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in her class in discussions about their past sexual experiences, yet the conversation is not in any way relevant to the subject matter of the class. She probes for explicit details, and demands the students answer her, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus.
- A student grabbed another student by the hair, then grabbed her breast and put his mouth on it. While this is sexual harassment, it is also a form of sexual violence.

**APPENDIX C:  
EXAMPLES OF SEXUAL EXPLOITATION**

- Invasion of sexual privacy;
- Prostituting another person;
- Non-consensual digital, video or audio recording of nudity or sexual activity;
- Engaging in voyeurism;
- Going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you having consensual sex);
- Knowingly exposing someone to or transmitting an STI, STD, or HIV to another person;
- Intentionally or recklessly exposing one’s genitals in non-consensual circumstances; inducing another to expose their genitals;
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation

**APPENDIX D:  
EXAMPLES OF NON-CONSENSUAL SEXUAL CONTACT  
AND**

## NON-CONSENSUAL SEXUAL INTERCOURSE

1. Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to go to his apartment. 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 Southeast Tech’s Non-Consensual Sexual Contact definition. It is likely that campus decision-makers would find that the degree and duration of the pressure Bill applied to Amanda are unreasonable. Bill coerced Amanda into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. Consent is not valid when forced. Sex without consent is sexual misconduct.**
2. Tom is a second-year student. Beth is a first-year student. Tom comes to Beth’s on-campus apartment with some mutual friends to watch a movie. Tom and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Tom and Beth are alone. They hit it off, and are soon becoming more intimate. They start to make out. Tom verbally expresses his desire to have sex with Beth. Beth, who was abused by a babysitter when she was five, and has not had any sexual relations since, is shocked at how quickly things are progressing. As Tom takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with her, Beth has a sever flashback to her childhood trauma. She wants to tell Tom to stop, but cannot. Beth is stiff and unresponsive during the intercourse. Is this a policy violation? **Tom would be held responsible in this scenario for Non-Consensual Sexual Intercourse. It is the duty of the sexual initiator, Tom, 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, Tom had no verbal or nonverbal mutually understandable indication from Beth that she consented to sexual intercourse. Of course, whenever possible, it is important to be as clear as possible as to whether or not sexual contact is desired, and to 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 John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it's a lot. After the party, he walks John to his room, and John comes on to Kevin, initiating sexual activity. Kevin asks John if he is really up to this, and John says yes. Clothes go flying, and they end up on John's bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John 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 John is pretty groggy and passive, and he thinks John may have even passed out briefly during the sex, but he does not let that stop him. When Kevin runs into John the next day, he thanks him for the wild night. John remembers nothing, and decides to make a report to the VP of Student Services. **This is a violation of the Non-Consensual Sexual Intercourse definition. Kevin should have known that John was incapable of making a rational, reasonable decision about sex. Even if John seemed to consent, Kevin was well aware that John had consumed a large amount of alcohol, and Kevin thought John was physically ill, and that he passed out during sex. Kevin should be held accountable for taking advantage of John in his condition. This is not the level of respectful conduct Southeast Tech expects.**

#### **APPENDIX E: EXAMPLES OF STALKING**

1. A student repeatedly shows up at another student's on-campus residence, always notifying her roommates that they are there to see the resident. The student informs housing staff that this visitor wasn't invited and continuously attempts to see them, even so far as waiting for them outside of classes and showing up to their on-campus work study and requesting they go out on a date together. **This is an example of Stalking 1.**
2. A student working as an on-campus tutor received flowers and gifts delivered to the Success Lab. After learning the gifts were from a student s/he recently tutored, the student thanked the student and stated that it was not necessary and would appreciate the gift deliveries to stop. The student then started leaving notes of love and gratitude on the student's car, both on-campus and at home. Asked again to stop, the student stated by email "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything necessary to make you have the feelings for me that I have for you." When the tutor did not respond, the student emailed again, "You cannot escape me. I will track you down to the ends of the earth. We are meant to be together". **This is an example of Stalking 2.**

#### **APPENDIX F: QUESTIONS AND ANSWERS**

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

*Does information about a report remain private?*

The privacy of all parties to a report of sexual misconduct must be respected, except insofar as it interferes with Southeast Tech'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. Southeast Tech will not disseminate information and/or written materials to persons not involved in the resolution process without consent of both parties. Witnesses are also required to maintain the privacy of information shared with them during interviews and/or hearings. Violations of the privacy of the reporting party or the responding party may lead to conduct action by the institute, though both parties are allowed to share their perspectives and experiences. All parties, including witnesses, involved in an allegation are strongly encouraged to maintain the privacy of information and/or written materials.

In all resolutions of sexual misconduct, reporting and responding parties will be informed of the outcome. In some instances, the administration also may choose to make a brief public announcement of the nature of the violation and the action taken, without using the name or identifiable information of the alleged victim. Certain administrators are informed of the outcome within the bounds of student privacy. If there is a report of an act of alleged sexual misconduct to a conduct officer of the institute and there is evidence that a felony has occurred, local police will be notified. This does not mean that charges will be automatically filed or that a victim must speak with the police, but Southeast Tech is legally required to notify law enforcement authorities. Southeast Tech also must statistically report the occurrence on campus of major violent crimes, including certain sex offenses, in an "Annual Security Report" of campus crime statistics. This statistical report does not include personally identifiable information.

*Will my parents be told?*

Southeast Tech will not inform your parents unless you are under the age of 18, in the case of a life-threatening situation, or if explicitly requested to do so by the reporting or responding party. Whether you are the reporting party or the responding party, Southeast Tech's primary relationship is to the student and not to the parent. However, in the event of major medical, disciplinary, or academic jeopardy, students are strongly encouraged to inform their parents.

*Will the responding party know my identity?*

Yes, if Southeast Tech determines there is reasonable cause to believe a violation has occurred and investigates the matter. The responding party has a right to know the identity of the reporting party. If there is a hearing, Southeast Tech does provide

options for questioning without confrontation, including closed-circuit testimony, Skype, using a room divider or using separate hearing rooms.

*Do I have to name the responding party?*

Yes, if you want formal disciplinary action to be taken against the responding party. You can report the incident without the identity of the responding party, but doing so may limit the institute's ability to respond comprehensively.

*What do I do if I am accused of sexual misconduct?*

DO NOT contact the reporting party. You may immediately want to contact someone who can act as your advocate; anyone may serve as your advocate. You may also contact the Vice President of Student Affairs, who can explain the institute's procedures for addressing sexual misconduct reports. You may also want to talk to a confidential counselor or seek other community assistance. See below regarding legal representation.

*Will I (as a victim) have to pay for counseling/medical care?*

If a physician, hospital, or clinic examines the victim of an alleged rape or sexual offense the examination shall be provided without cost to the victim. Southeast Tech's on-campus counselors provide their services free of charge.

*What about legal advice?*

Victims of criminal sexual assault need not retain a private attorney to pursue criminal prosecution because representation will be handled by the District Attorney's office. You may want to retain an attorney if you are considering filing a civil action or are the responding party. The responding party may retain counsel at their own expense if they determine that they need legal advice about criminal prosecution and/or the campus conduct proceeding. Both the responding party and the reporting party may also use an attorney as their advocate during the campus' resolution process. Attorneys are subject to the same restrictions as other advocates in the process described in the grievance procedures.

*What about changing on-campus apartments?*

If you live in Southeast Tech's on-campus apartments, you may request a room change if you want to move. Room changes under these circumstances are considered emergencies. It is typically institutional policy that in emergency room changes, the student is moved to the first available suitable room. If the responding party also lives in the on-campus apartments and you prefer that s/he be moved to another apartment, that request will be evaluated by the Title IX Coordinator to determine if it can be honored. Other assistance and modifications available to you might include:

- Assistance from Southeast Tech Housing Staff in completing a room relocation;
- Arranging to dissolve a housing contract and pro-rating a refund
- Help with finding an off-campus residential alternative
- Assistance with or rescheduling an academic assignment (paper, exams, etc.) or otherwise implementing academic assistance;
- Taking an incomplete in a class;



- Assistance with transferring class sections;
- Temporary withdrawal;
- Assistance with alternative course completion options;
- Escorts to and from campus locations;
- On or off-campus counseling assistance;
- Transportation assistance or support;
- Other accommodations for safety as necessary.

*What should I do about preserving evidence of a sexual assault?*

Police are in the best position to secure evidence of a crime. Physical evidence of a criminal sexual assault must be collected from the alleged victim's person within 120 hours, though evidence can often be obtained from towels, sheets, clothes, etc. for much longer periods of time. If you believe you have been a victim of a criminal sexual assault, you should go to the nearest Hospital Emergency Room (Sanford USD Medical Center, located at 1305 W 18<sup>th</sup> St.), before washing yourself or your clothing. The Sexual Assault Nurse Examiner (a specially trained nurse) at the hospital is usually on call 24 hours a day, 7 days a week (call the Emergency Room at 605-333-6688 if you first want to speak to the nurse; ER will refer you). If a victim goes to the hospital, local police will be called, but s/he is not obligated to talk to the police or pursue prosecution. Having the evidence collected in this manner will help keep all options available to a victim, but will not oblige him or her to any course of action. Collecting evidence can assist the authorities in pursuing criminal charges, should the victim decide later to exercise it.

For the Victim: the hospital staff will collect evidence, check for injuries, address pregnancy concerns and address the possibility of exposure to sexually transmitted infections. If you have changed clothing since the assault, bring the clothing you had on at the time of the assault with you 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 you have not changed clothes, bring a change of clothes with you to the hospital, if possible, as they will likely keep the clothes you are wearing as evidence. You can take a support person with you to the hospital, and they can accompany you through the exam, if you want. Do not disturb the crime scene—leave all sheets, towels, etc. that may bear evidence for the police to collect.

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

No. The seriousness of sexual misconduct is a major concern and Southeast Tech does not want any of the circumstances (e.g. drug or alcohol use) to inhibit the reporting of sexual misconduct. The institute provides amnesty from any consequences for minor

policy violations that occur during or come to light as the result of a victim's report of sexual misconduct.

*Will the use of drugs or alcohol affect the outcome of a sexual misconduct conduct resolution?*

The use of alcohol and/or drugs by either party will not diminish the responding party's responsibility. On the other hand, alcohol and/or drug use is likely to affect the reporting party's memory and, therefore, may affect the resolution of the reported misconduct. A reporting party must either remember the alleged incident or have sufficient circumstantial evidence, physical evidence and/or witnesses to prove that policy was violated. If the reporting party does not remember the circumstances of the alleged incident, it may not be possible to impose sanctions on the responding party without further corroborating information. Use of alcohol and/or other drugs will never excuse a violation by a responding party.

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

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

*What should I do if I am uncertain about what happened?*

If you believe that you have experienced sexual misconduct, but are unsure of whether it was a violation or the institute's sexual misconduct policy, you should contact Southeast Tech's Title IX Coordinator (not confidential) or one of Southeast Tech's on-campus counselors.

#### **APPENDIX G: RISK REDUCTION TIPS**

Risk reduction tips can often take a victim-blaming tone, even unintentionally. Only those who commit sexual violence are responsible for those actions. We offer the tips below with no intention to victim-blame, with recognition that these suggestions may nevertheless help you to reduce your risk of experiencing a non-consensual sexual act. Below, suggestions to avoid committing a non-consensual sexual act are also offered:

- If you have limits, make them known as early as possible.
- Tell a sexual aggressor "NO" clearly and firmly.
- Try to remove yourself from the physical presence of a sexual aggressor.
- Find someone nearby and ask for help.
- Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of sexual misconduct.

- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- Understand and respect personal boundaries.
- DON'T MAKE ASSUMPTIONS about consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go or about whether they are physically and/or mentally able to consent. Your partner's consent should be affirmative and continuous. If there are any questions or ambiguity then you DO NOT have consent.
- Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
- Don't take advantage of someone's drunkenness or altered state, even if they willingly consumed alcohol or substances.
- Realize that your potential partner could feel intimidated or coerced by you. You may have a power advantage simply because of your gender or physical presence. Don't abuse that power.
- Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
- Silence, passivity, or non-responsiveness cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and nonverbal communication and body language.

Regulation

Board Action

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