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# Title IX

## Definitions/Terminology

**Actual Knowledge-** means notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee.

**Age** – There is no consent for purposes of this policy where a person is too young to give effective consent under applicable law. Under Mississippi law, persons under fourteen cannot give effective consent to sexual activity with an older person, where the age difference is greater than twenty-four months. Persons between the ages of fourteen and sixteen cannot give consent to sexual activity with an older person where the age difference is greater than thirty-six months.

**Bystander** – Any person present but not involved.



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**Complainant** – means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

**Confidential Employees** – Certain employees specifically exempted from Responsible Employee status include (1) mental health counselors, such as those in the Campus Counseling Center, (2) health care providers, such as those at the O.W. Reily Student Health Center; and (3) pastoral counselors. These employees are not required to relay any information about reported sexual misconduct to the University.

**Consent** – Consent is defined as a clear, informed, and voluntary agreement/exchange between participants to engage in sexual activity. Consent can be communicated by words or actions as long as those words or actions are unambiguous and create mutually understandable permission regarding the scope of sexual contact or activity. Although consent can be communicated with actions, verbal communication is the most reliable form of asking for and gauging consent.

**Dating Violence**-Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

**Decision Maker**– person assigned to oversee and control the live hearing, trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and renders a determination and/or finding to both parties.

**Domestic Violence** – A felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim; by a person with whom the victim shares a

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**Employee** –This generally includes faculty, staff, and hourly employees who are working on paid appointments by the University. It generally excludes students or temporary employees. For specific information on who is considered an employee, contact the Human Resources Department.

**Force** – The use of physical violence and/or imposing on someone physically to gain sexual access. 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 overcome resistance.

**Formal Complaint**-means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator, and by any additional method designated by the recipient.

**Incapacitation**- occurs when a person cannot make rational, reasonable decisions due to alcohol, drugs, unconsciousness, or cognitive disability because they lack the capacity to give knowing consent. There is no consent if a person is mentally or physically incapacitated due to drug or alcohol consumption, voluntarily or involuntarily, or if the person is unconscious, asleep, or otherwise unaware that sexual interaction/activity is happening. It also includes instances in which a person lacks the required understanding due to medical conditions, cognitive disabilities, or other disabilities.



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**Intimidation** – Implied threats or acts that cause an unreasonable fear of harm in another.

**Jurisdiction**- the geographical location in which the “educational program or activity” in which the recipient has substantial control over both the respondent and the context in which the sexual harassment occurs. This also includes any buildings owned or controlled by a student organization that is officially recognized and controlled by the post-secondary institution.

**Non-consensual intentional sexual contact (or attempts to commit same)** – Any intentional sexual touching with any object, by any person upon another, without consent, and/or by force, intimidation, coercion, or incapacitation. This includes intentional contact with the breasts, buttocks, groin, genitals, or touching another with any of these body parts, or making another touch the offender or themselves with or on any of these body parts.

**Non-consensual sexual intercourse (or attempts to commit same)** – Any sexual intercourse, however slight, by any person or object upon another without consent, and/or by force, intimidation, coercion, or incapacitation. It includes oral, anal, and vaginal penetration, to any degree, with any object or body part (i.e. penis, finger, tongue). Intercourse includes vaginal penetration by a penis, tongue, finger, or object; anal penetration by a penis, object, tongue or finger; and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

**Preponderance of Evidence** – The standard of proof for adjudicating any sexual misconduct charge is a preponderance of the evidence standard. In other words, the evidence must show that it is more likely than not that the alleged sexual misconduct occurred.

**Recipient**-the University



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**Responding Party** –a person (s) responding to the allegations of a violation of the University's Sexual Harassment policy.

### **Resolution –**

Formal – resolution of a complaint by the Decision Maker.

Informal – resolution of a complaint by the Title IX Coordinator.

**Responsible Employee-** All employees are responsible employees and have a duty to report all reports of sexual misconduct. They are required to share all known details (names, dates, times, locations, witnesses etc.) of incidents or suspected incidents of sexual misconduct with the Title IX Coordinator. When an alleged victim tells a responsible employee about an incident of sexual misconduct, the University will take immediate and appropriate steps to investigate what happened to resolve the matter promptly and equitably, and prevent its recurrence. A report to these employees constitutes a report to the University—and generally obligates the University to investigate the incident and take appropriate steps to address the situation.

**Retaliation** –Retaliation is defined as any adverse action or threat taken against an individual for filing a complaint of sexual misconduct, serving as a witness, or for participating in the investigation or resolution process. The University strictly prohibits retaliation. This includes any form of intimidation, threats, harassment, or any other conduct that would discourage a reasonable person from participating in protected activity, such as reporting sexual misconduct, seeking services, or receiving interim measures and accommodations. Retaliating against a person for participating in protected activity is a basis for disciplinary action, regardless of the outcome of the underlying complaint. Complaints of retaliation should be reported immediately to the Title IX Coordinator.

**Sexual Assault** – Intentional physical sexual acts perpetrated against a person without their consent. Sexual assault includes sexual penetration or intercourse or any other physical co ^ :t

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**Sexual Contact** – Sexual contact includes, but is not limited to intentional sexual contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch another or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifices.

**Sexual Exploitation** –Taking sexual advantage of another person in a way that deliberately infringes on his or her reasonable expectation of privacy and/or security, but does not involve actual or attempted physical contact. Examples of sexual exploitation include, but are not limited to (a) recording images, video, or audio depicting another person engaged in sexual activity or in a state of undress without that person’s consent, even if the sexual activity itself is consensual; (b) distributing images, video, or audio depicting another person engaged in sexual activity or in a state of undress—or threatening to distribute the same—if the person distributing knew or reasonably should have known that the person depicted did not consent to the recording or the distribution; (c) intentionally viewing another person engaged in sexual activity or in a state of undress in a place where that person would have a reasonable expectation of privacy, without that person’s consent and for the purpose of gratifying sexual desire; (d) intentionally failing to notify a person with whom one is engaged in a sexual activity that another person is observing.

**Sexual Harassment** – conduct on the basis of sex that satisfies one or more of the following:

- An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
- Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution’s education program or activity; or
- Sexual assault (as defined in the Clery Act), or
- Dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).



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...this from each other, including between people who are or have been involved in an intimate/sexual relationship. It can be committed by anyone, regardless of sex or gender, and can occur between people of the same or different sex or gender. This policy prohibits all forms of sexual misconduct.

**Stalking** – Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for the person’s safety or the safety of others; or (2) suffer substantial emotional distress. The 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. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

**Student** – A person enrolled at Delta State University, either full-time or part-time.

**Supportive Measures**– means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient’s educational environment or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.





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