

At any time prior to the issuance of the investigative report or while an appeal is pending, the respondent may elect to acknowledge his or her actions and take responsibility for the alleged policy violation. In such situations, the Title IX Coordinator will convene a Sanctions Panel to determine the sanction(s). If either party objects to the proposed sanction(s), they may appeal the sanction pursuant to this policy.

No Retaliation

Retaliation against any person who files a complaint, participates in an investigation, or opposes a discriminatory employment or educational practice or policy is prohibited. A person who believes retaliation has occurred should notify the Title IX Coordinator as soon as possible.

False Reports

Willfully making a false report of sexual harassment is a violation of university policy and is a serious offense. Any person who willfully makes or participates in making a false or frivolous report of discrimination, harassment, retaliation or sexual misconduct will be subject to disciplinary action. False reporting may also violate state criminal statutes and civil defamation laws.

Office of Civil Rights Complaint

Although complainants are encouraged to resolve their grievances related to discrimination by utilizing this complaint procedure, they have the right to file a complaint directly with the U.S. Department of Education, Office for Civil Rights (OCR). Information regarding applicable timelines and procedures is available from OCR. You may call 1.800.421.3481 to obtain further information about filing a complaint with OCR.

Effective Date

The university reserves the right to make changes and amendments to this policy as needed, with appropriate notice to the campus community. However, the policy in force at the time that a complaint is filed will be the policy used throughout the investigation and any appeals that are heard.

Documentation

The university will retain documentation (including but not limited to the written complaint, notifications, the investigative report, any written findings of fact, petitions for appeal, and any written communication between the parties) for at least three (3) years. Documentation pertaining to terminations, expulsions, or educational sanctions may be retained indefinitely.

Definition of Terms

Complainant: Any party who makes a complaint against a student, employee, staff member, or campus visitor.

Consent: Consent is informed, freely and actively given and mutually understandable clear permission communicated by words or actions that indicate a willingness to engage in a mutually agreed-upon sexual activity. Consent is clear, knowing, active, and voluntary. Consent is not passive. Silence does not constitute consent. Consent cannot be inferred from passivity or lack of resistance alone. Consent can be withdrawn at any time. Coercion, intimidation, force, or threat of either invalidates consent. There is no consent when there is force, expressed or implied, or use of duress or deception upon the complainant. Past consent to sexual activities does not imply ongoing future consent. Previous relationships cannot imply consent to future sexual

acts. Consent to any one form of sexual activity does automatically imply consent to any other forms of sexual activity. If an individual has taken advantage of a position of influence over a complainant may be a factor in determining consent.

Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear 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. Consent cannot be gained by ignoring or acting in spite of the objections of another.

If a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact, nature, or extent of the sexual situation, there is no consent. This includes impairment or incapacitation due to voluntary alcohol or drug consumption, or being asleep or unconscious. Incapacitation is a state in which someone cannot make rational, reasonable decisions because he or she lacks the capacity to give knowing consent.

Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes overt threats, implied threats, intimidation, and coercion that overcome resistance or produce consent.

Under Arkansas law, the age of consent varies with the degrees of assault, the age of the actor, and the relationship of the actor to the other party. However, consent may never be given by a person in Arkansas under the age of 14. For specific information, please refer to Arkansas statutes (e.g., Arkansas Code Annotated §5-14-125, Sexual Assault in the Second Degree).

Sexual activity with someone known to be mentally, physically, or legally incapacitated, or based on the circumstances, someone who could reasonably be known to be mentally or physically incapacitated, constitutes a violation of this policy.

This policy also covers a person whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of substances commonly known as “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/>.

Use of alcohol or other drugs will never function as a defense to an allegation of violation of this policy.

Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. It includes any unwelcome physical violence such as hitting, pulling, shoving, kicking, biting, or throwing things; and sexual assault, sexual exploitation, and sexual harassment.

Discrimination (general definition): Conduct that is based upon an individual’s race, color, ethnicity, religion, sexual orientation, gender identity, national origin, service in the uniformed services (as defined in state and federal law), veteran status, sex, age, physical disability or mental disability that excludes an individual from participation, denies the individual the benefits of, treats the individual differently, or otherwise adversely affects a term or condition of an individual’s employment, education, living environment, or participation in a university program or activity. This includes failing to provide reasonable accommodation, consistent with state and federal law, to persons with disabilities.

Discriminatory Harassment: Detrimental action based on an individual’s race, color, ethnicity, religion, sexual orientation, gender identity, national origin, service in the uniformed services (as defined in state and federal law), veteran status, sex, age, physical disability or mental disability. Harassing conduct may take various forms, including, name-calling, graphic or written statements (including the use of cell phones or the Internet), or other

conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Gender-based harassment includes sexual harassment.

Domestic Violence: Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members; or any sexual conduct between family or household members, whether minors or adults, constitutes a crime under the laws of this state. Family or household members means spouses, former spouses, parents and children, persons related by blood within the fourth degree of consanguinity, any children residing in the household, persons who presently or in the past have resided or cohabited together, persons who have or have had a child in common, and persons who are presently or in the past have been in a dating relationship together. See also, Arkansas Code Annotated §9-15-103—“Domestic Abuse”.

“Employee” Status: Full and part-time university employees who are not enrolled as students will be considered “employees” for the purposes of this policy. A full-time employee of the university who is enrolled as a student will also be considered an “employee” for the purposes of this policy.

Hostile Environment: A hostile environment exists when there is harassing conduct based on race, color, ethnicity, religion, sexual orientation, gender identity, national origin, service in the uniformed services (as defined in state and federal law), veteran status, sex, age, physical disability or mental disability that is sufficiently serious (i.e., severe, pervasive, or persistent) and objectively offensive to deny or limit a person’s ability to participate in or benefit from the university’s programs, services, opportunities, or activities; or when such conduct has the purpose or effect of unreasonably interfering with an individual’s employment. Harassment that creates a hostile environment (“hostile environment harassment”) violates this policy.

Non-Consensual Sexual Contact: Non-consensual sexual contact is any intentional sexual touching, however slight, with any object by a male or female upon a male or a female that is without consent and/or by force. Sexual contact includes intentional contact with the breasts, buttock, groin, or genitals, or touching the body of another person with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth, or other orifice.

Non-Consensual Sexual Intercourse: Non-consensual sexual intercourse is any sexual intercourse, however slight, by a male or female upon a male or a female that is without consent and/or by force. Intercourse includes vaginal penetration by a penis, object, tongue, or finger; anal penetration by a penis, object, tongue, or finger; and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

Respondent: The person(s) against whom a complaint has been made.

Retaliation: Action taken by an accused individual or by a third party against any person because that person has opposed any practices forbidden under this policy or because that person has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this policy. This includes action taken against a bystander who intervened to stop or attempt to stop discrimination, harassment, or sexual misconduct. Retaliation includes intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual’s complaint or participation. Action is generally deemed retaliatory if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this policy.

Sexual Assault: An actual or attempted sexual contact with another person without that person’s consent. Sexual assault includes but is not limited to involvement in any sexual contact when the complainant is unable to consent; intentional and unwelcome touching of, or coercing, forcing, or attempting to coerce or force

another to touch a person's intimate parts (defined as genital area, groin, inner thigh, buttocks, or breast); and sexual intercourse without consent, including acts commonly referred to as "rape."

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

- Invading sexual privacy.
- Prostituting another person.
- Non-consensual video or audio-taping of sexual activity.
- Going beyond the boundaries of consent (e.g., allowing others to watch consensual sex without that party's knowledge or consent);
- Engaging in voyeurism.
- Non-consensual distribution of photos, other images, or information of an individual's sexual activity, intimate body parts, or nakedness, with the intent to or having the effect of embarrassing an individual who is the subject of such images or information.
- Knowingly transmitting a sexually transmitted infection (STI), such as HIV, to another without disclosing one's STI status.
- Exposing one's genitals in non-consensual circumstances or inducing another to expose his or her genitals.
- Possessing, distributing, viewing, or forcing others to view illegal pornography.

Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

Sexual Harassment: Unwelcome, gender-based spoken, written, or symbolic action or physical conduct that is sufficiently severe, persistent, or pervasive that it has the effect of unreasonably interfering with, limiting, or denying someone the ability to participate in or benefit from the university's educational programs. The unwelcome behavior may be based on power differentials, the creation of a hostile environment, or retaliation.

For the purpose of this policy, sexual harassment includes stalking or repeatedly following, harassing, threatening, or intimidating another by telephone, mail, electronic communication, social media, or any other action, device, or method that purposely or knowingly causes substantial emotional distress or reasonable fear of bodily injury or death. Sexual harassment also includes quid pro quo sexual harassment which exists when there are unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature and submission to or rejection of such conduct results in adverse educational or employment action.

Not all workplace or educational conduct that may be described as "harassment" affects the terms, conditions, or privileges of employment or education. For example, a mere utterance of an ethnic, gender-based, or racial epithet which creates offensive feelings in an employee or student would not normally affect the terms and conditions of their employment or limit a student's ability to participate in or benefit from the university's educational programs or activities.

Sexual Misconduct: Includes sexual assault, inducing incapacitation for sexual purposes, sexual exploitation, and dating and domestic violence.

"Student" Status: Any student who is a part-time employee of the university will be considered a "student" for the purposes of this policy unless the incident under consideration occurred in connection with his or her employment. Students who are not employed by the university will be considered "students" for the purposes of this policy.

BT 2016 02 11

Ref. Board of Trustees Resolution #03-0211-16

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