

UNIVERSITY OF CENTRAL ARKANSAS
BOARD POLICY

Policy Number: 426

Subject: Title IX Sexual Harassment

Date Adopted: 07/20 Revised: _____

POLICY STATEMENT

Sexual harassment, including, but not limited to, sexual assault, dating violence, domestic violence, stalking, unauthorized distribution of sexual images or recordings, or any crime that is based upon sexual acts defined at the adoption of this policy or later enacted by the State of Arkansas, by any faculty member, staff member, student, or a third party who is *a participant in a university-sponsored program, event, or activity under substantial control of the University* is a violation of University policy and will not be tolerated at the University of Central Arkansas. Further, the University of Central Arkansas is committed to providing ongoing sexual harassment primary prevention, awareness, and risk reduction programs and training for the entire UCA community. Sexual harassment of employees is prohibited under Section 703 of Title VII of the Civil Rights Act of 1964 and sexual harassment of students may constitute discrimination under Title IX of the Education Amendments of 1972. This policy seeks to comply with requirements mandated by the Violence Against Women Reauthorization Act of 2013. The university considers sexual harassment a very serious issue and shall subject the offender to dismissal and/or other sanctions following the university's investigation and substantiation of the complaint and compliance with due process requirements.

TITLE IX COORDINATOR

The university has designated a Title IX coordinator who will be responsible for ensuring the university has required policies and procedures in place; ensuring prompt and effective processing of complaints; administering a centralized complaint filing system; conducting evaluations of school compliance; for analyzing trends revealed by complaints; coordinating investigations and enforcement activities; assist in arranging for training for staff and students; making an initial determination of whether the issues raised in complaints meet the definition of Title IX Sexual Harassment; and for monitoring on behalf of the institution overall compliance with this policy and related federal and state legislation and regulation.

The university may designate one or more deputy coordinators to assist the Title IX coordinator. Such deputies will be authorized to receive complaints and perform the administrative duties of the Title IX Coordinator in the event of a conflict of interest or when the Title IX Coordinator is unavailable. Deputy Title IX Coordinators will only be precluded from filling other administrative duties related to the Title IX Grievance Procedures when they have also served in the Title IX Coordinator role for the same complaint or when a conflict of interest is determined to exist. Whenever the phrase "Title IX coordinator" appears in this policy and other policies in

connection with administering an individual complaint, it will be understood to include both the coordinator and any deputy coordinators who may have been assigned responsibilities to administer the matter.

TITLE IX SEXUAL HARASSMENT

Sexual harassment, as defined by Title IX (Part 106 of Title 34 of the Code of Federal Regulations, § 106.30) is conduct on the basis of sex that satisfies one or more of the following:

(1) An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;

(2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or

(3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

DEFINITION OF DATING VIOLENCE

Dating violence is defined as physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between two individuals who are in a romantic or intimate social relationship. A romantic or intimate social relationship between two individuals is determined by examining the following factors: (i) the length of the relationship; (ii) the type of the relationship; and (iii) the frequency of interaction between the two individuals involved in the relationship. "Dating" does not include a casual relationship or ordinary fraternization between two individuals in a business or social context.

DEFINITION OF DOMESTIC VIOLENCE

Domestic violence is a felony or misdemeanor crime of violence committed by any of the following individuals:

(i) a current or former spouse or intimate partner of the victim; *or*

(ii) a person with whom the victim shares a child in common; *or*

(iii) a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; *or*

(iv) a person similarly situated to a spouse of the victim under the domestic or family laws of the jurisdiction in which the crime of the violence occurred; *or*

(v) any other person against an adult or youth who is protected under the domestic or family violence laws of the jurisdiction in which the crime of violence has occurred.

DEFINITION OF SEXUAL ASSAULT: NON-CONSENSUAL SEXUAL CONTACT

Non-consensual sexual contact is defined as any sexual touching, with any object, by a man or a woman upon another person without consent or making any person touch another person in a sexual manner.

DEFINITION OF SEXUAL ASSAULT: NON-CONSENSUAL SEXUAL INTERCOURSE

Non-consensual sexual intercourse is defined as any sexual intercourse (anal, oral or vaginal), with any object, by a man or woman upon another person without consent.

DEFINITION OF SEXUAL HARASSMENT

Sexual harassment includes unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature when:

- (i) submission to such conduct is either explicitly or implicitly made a condition of an individual's employment with the University or a factor in the educational program of a student. or submission to or rejection of such conduct by an individual is used as the basis for an employment or academic decision affecting such individual. Conduct of this nature, commonly referred to as quid pro quo sexual harassment, does not require the further analysis of whether the conduct is severe, pervasive, and objectively offensive and is a per se violation of this policy; or
- (ii) such conduct is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity or to work in an environment free of intimidation, hostility or threats stemming from acts or language of a sexual nature

EXAMPLES OF SEXUAL HARASSMENT

Sexual harassment may create a hostile, abusive, demeaning, offensive or intimidating environment. Unwelcome conduct of this nature that is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity is a violation of this policy and Federal Law. The reasonable person standard considers the perspective reasonable person in the position of the Complainant. Unwelcome sexual conduct may be manifested by verbal and/or physical actions, including gestures and other symbolic conduct. Sexual harassment is not always obvious and overt; it can also be subtle and covert. A person who consents to sexual advances may nevertheless be a victim of sexual harassment if those sexual advances were unwelcome. Previously welcomed advances may become unwelcome. Examples of sexual harassment may include, but are not limited to, the following:

non-sexual slurs about one's gender;

contrived work or study assignments and assigning more onerous or unpleasant tasks predominately to employees or students of one gender;

repeated unwanted touching, patting or pinching;

repeated inappropriate social invitations or requests for sexual favors;

repeated unwanted discussions of sexual matters;

use of sexual jokes, stories, analogies or images which are not related to the subject of the class or work situation;

touching, fondling or deliberate brushing against another person;

ogling, leering or prolonged stares at another's body;

display or use of sexual graffiti or sexually-explicit pictures or objects; and

sexually-suggestive jokes, comments, e-mails, or other written or oral communications.

Although sexual harassment most frequently occurs when there is an authority differential between the persons involved (e.g. faculty member and student, supervisor and staff member), it may also occur between persons of the same status (e.g. faculty and faculty, student and student, staff and staff). Both men and women may be victims of sexual harassment and sexual harassment may occur between individuals of the same gender.

NOTE: Other forms of harassment based upon race, religion, national origin, sex or age may have the same impact as sexual harassment. However, pursuant to the Department of Education Regulations for Title IX, these forms of harassment are not investigated or adjudicated using the Title IX Grievance Procedures. If a complaint of harassment is received by the Title IX Coordinator which is determined not to meet the Title IX sexual harassment definition, but alleges other forms of harassment, the complaint will be forwarded as follows: in the event the respondent is a faculty member, the complaint will be forwarded to the Provost; in the event the respondent is a student, the complaint will be forwarded to the Dean of Students; in the event the respondent is staff member, the complaint will be forwarded to the Associate Vice President of Human Resources/Risk Management.

DEFINITION OF STALKING

Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.

A "course of conduct" is 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" is significant mental suffering or anguish that may, but does not necessarily require, medical or other professional treatment or counseling. A "reasonable person" is one under similar circumstances and with similar identities to the victim.

DEFINITION OF UNAUTHORIZED DISTRIBUTION OF SEXUAL IMAGES OR RECORDINGS

Unauthorized distribution of sexual images or recordings, commonly referred to as "revenge pornography" or "cyber sexual exploitation," is defined as distributing sexual images or recordings of a person being eighteen (18) years of age or older with the purpose to harass, frighten, intimidate, threaten, or abuse another person.

The unauthorized distribution of images or recordings means the unauthorized sharing of images, pictures, videos, or voice or audio recording of another person to a third person by any means if the image, picture, video, or voice or audio recording:

- (1) Is of a sexual nature or depicts the other person in a state of nudity; and
- (2) The other person is a family or household member of the actor or another person with whom the actor is in a current or former dating relationship; or
- (3) The images or recordings are made without the knowledge or consent of the person depicted.

The fact that an image, picture, video, or voice or audio recording was created with the knowledge or consent of the other person or that the image, picture, video, or voice or audio recording is the property of a person not the person depicted is not a defense for this type of sexual harassment. Even if the other person originally consented to the creation of the image, picture, or voice or audio recording, or if the other person provided the same to the actor, further distribution or sharing by the actor of any kind is deemed to be in violation of this policy.

The location of any digital file, upload, server, or other digital platform is immaterial for the purposes of this definition and policy. The policy applies to any person who is a faculty member, staff member, student, or a third party who is *a participant in a University-sponsored program, event, or activity, under substantial control of the University*. The location in which the image, picture, video, or voice or audio recording was created is not relevant to the determination of whether the sharing of the same was a violation of this policy. The sharing of the image, picture, video, or voice or audio recording in violation of the policy is the act which subjects the actor to enforcement actions through the Title IX Grievance Procedures`.

DEFINITION OF CONSENT

Consent is a clear, knowing and ongoing communication of a voluntary mutual agreement to engage in sexual activity. Consent requires communication and this policy requires that each member of the campus community respect the body autonomy of others. A few characteristics of consent are: (1) Consent is active, not passive. It is mutual, not individual; (2) Consent can be withdrawn at any time, as long as the withdrawal is clearly communicated; (3) Consent to any one form of sexual activity does not automatically imply consent to all other forms of sexual activity. Consent to any past sexual activity, does not automatically imply consent for any future sexual contact; (4) Consent can be given by words and actions, as long as those words or actions

consist of affirmative, unambiguous, conscious decisions by each participant to engage in mutually agreed-upon sexual activity

Consent cannot be given when a person is incapacitated, such as when a person is physically or mentally unable to make informed, rational judgments, or lacks the ability to understand the “who, what, when, where and how” related to the sexual activity, or when a person is under age (pursuant to Arkansas law). States of incapacitation include, but are not limited to, unconsciousness and sleep. When considering alcohol or other drug induced intoxication and/or impairment, incapacitation is determined by how the alcohol or other drugs have impacted a person’s decision-making capacity, awareness of consequences, and/or ability to make fully informed judgments. When the factual circumstances clearly indicate to a reasonable person that another person is incapacitated, then the other person is incapable of consenting to sexual activity.

CONSENSUAL RELATIONSHIPS

Because of the unique situations that exist among students, faculty, supervisors, and staff, relationships in the workplace and on campus should at all times remain professional. In particular, due to the professional power differential between faculty and students, faculty members are encouraged to remain professional in all relationships with students. Refer to Board Policy No. 515 for further information on consensual relationships.

EMPLOYEE REPORTING UNDER TITLE IX

All employees, both faculty and professional staff, are encouraged to report any violations of this policy that they are made aware of by any person. When an employee becomes aware of an alleged act of Title IX Sexual Harassment, the employee should promptly contact the Title IX coordinator, a deputy Title IX coordinator, general counsel or assistant vice president for human resources. The Title IX coordinator and any deputy Title IX coordinator are available to provide guidance on how to handle a situation to faculty and professional staff at any time. Only the Title IX Coordinator or a Complainant (person individually harmed by violation of this policy) may file a formal complaint.

All employees are required to receive training related to Title IX, and should understand how to provide information related to accessing basic University resources when the employee is notified of a potential instance of Title IX Sexual Harassment.

ACTUAL KNOWLEDGE

In accordance with Federal regulation, the University is deemed to have actual knowledge of an allegation of Title IX Sexual Harassment when the Title IX Coordinator or an Employee with the authority to institute corrective measures on behalf of the University is made aware of the allegation. For the purposes of this policy, the following individuals are considered to have authority to institute corrective measures on behalf of the University: President, Provost, College Deans, Vice President of Student Services and Institutional Diversity, Vice President of Finance and Administration, Vice President of Advancement, Director of Athletics, Chief Information Office, Chief of Staff, and Title IX Coordinator.

CONFIDENTIALITY

In the course of a complaint investigation, the University will make reasonable efforts to maintain confidentiality of the complaints. In the event of an emergency or ongoing threat to the health, safety, or security of any individual or the campus community, the University may release information to the extent necessary to appropriately address the situation presented. All parties to the complaint will be asked to assist in treating the complaint confidentially. However, there can be no guarantee of confidentiality and anonymity based upon the course and scope of the complaint investigation and the institution may share information where necessary to provide accommodations or protective measures. If the complaint raises issues required by law to be disclosed, the University will release information to the extent required by law.

SUPPORTIVE MEASURES

There are a range of supportive measures the University may offer following an allegation of sexual harassment including, but not limited to:

- issuing mutual “no contact” orders;

- summarily suspending the respondent from campus housing on an interim basis in the case of a formal complaint that meets the definition of Title IX sexual harassment and presents a reasonable ongoing safety concern for any person;

- restricting the respondent’s movement on campus;

- re-assigning or placing the respondent on administrative leave when the respondent is an employee;

- providing reasonable temporary alternative housing options for on-campus residents; and/or

- adjusting academic calendars and course attendance to support students participating in the grievance process when appropriate.

ACADEMIC ACCOMMODATION AS A SUPPORTIVE MEASURE

Student requests for academic accommodation as a supportive measure under this policy will be made on behalf of students by the Title IX Coordinator. The approval authority for academic accommodation will be, collectively, the individual faculty member concerned and the respective academic department chair.

FILING OF FALSE REPORTS

A grievant whose complaint is found to be both false and to have been made with malicious intent will be subject to disciplinary action which may include, but is not limited to, demotion, transfer, suspension, expulsion or termination of employment.

DUTY TO COOPERATE

All students and employees whose assistance is needed in the investigation of a complaint or in the course of disciplinary action will be required to cooperate with the Title IX coordinator, any

designated deputy Title IX coordinator, and other parties who are duly authorized to investigate or to discipline. Persons who are accused of having engaged in sexual misconduct will be entitled to such cooperation when necessary to obtain witnesses in any formal disciplinary proceedings that may be initiated. Where necessary, adjustments will be made to work schedules, classroom schedules, and other academic or employment obligations.

PROHIBITION ON RETALIATION

Retaliation against any person in the UCA community for filing, supporting, providing information, or for cooperating in a sexual misconduct investigation in good faith, in connection with a complaint of sexual misconduct is strictly prohibited. Examples of retaliation may include, but are not limited to, adverse employment actions such as termination, refusal to hire, and denial of promotion. Additionally, retaliation in the form of harassment, intimidation, threats, or coercion, or in the form of any materially adverse harm that would dissuade a reasonable student or employee from filing a harassment complaint or participating in a harassment investigation is strictly prohibited. Any person who feels he/she has been subjected to retaliation should make a report to the Title IX coordinator.

GRIEVANCE PROCEDURES FOR TITLE IX SEXUAL HARASSMENT CLAIMS

Employees or students of the university who believe they have been subjected to sexual harassment are encouraged to report instances of sexual harassment to the Title IX Coordinator.

Formal Complaints will be resolved using the UCA Title IX Sexual Harassment Grievance Procedures, which may be found on the university's website.

The university will make every effort to adhere to the prescribed time frames of the formal resolution processes. However, in the event that individuals involved are unavailable or of other unanticipated occurrences, the Title IX Coordinator, with the concurrence of the President, may adjust the time frames. Any changes will be immediately communicated to the complainant and respondent by the Title IX Coordinator, and where possible, their needs will be accommodated. Time frames may also be extended upon the mutual agreement of the parties. Time frames will be extended if necessary to accommodate holidays and vacation periods that form part of the academic calendar or days on which an institution is closed for weather or other emergency purposes. Working days are those on which the offices of the university are open for business. Extensions will not exceed the bounds allowed by applicable law and regulations.

FORMAL INVESTIGATION AND RESOLUTION

Formal Complaints must be provided to the Title IX Coordinator, and the Title IX Coordinator must sign and date the complaint before it will be considered received by the University. The Title IX coordinator will utilize the University Title IX Sexual Harassment Grievance Procedures in coordinating the formal investigation and hearing process, which may be routinely modified to remain in compliance with the current status of the law. Hearings will be conducted by officials who receive training on various aspects of Title IX Sexual Harassment including, but not limited to, sexual harassment, sexual assault, dating violence, domestic violence, stalking, and unauthorized distribution of sexual images or recordings.

STANDARD OF EVIDENCE

The University will use the Preponderance of the Evidence standard for all hearings related to this policy.

INFORMAL RESOLUTION

Informal resolution of a formal complaint may be used as a final resolution only when:

- (1) Both parties agree to be bound by the outcome of an informal process;
- (2) The complaint does not involve a University employee as a party;
- (3) The University, through the Title IX Coordinator, agrees to informal resolution.