

POLICY ON PROHIBITED SEXUAL CONDUCT

Policy # AF002.2

Responsible Executive: Vice President of
Administration and Finance

Responsible Office: Title IX

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I. Policy Statement

Pursuant to this Policy, the University of Louisiana at Lafayette (the “University”) does not tolerate *Prohibited Sexual Conduct*. The Policy is intended to ensure that each member of the University community shall be treated with respect and dignity and is free to participate in a lively exchange of ideas.

In addition to governing *Prohibited Sexual Conduct*, the Procedures to this Policy address how the University handles allegations of *Prohibited Sexual Conduct*. University students and employees who violate this Policy may face discipline up to and including expulsion or termination.

II. Purpose of Policy

The University is committed to creating and maintaining a campus environment in which all individuals are treated with respect and dignity and are free to participate in a lively exchange of ideas. Furthermore, the University is committed to fostering an environment in which all members of our campus community are safe, secure, and free from *Sexual Misconduct* of any form, including but not limited to *Sexual Assault*, *Dating Violence*, *Domestic Violence*, and *Stalking*. The University expects that all interpersonal relationships and interactions – especially those of an intimate nature – be grounded upon mutual respect, open communication, and clear *Consent*. Each student has the right to learn and each employee has the right to work in an environment free of *Prohibited Sexual Conduct*.

The purpose of this Policy is also to ensure that no member of the University community will be retaliated against for refusing or objecting to *Prohibited Sexual Conduct*, or making an allegation related to *Prohibited Sexual Conduct*.

1. *Prohibited Sexual Conduct* includes:

a. *Sexual Misconduct*

This Policy prohibits *Sexual Misconduct* as well as any attempt to commit *Sexual Misconduct*.

b. *Sexual Behavior Between Individuals in Certain Roles*

This Policy prohibits *Sexual Behavior Between Individuals in Certain Roles*. In this category, both *Consensual* and non-*Consensual* sexual behavior are prohibited because of the University's presumption that individuals not in a position of authority (or of lesser authority) cannot willingly and freely say no to any sexual advances, acts, or contact from a person in a position of authority.

The individual in the relationship with the higher position of authority shall consult with his/her supervisor to establish an alternate chain of command where necessary to avoid violation of this Policy.

2. *Retaliation*

This Policy prohibits *Retaliatory* or *Intimidating* conduct against any individual who has made an allegation of *Prohibited Sexual Conduct*, or who has testified or assisted in any manner in an investigation pursuant to this Policy. The University will take strong responsive action against any attempt at such *Retaliation*. *Retaliation* will be grounds for a separate violation of this Policy.

3. *Prevention and Awareness Programs*

The University will annually offer education and prevention programs that include, but are not limited to: (a) awareness programs; (b) bystander intervention programs; (c) ongoing prevention and awareness campaigns; (d) primary prevention programs; and (e) education on risk reduction. The University will provide and document all training programs.

4. *Training*

Annual training concerning this Policy and the procedures for reporting, responding to, investigating, and adjudicating complaints under the Policy will be provided to faculty and staff, including, but not limited to, the Title IX Coordinator, law enforcement, *Responsible Employees*, *Confidential Advisors*, and anyone else who is involved in responding to, investigating, or adjudicating *Prohibited Sexual Conduct*.

5. *Clery Act Reporting*

Under the Clery Act, the University must report particular crimes, including certain sexual offenses. The report will not include an individual's name, or that of any other involved individuals. The University must publish an Annual Security Report (ASR) documenting three calendar years of select campus crime statistics including security policies and procedures and information on the basic rights guaranteed victims of sexual assault. The law requires schools make the report available to all current students and employees, and prospective students and employees must be notified of its existence and given a copy upon request.

The University must also issue timely warnings about Clery Act crimes which pose a serious or ongoing threat to students and employees. The University must provide timely warnings in a manner likely to reach all members of the campus community.

6. Campus Climate Survey

Consistent with the Board of Regents and University of Louisiana System Policy and in accordance with Act 172, the University will administer a campus climate survey annually to students with the intention of assessing campus safety and identify vulnerabilities. This will be coordinated by the Board of Regents and the University will be required to submit results of the survey to the Board of Regents. The University may supplement the statewide survey by collecting additional information that can be utilized to develop prevention and intervention strategies appropriate for its campus.

7. Free Speech

This Policy and its related procedures will not be implemented in a manner that infringes on any form of speech or conduct that is protected by the First Amendment.

III. Applicability

This Policy is applicable to and enforceable against all faculty, administrators, staff, students, individuals affiliated with the University by contract or otherwise (including, but not limited to, non-employees, such as vendors and independent contractors, volunteers, student organization advisors), and visitors. This Policy applies to the entire University community, regardless of an individual's sexual orientation or gender identity. This Policy may include *Prohibited Sexual Conduct* that has taken place on or off campus.

IV. Definitions

Where starred (*), the terms listed herein are defined as stated in the Louisiana Board of Regents' Uniform Policy on Sexual Misconduct.

- ✦ **Coercion***: is the use of express or implied threats, *Intimidation*, or physical force which places an individual in fear of immediate harm or physical injury or causes a person to engage in unwelcome sexual activity. *Coercion* also includes administering a drug, intoxicant, or similar substance with the intent to impair that person's ability to *Consent* prior to engaging in sexual activity.
- ✦ **Complainant**: is the person alleged to have been affected by *Prohibited Sexual Conduct* in violation of the Policy. The *Complainant* is referred to as the Alleged Victim in the Board of Regents' definitions.
- ✦ **Confidential Advisor**: individuals designated, to the extent authorized under law, to provide confidential services to students.
 - a. The *Confidential Advisor* shall be authorized to advise *Complainant* of, and provide written information regarding, both *Complainant's* rights and the University's responsibilities regarding orders of protection, no-contact orders, restraining orders, or similar lawful orders issues by a court of competent jurisdiction or by the University.
 - b. The *Confidential Advisor* shall be authorized to liaise with appropriate staff at the University to arrange reasonable accommodations through the University to allow *Complainant* to change living arrangements or class schedules, obtain accessibility services, or arrange other accommodations. The same accommodations that are offered to *Complainant* may be offered to *Respondent*. Any requests for accommodations shall not trigger an *Investigation* by the University.

- c. The *Confidential Advisor* shall be authorized to accompany *Complainant*, when requested to do so by *Complainant*, to interviews and other proceedings of a campus investigation and University disciplinary proceedings.
- d. The *Confidential Advisor* may, as appropriate, serve as a liaison between *Complainant* and the University or local law enforcement when directed to do so in writing by *Complainant* who has been fully and accurately informed about what procedures shall occur if information is shared, and assist *Complainant* in contacting and reporting to a responsible employee or local law enforcement.
- e. The *Confidential Advisor* shall not be obligated to report crimes to the University or law enforcement in a way that identifies *Complainant* or *Respondent*, unless otherwise required to do so by law.

✦ **Consent***: *Consent* to engage in sexual activity must exist from beginning to end of each instance of sexual activity. *Consent* is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage in a specific sexual activity. Silence alone, without actions evidencing permission, does not demonstrate *Consent*. *Consent* must be knowing and voluntary. To give *Consent*, a person must be of legal age. Assent does not constitute *Consent* if obtained through *Coercion* or from an individual whom the Alleged Offender [herein, *Respondent*] knows or reasonably should know is *Incapacitated*. The responsibility of obtaining *Consent* rests with the person initiating sexual activity. Use of alcohol or drugs does not diminish one's responsibility to obtain *Consent*. *Consent* to engage in sexual activity may be withdrawn by any person at any time. Once withdrawal of *Consent* has been expressed, the sexual activity must cease. *Consent* is automatically withdrawn by a person who is no longer capable of giving *Consent*. A current or previous *Consensual* dating or sexual relationship between the Parties does not itself imply *Consent* or preclude a finding of responsibility.

Note: *Consent* is a voluntary agreement to engage in sexual activity. *Consent* to engage in sexual activity with one person does not imply *Consent* to engage in sexual activity with another. *Coercion*, force, or threat of either invalidates *Consent*.

✦ **Dating Violence***: is

- a. **Dating Violence definition in Clery Act**: Violence, including but not limited to sexual or physical abuse or the threat of such abuse, committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Alleged Victim [here, *Complainant*]. The existence of such a relationship will be determined based on a consideration of the length and type of relationship and the frequency of interaction.
- b. **Dating Violence definition in Louisiana law**: “*Dating Violence*” includes but is not limited to physical or sexual abuse and any offense against the person as defined in the Criminal Code of Louisiana, except negligent injury and defamation, committed by one dating partner against the other. La. R.S. § 46.2151(C). For purposes of this Section, “dating partner” means any person who is or has been in a social relationship of a romantic or intimate nature with the victim [here, *Complainant*] and where the existence of such a relationship shall be determined based on a consideration of the following factors:
 1. The length of the relationship.
 2. The type of relationship.

3. The frequency of interaction between the persons involved in the relationship.

✦ **Domestic Abuse***: is

- a. **Domestic abuse definition in Louisiana law**: Includes but is not limited to physical or sexual abuse and any offense against the person as defined in the Criminal Code of Louisiana, except negligent injury and defamation, committed by one family or household member against another. La. R.S. 46:2132(3).

✦ **Domestic Violence***: is

Domestic Violence definition in Clery Act: Violence, including but not limited to sexual or physical abuse or the threat of such abuse, committed by a current or former spouse or intimate partner or any other person from whom the Alleged Victim [herein, *Complainant*] is protected under federal or Louisiana law. 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 child in common;
- By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- By a person similarly situated to a spouse of the victim under the *Domestic* or *Family Violence* laws of the jurisdiction in which the crime of violence occurred; or
- By any other person against an adult or youth victim who is protected from that person's acts under the *Domestic* or *Family Violence* laws of the jurisdiction in which the crime of violence occurred.

✦ **Family Violence***: is

Family violence definition in Louisiana law: means any assault, battery, or other physical abuse which occurs between family or household members, who reside together or who formerly resided together. La. R.S. § 46.2121.1(2).

✦ **Hostile Environment Caused by Sexual Harassment**: includes any situation in which there is harassing conduct that is sufficiently severe, pervasive, or objectively offensive such that it alters the conditions of employment or limits, interferes with, or denies educational benefits or opportunities. A *Hostile Environment* can be created by a one-time act that is severe (i.e., a *Sexual Assault*), or it can be created by repeated acts of less severity (i.e., harassing comments made over a period of time).

Examples of a *Hostile Environment Caused by Sexual Harassment* include, but are not limited to:

1. Posting pictures of pornography;
2. Consistently telling sexual jokes or stories where it can be overheard by others;
3. Making sexually suggestive remarks about people within ear shot of others;

4. Persisting in unwanted sexual attention; and
5. Using derogatory terms with a sexual connotation.

✦ **Incapacitation*/Incapacitated**: An individual is considered to be *Incapacitated* if, by reason of mental or physical condition, the individual is manifestly unable to make a knowing and deliberate choice to engage in sexual activity. Being drunk or intoxicated can lead to *Incapacitation*; however, someone who is drunk or intoxicated is not necessarily *Incapacitated*, as *Incapacitation* is a state beyond drunkenness or intoxication. Individuals who are asleep, unresponsive or unconscious are *Incapacitated*. Other indicators that an individual may be *Incapacitated* include, but are not limited to, inability to communicate coherently, inability to dress/undress without assistance, inability to walk without assistance, slurred speech, loss of coordination, vomiting, or inability to perform other physical or cognitive tasks without assistance.

✦ **Intimidation**: is to place another person in reasonable fear of harm through the use of threatening words and/or other conduct.

✦ **Prohibited Sexual Conduct**: is *Sexual Misconduct* or *Sexual Behavior Between Individuals in Certain Roles*, which is prohibited by this Policy.

✦ **Respondent**: is the person alleged to have engaged in *Prohibited Sexual Conduct* in violation of the Policy. The *Respondent* is referred to as the Alleged Offender in the Board of Regents' definitions.

✦ **Responsible Employee***: The University shall designate and publish the names and contact information for easily accessible University employees as *Responsible Employees* who have the authority to take action to redress sexual violence and have been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX Coordinator or other appropriate school designee. However, the University's decision to make all employees mandatory reporters of suspected or known *Sexual Harassment* or *Sexual Misconduct* to the Title IX Coordinator or other appropriate school designee does not render all University employees to be *Responsible Employees*. Employees who are authorized or required by law to keep information confidential by virtue of the employee's professional role such as Counseling Staff or similar shall not be designated as mandated reporters of *Sexual Harassment* or as *Responsible Employees*.

✦ **Retaliation*/Retaliatory**: Acts or attempted acts for the purpose of interfering with any report, *Investigation*, or proceeding under this Policy, or as retribution or revenge against anyone who has reported *Sexual Misconduct* or Relationship Violence [or *Prohibited Sexual Conduct*] or who has participated (or is expected to participate) in any manner in an *Investigation*, or proceeding under this Policy. Prohibited *Retaliatory* acts include, but are not limited to, *Intimidation*, threats, *Coercion*, or discrimination. Title IX prohibits *Retaliation*. For purposes of this Policy, an attempt requires a substantial step towards committing a violation.

✦ **Sexual Assault***: is:

- a. **Sexual Assault as defined by the Clery Act**: an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's UCR program.
- b. **Sexual Assault as defined by Louisiana State Law**:

- i. **Non-Consensual Sexual Intercourse**: Having or attempting to have sexual intercourse, cunnilingus, or fellatio without *Consent*. Sexual intercourse is defined as anal or vaginal penetration by a penis, tongue, finger, or inanimate object.
- ii. **Non-Consensual Sexual Contact**: Any intentional sexual touching, or attempted sexual touching, without *Consent*.

✦ **Sexual Behavior Between Individuals in Certain Roles**: Sexual advances, acts, or contact, whether *Consensual* or not, involving individuals where, by virtue of roles or position in the University, one individual is in a position of direct academic or supervisory authority with respect to the other are prohibited. These roles include, but are not limited to, the following examples:

- a. A faculty member and any student in his or her class;
- b. A faculty member and any undergraduate major in his or her department;
- c. A faculty member and any graduate student in a departmental program;
- d. A graduate assistant who has teaching or other classroom duties and all students in the class or classes that he or she teaches or assists;
- e. A departmental, college, or University administrator and any member of the faculty in his/her chain of command;
- f. A laboratory supervisor and those using or working in his/her lab;
- g. A supervisor of civil service employees and his/her employee; or
- h. A department head and a staff member of his/her chain of command.

✦ **Sexual Exploitation***: An act attempted or committed by a person for sexual gratification, financial gain, or other advancement through the abuse or exploitation of another person's sexuality. Examples of *Sexual Exploitation* include, but are not limited to, non-consensual observation of individuals who are undressed or engaging in sexual acts, non-consensual audio- or videotaping of sexual activity, prostituting another person, allowing others to observe a personal consensual sexual act without the knowledge or *Consent* of all involved parties, and knowingly exposing an individual to a sexually transmitted infection without that individual's knowledge.

✦ **Sexual Harassment***: Unwelcome conduct of a sexual nature when i) submission to such conduct is made either explicitly or implicitly a term or condition of a person's employment or education; ii) submission to or rejection of such conduct by a person is used as the basis for a decision affecting that person's employment or education; or iii) such conduct has the purpose or effect of unreasonably interfering with a person's employment or education, or creating an intimidating, hostile, or offensive employment or educational environment, and has no legitimate relationship to the subject matter of a course or academic research. *Sexual Harassment* also includes non-*Sexual Harassment* or discrimination of a person because of the person's sex and/or gender, including harassment based on the person's nonconformity with gender stereotypes. For purposes of this Policy, the various forms of prohibited *Sexual Harassment* are referred to as "*Sexual Misconduct*."

✦ **Sexual Misconduct***: is a sexual act or contact of a sexual nature that occurs, regardless of personal relationship, without the *Consent* of the other person(s), or that occurs when the person(s)

is unable to give *Consent* or whose *Consent* is coerced or obtained in a fraudulent manner. For the purpose of this Policy, *Sexual Misconduct* includes, but is not limited to, *Sexual Assault*, *Sexual Abuse*, violence of a sexual nature, *Sexual Harassment*, non-*Consensual* sexual intercourse, *Sexual Exploitation*, video voyeurism, contact of a sexual nature with an object, or the obtaining, posting or disclosure of intimate descriptions, photos, or videos without the express *Consent* [of] the persons depicted therein, as well as *Dating Violence*, *Domestic Violence*, and *Stalking*.

✦ **Sexually Oriented Criminal Offense***: Any sexual assault offense as defined in La. R.S. § 44:51 and any sexual abuse offense as defined in La. R.S. § 14:403.

✦ **Stalking***: is:

- a. **Stalking as defined by Clergy Act**: (1) Intentional and repeated following OR harassing that would cause a reasonable person to feel alarmed OR that would cause a reasonable person to suffer emotional distress OR (2) Intentional and repeated uninvited presence at another person's: home, work place, school, or any other place which would cause a reasonable person to be alarmed OR would cause a reasonable person to suffer emotional distress as a result of verbal or behaviorally implied threats of death, bodily injury, sexual assault, kidnapping or any other statutory criminal act to the victim OR any member of the victim's family OR any person with whom the victim is acquainted. 34 CFR 668.46(a).
- b. **Stalking as defined by Louisiana state law**: *Stalking* is the intentional and repeated following or harassing of another person that would cause a reasonable person to feel alarmed or to suffer emotional distress. *Stalking* shall include but not be limited to the intentional and repeated uninvited presence of the perpetrator at another person's home, workplace, school, or any place which would cause a reasonable person to be alarmed, or to suffer emotional distress as a result of verbal, written, or behaviorally implied threats of death, bodily injury, *Sexual Assault*, kidnaping, or any other statutory criminal act to himself or any member of his family or any person with whom he is acquainted. La. R.S. § 14:40.2(A). "Harassing" means the repeated pattern of verbal communications or nonverbal behavior without invitation which includes but is not limited to making telephone calls, transmitting electronic mail, sending messages via a third party, or sending letters or pictures. "Pattern of conduct" means a series of acts over a period of time, however short, evidencing an intent to inflict a continuity of emotional distress upon the person. Constitutionally protected activity is not included within the meaning of pattern of conduct. La. R.S. § 14:40.2(C).

V. Policy Procedure

Pursuant to Title IX of the Education Amendments of 1972 and the U.S. Department of Education's implementing regulations at 34 C.F.R. Part 106, the University's Title IX Coordinator has primary responsibility for coordinating the University's efforts to comply with and carry out its responsibilities under Title IX, which prohibits sex discrimination in all the operations of this University, as well as retaliation for the purpose of interfering with any right or privilege secured by Title IX.

Sexual Misconduct against individuals, including *Sexual Harassment*, *Sexual Assault*, rape, and *Sexual Exploitation*, can be a form of sex discrimination under Title IX. The Title IX Coordinator oversees the University's response to allegations and complaints that involve possible sex discrimination to monitor outcomes, identify and address any patterns, and assess effects on the campus climate, so the University can address issues that affect the wider University community.

There are a number of methods for reporting *Prohibited Sexual Conduct*, which are addressed in the Procedures. See Section IX. The various levels of confidentiality involved in the different methods of reporting are described in detail in the Procedures. Procedures related to this Policy are based on the relationship of the *Respondent* to the University.

The University's Title IX Coordinator is:
Christine Brasher
Director, Operational Review
104 University Circle, Martin Hall, Suite 309
PO Box 43561
Lafayette, Louisiana 70504
337-482-1394
cbrasher@louisiana.edu

Inquiries or complaints that involve potential violations of Title IX may also be referred to the Regional Civil Rights Director, Office for Civil Rights, Dallas Office, U.S. Department of Education, 1999 Bryan Street, Suite 1620, Dallas, Texas 75201-6810; (214) 661-9600; Fax (214) 661-9587; TDD (800) 877-8339; Email: OCR.Dallas@ed.gov.

VI. Enforcement

The Title IX Coordinator is responsible for enforcement of this Policy. Sanctions for violations of this Policy may include, but are not limited to, disciplinary action up to termination of employment, expulsion, rescission of contractual relationship, ban from campus, and other sanctions detailed in the Procedures referenced in Section V., above.

VII. Policy Management

Upon adoption, the Vice President of Administration and Finance shall be the Responsible Executive for this Policy in charge of the management of this Policy. The Title IX Coordinator's Office shall be the Responsible Office for this Policy.

VIII. Exclusions

Certain individuals in limited cases may be exempt from this Policy's prohibition against *Sexual Behavior Between Individuals in Certain Roles*. Such exemption may not violate the Louisiana Code of Governmental Ethics.

IX. Effective Date

This Policy shall apply to all incidents of *Prohibited Sexual Conduct* that are reported on or after the date of adoption of this Policy.

X. Adoption

This Policy is hereby adopted on this 30th day of November, 2015.

/s/ E. Joseph Savoie

E. Joseph Savoie
President

Policy on Prohibited Sexual Conduct

IX. Appendices, References and Related Materials

- ✦ Procedures for Reporting and Responding to Alleged Policy Violations Involving a Student as a Respondent.
- ✦ The Title IX Coordinator may be consulted concerning procedures related to other types of *Respondents*.
- ✦ Title IX of the 1972 Education Amendments; Title 20 U.S.C. Sections 1681-1688
- ✦ The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) as amended; 20 U.S.C. 1092(f)
- ✦ Section 304 of the Violence against Women Reauthorization Act of 2013 (VAWA); PL113-4 (March 7, 2013)
- ✦ Louisiana Revised Statutes, Titles 14 and 46
- ✦ La. R.S. 17:1805(H); 40:2405.8(A); (C)(1)
- ✦ La. R.S. 17:3351
- ✦ Louisiana Campus Accountability and Safety Act, La. R.S. 17:3399.11 et seq.
- ✦ La. Executive Order No. BJ 2014-14
- ✦ Louisiana Board of Regents Uniform Policy on Sexual Misconduct, Appendix A: Louisiana Campus Sexual Misconduct Policy
- ✦ Louisiana Code of Governmental Ethics
- ✦ University Policy on Academic Freedom
- ✦ University Policy on Non-Discrimination
- ✦ University of Louisiana System Board Bylaws and Rules, Part Two, Chapter II, Students, Section XIX, Student Conduct and Appeal Procedures
(<http://ulsystem.edu/assets/docs/searchable/boards/Chpt 2 XIX Student Conduct Appeal Procedures.pdf>)

XII. Revision History

- Original adoption date of the Policy on Prohibited Sexual Conduct (Interim Policy): September 30, 2015.
- This Policy replaces:
 - (1) Faculty Handbook Document XI, University Policy Regarding Sexual Behavior and Sexual Harassment; (2) Staff Handbook, Policy Document III, University Policy Regarding Sexual Behavior and Sexual Harassment; and (3) Student Code of Conduct and Appeal Procedures, Section 19 Sexual Harassment.
 - For purposes of hearings and appeals related to Prohibited Sexual Conduct, this Policy replaces the Student Code of Conduct and Appeal Procedures, Section 7 and Section 18.1-18.4.
- Adoption of Policy on Prohibited Sexual Conduct: November 30, 2015.