

UNIVERSITY OF CENTRAL ARKANSAS
BOARD POLICY

Policy Number: 511

Subject: Sexual Misconduct

Date Adopted: 08/89 Revised: 12/12, 08/14

POLICY STATEMENT

Sexual misconduct, including, but not limited to sexual harassment, sexual assault, dating violence, domestic violence, and stalking, by any faculty member, staff member, student, or a third party who is *a participant in a university-sponsored program, event, or activity*, is a violation of both state and federal law as well as 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 misconduct primary prevention, awareness, and risk reduction programs and training for the entire UCA community. Sexual misconduct 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 misconduct 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, investigations and enforcement activities; assist in arranging for training for staff and students; 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 will have full power to conduct reviews and investigations and hear appeals as directed by the institutional Title IX coordinator. 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.

DEFINITION OF SEXUAL MISCONDUCT

Sexual misconduct is any unwelcome conduct of a sexual nature, including any conduct or act of a sexual nature perpetrated against an individual without consent. Sexual misconduct can be committed by men or by women and it can occur between people of the same or different sex. Sexual misconduct includes but is not limited to:

- dating violence;
- domestic violence;
- sexual assault (non-consensual sexual contact and non-consensual sexual intercourse);
- sexual harassment; and
- stalking.

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 causal 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:

- a current or former spouse or intimate partner of the victim; *or*
- a person with whom the victim shares a child in common; *or*
- a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; *or*
- 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*
- 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 you or them 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 is defined as unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature when:

- 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;
- submission to or rejection of such conduct by an individual is used as the basis for an employment or academic decision affecting such individual; and/or
- such conduct has the purpose or effect of unreasonably interfering with an individual's right to achieve an educational objective 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. It 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. In the absence of other policies addressing these specific issues, the university encourages the use of the steps and procedures in this policy in reporting other types of harassment and will generally conduct investigations of those complaints in the same manner.

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.

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 is encouraged to remain professional in all relationships with students. Refer to Board Policy No. 515 for further information on consensual relationships.

MANDATORY REPORTING UNDER TITLE IX

The University of Central Arkansas has designated all employees, both faculty and professional staff, as mandatory reporters. Additionally, anyone affiliated with the university in an official capacity, but who may not necessarily be employees (i.e. off-campus student organization advisors) are also deemed as mandatory reporters. When an employee becomes aware of an alleged act of sexual misconduct, the employee must promptly contact the Title IX coordinator, a deputy Title IX coordinator, general counsel or assistant vice president for human resources. The employee should use the Sexual Misconduct Complaint Form, which may be found on the university website. Alternatively, the employee may call the Title IX coordinator and then follow-up by completing the form. The Title IX coordinator and any deputy Title IX coordinator are also available to provide guidance on how to handle a situation to faculty and professional staff at any time. Individuals who are aware of or have experienced an incident of misconduct should promptly report the matter to the Title IX coordinator, a deputy Title IX coordinator,

general counsel or assistant vice president for Human Resources. Sexual misconduct should be reported within 180 days of its occurrence. However, complaints reported after 180 days will still be investigated.

When an employee thinks that a student may be about to report an act of misconduct, the employee should make every effort to ensure that the student understands: (i) the employee's obligation to report the names of the alleged perpetrator and student involved in the alleged sexual violence, as well as relevant facts regarding the alleged incident (including the date, time, and location), to the Title IX coordinator or other appropriate school officials, (ii) the student's option to request that the school maintain his or her confidentiality, which the school (*e.g.*, Title IX coordinator) will consider, and (iii) the student's ability to share the information confidentially with counseling, advocacy, health, mental health, or sexual-assault-related services (*e.g.*, sexual assault resource centers, campus health centers, pastoral counselors, and campus mental health centers).

REPORTING REQUIREMENTS FOR PROFESSIONAL AND PASTORAL COUNSELORS

Campus professional counselors, pastoral counselors, health center employees, or any other person with a professional license requiring confidentiality, or who is supervised by such a person, are not required to report, without the student's consent, incidents of sexual misconduct to the school in a way that identifies the student. However, they are required to report such incidents in a way that does not identify the student, but gives the university enough information to attempt to stop, prevent and remedy the effects of the violation.

Campus professional counselors, pastoral counselors, health center employees should inform students of their right to file a Title IX complaint with the school and a separate complaint with campus or local law enforcement. In addition to informing students about campus resources for counseling, medical, and academic support, these persons should also indicate that they are available to assist students in filing such complaints. They should also explain that Title IX includes protections against retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs. This includes retaliatory actions taken by the school and school officials.

CONFIDENTIALITY

In the course of a complaint investigation, the university will make reasonable efforts to maintain confidentiality of the complaints. 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.

Even if the complainant requests confidentiality or asks the complaint not be pursued, the university will 1) take all reasonable steps to investigate and respond to the complaint to the extent possible consistent with the alleged victim's wishes; 2) notify the alleged victim that the failure of the alleged victim to pursue a complaint may limit the university's ability to fully address the matter; and 3) report the incident to local law enforcement authorities if it appears to

involve a crime that is required to be reported or a health or safety emergency as defined by state or federal law requires such reporting.

PROTECTIVE MEASURES

There are a range of protective measures the institution may offer following an allegation of sexual misconduct including:

- issuing “no contact” orders;
- summarily suspending the respondent from campus housing on an interim basis;
- restricting the respondent’s movement on campus; and/or
- re-assigning or placing the respondent on administrative leave.

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.

GREIVANCE PROCEDURES FOR SEXUAL MISCONDUCT CLAIMS

Employees or students of the university who believe they have been subjected to sexual misconduct are encouraged to use the University Sexual Misconduct Grievance Procedures, which may be found on the university’s website, to resolve their complaint.

The university will make every effort to adhere to the prescribed time frames of the informal and 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.

INFORMAL INVESTIGATION AND RESOLUTION

1. Individuals who believe they have been subjected to sexual misconduct (complainant or “alleged victim” if not the complainant) should report the incident promptly to their immediate supervisor, academic dean, departmental supervisor higher up in the chain of command, or directly to the Title IX coordinator, a deputy Title IX coordinator, general counsel or assistant vice president for human resources.

The person to whom the complaint is made shall immediately contact the Title IX coordinator. The Title IX coordinator will utilize the University Sexual Misconduct Grievance Procedures, which may be found on the university website, in conducting the informal investigation and resolution. The department involved and/or the supervisor to whom the complaint was made may be asked to assist in the informal investigation.

2. The alleged victim may elect to resolve his or her complaint through the informal resolution process outlined in the University Sexual Misconduct Grievance Procedures provided that (i) the respondent agrees to such resolution, (ii) the alleged victim and the respondent are both students or are both employees of the university, (iii) the Title IX coordinator determines that informal resolution is an appropriate mechanism for resolving the complaint, and (iv) the complaint does not involve sexual assault.
3. If, following investigation, an informal resolution of the matter that is satisfactory to the complainant, the person against whom the complaint is made (respondent) and the university (represented by the Title IX coordinator) is reached, it shall be considered closed and all parties involved shall be so advised in writing by the Title IX coordinator. If a satisfactory resolution has not been reached within 10 working days from the date of the complaint, the complainant, respondent, or university may initiate formal complaint/investigation procedures.

FORMAL INVESTIGATION AND RESOLUTION

If the sexual misconduct complaint has not been resolved through informal procedures and the complainant, respondent, or university wishes to pursue the matter further, the party wishing to pursue the matter must file a written complaint. The written complaint must be filed with the Title IX coordinator within three working days of the termination of the informal procedures.

The Title IX coordinator will utilize the University Sexual Misconduct Grievance Procedures in conducting the formal investigation, which may be routinely modified to remain in compliance with the current status of the law. Proceedings will be conducted by officials who receive training on various aspects of sexual misconduct including, but not limited to, sexual harassment, sexual assault, dating violence, domestic violence, and stalking.