

University of Louisiana System

**Title: SEXUAL MISCONDUCT
/POWER-BASED VIOLENCE**

Effective Date: August 1, 2022

Cancellation: October 15, 2021

Chapter: Students

Policy and Procedures Memorandum

I. INTRODUCTION and POLICY STATEMENT

The University of Louisiana System (UL System) is committed to ensuring the highest ethical conduct of the members of its community by promoting a safe learning and working environment. To that end, the Policy prohibits sexual misconduct, power-based violence, and any form of sex discrimination, as defined herein. All UL System member institutions shall prohibit sexual misconduct and shall be committed to providing a learning, working, and living environment that promotes integrity, civility, and mutual respect in an environment free from sexual misconduct as provided in Title IX and other applicable laws. All institutions shall implement policies, procedures, practices, and educational programs to prevent acts of sexual misconduct and power-based violence in compliance with this Policy and shall take prompt and appropriate action to investigate and effectively discipline those accused of such conduct in a manner consistent with the law and due process. All institutions shall provide support and assistance to complainants of sexual misconduct and shall report instances of sexual misconduct in accordance with law. Institutions must strive to create and maintain safe learning, working, and living environments for all individuals who participate in the institutions activities and programs, including online instruction. Any non-confidential report of sexual misconduct as defined herein must be investigated, addressed, and resolved by each institution under its respective policy and procedures in accordance with all applicable federal and state laws and regulations and this Policy. Each institution s policy must comply with applicable federal and state laws and regulations, this Policy and the Board of Regents Uniform Policy on Power-Based Violence and Sexual Misconduct.

The institutional policy must be displayed prominently at all times in an easily accessible manner on its website. The institutional policy shall thereafter be annually provided to all Title IX Coordinators, campus law enforcement officers, security personnel, and officials with authority to institute corrective measures. Further, the institutional policy shall be presented at student orientation and at student awareness and prevention trainings and made broadly available at each campus.

II. NOTICE OF NONDISCRIMINATION

Each UL System institution must publish a notice of nondiscrimination in their power-based

best practices that address both Title IX Conduct and power-based violence which includes sexual misconduct.

This Policy is intended to inform and guide the development of institutional policy to address individuals who have been affected by power-based violence, whether as a Complainant, a Respondent, or a witness, and to provide fair and equitable procedures for all parties. It is applicable to all Institutions with respect to conduct that occurs both on and off campus.

Power-based violence is a broader term that covers gender/sex-based misconduct beyond the Title IX Regulations sexual harassment definition. Power-based violence prohibited by this Policy includes conduct defined in Act 472. (See defined terms in Appendix A.)

This policy and Board of Regents Uniform Sexual Misconduct/Power-Based Violence policy along with the institutions policies and procedures are intended to ensure that all students impacted by an incident or formal complaint of power-based violence receive appropriate support and fair treatment, and that allegations of power-based violence are handled in a prompt, thorough and equitable manner.

2. OVERVIEW OF POLICY

Institutions will address all reports of power-based violence and sexual misconduct received by the Title IX Coordinator. Each Institution is authorized under this Power-Based Violence Policy and its accompanying Title IX Formal Grievance Procedure to take certain actions to address or remedy power-based violence after receiving a Report, during an investigation, and after an investigation, even if the matter does not proceed to adjudication.

Anyone can report an incident of power-based violence to an Institution under the procedure described in Section VII of this Policy. For example, a Reporter can be any individual who reports to an Institution that they are a victim or survivor of power-based violence or that they have been affected by sex/gender discrimination or power-based violence (sometimes referred to as a First-Party Reporter) or that they have knowledge of power-based violence happening to or affecting someone else (sometimes referred to as a Third-Party Reporter).

IV. SAFETY EDUCATION

Not later than the beginning of each fall semester, the administration of each Institution, in consultation with campus or local law enforcement agencies, shall develop and distribute information to students regarding sexual misconduct, power-based violence, campus safety, and internet and cell phone safety and online content that is a potential threat to school safety.

The information shall include the following:

1. Instruction on how to identify and prevent power-based violence and how to detect potential threats to school safety exhibited online, including on any social media platform;
2. How to report incidents of power-based violence, crimes on campus, violations of the student code of conduct, and possible threats to campus safety; and
3. Where to find reports regarding campus safety.

- I. A standardized form to be used by students, faculty, and other personnel to report potential threats. The form shall request, at a minimum, the following information:
 - a. Name of Institution, person, or group being threatened;
 - b. Name of student, individual, or group threatening violence;
 - c. Date and time the threat was made; and
 - d. Method by which the threat was made, including the social media outlet or website where the threat was posted, a screenshot or recording of the threat, if available, and any printed evidence of the threat.

- II. A process for allowing anonymous reporting and for safeguarding the identity of a person who reports an incident of power-based violence or a safety threat.

Each Institution shall adopt a policy to implement the provisions of this Section. That policy must require that for every report of an incident of power-based violence or a safety threat received the actions taken by the Institution and the campus law enforcement agency or security officers be documented. The policies shall also provide for guidelines on referring the reports to the appropriate law enforcement agencies.

V. RETALIATION PROHIBITION

Retaliation is expressly prohibited under this Policy. Retaliation includes, but is not limited to, intimidation, harassment, threats, or other adverse action or speech against the person who reported the misconduct, the parties, and their witnesses.

The BOR, system management boards, and Louisiana's postsecondary Institutions expressly prohibit retaliation against anyone who: 1) in good faith reports what they believe is power-based violence, 2) cooperates with an investigation or proceeding under this Policy, or 3) opposes conduct that they believe to violate this Policy. However, an individual who reports an incident of power-based violence or participates in an investigation or proceeding and has perpetrated or assisted in the perpetration of committing the power-based violence reported, is still subjected to an investigation for a potential violation of this policy and may be subject to disciplinary action

Institutions will not only take steps to prevent retaliation but will also take strong corrective action if it occurs. Anyone who believes they have been retaliated against should immediately report it to the Title IX Coordinator, who will treat it as a Report. Any individual found to have retaliated against another individual will be in violation of this Policy and will be subject to disciplinary action. Employees who are mandatory reporters (i.e., Responsible Employees) under this Policy are required to report retaliation.

Anyone who knowingly makes a false accusation of unlawful discrimination, harassment, or retaliation of any form will be subject to an investigation for a potential violation of this

1. ONLINE REPORTING

Institutions shall provide an online reporting system to collect anonymous disclosures of incidents of sexual misconduct, power-based violence, and crimes, and track patterns of power-

Immunity shall not apply to an individual who perpetrates or assists in the perpetration of sexual misconduct and power-based violence.

3.

4. Not be obligated to report crimes to the Institution or law enforcement in a way that identifies an alleged victim or an accused individual, unless otherwise required to do so by law; and
5. To the extent authorized under law, provide confidential services to students. Any requests for accommodations made by a Confidential Advisor, as provided in this Section, shall not trigger an investigation by the Institution.

The Institution shall appoint an adequate number of Confidential Advisors. The BOR shall determine the adequate number of Confidential Advisors for an Institution based upon its size, no later than January 1, 2022, and on January 1st annually thereafter. Each institution shall identify and update the required number Confidential Advisors consistent with the BOR s determination.

Each Institution that enrolls fewer than five thousand students may partner with another Institution in their system or region to provide the services described in this Section. However, this provision shall not absolve the Institution of its obligations under this Section.

B. CAMPUS SECURITY REPORT

In accordance with Act 447 of the 2021 Regular Legislative Session of the Louisiana Legislature, each Institution must publish on its website a semiannual security report to contain updated campus security policies and campus crime statistics.

The reports shall be updated and posted by April Tenth (10th) and October Tenth (10th) of each academic year. The report must include, at a minimum, all information relative to such policies and statistics specified in the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. §1092 (Clery Act).

BOR recommends as a best practice to include information related to statistics of incidents of power-based violence.

The report shall be posted in a prominent location that is readily accessible from the main landing page of the Institution's website. If an individual campus does not have its own website, this information shall be posted on the main website of the Institution, with the campus clearly indicated. If institutions do not comply with this section, the State Bond Commission shall not authorize the institution to incur any debt that is subject to the Commission's approval for a period of two years following notification of the institution's failure to comply with this section.

C. SEX CRIME DATA REPORT

By February Fifteenth (15th) of each year, each Institution's campus police department shall submit a report containing the information required in Appendix C to the System President, the Institution's President/Chancellor, and the Institution's Title IX Coordinator.

The President of each institution shall ensure the report is posted on the Institution's website.

1. Delineation and sharing protocols of investigative responsibilities;
2. Protocols for investigations, including standards for notification and communication and measures to promote evidence preservation;
3. Agreed-upon training and requirements for the parties to the MOU on issues related to power-based violence for the purposes of sharing information and coordinating training to the extent possible;
4. A method of sharing general information about power-based violence occurring within the jurisdiction of the parties to the MOU in order to improve campus safety; and
5. A requirement that the local law enforcement agency include information on its police report regarding the status of the alleged victim as a student at an Institution.

Each executed MOU shall be reviewed annually by each institution's Chancellor/President, Title IX Coordinator, and the executive officer of the criminal justice agency, and shall be revised as considered necessary.

Nothing in this Section or any MOU shall be construed as prohibiting an alleged victim or Responsible Employee from making a Formal Complaint to both the Institution and a law enforcement agency).

XIII. CAMPUS SEXUAL MISCONDUCT/POWER-BASED VIOLENCE POLICIES

Each Institution shall institute policies incorporating the policies and best practices, where practical, and as prescribed by the BOR regarding the prevention and reporting of incidents of power-based violence committed by or against students of an Institution.

The policies, at a minimum, shall require each Institution to provide for the following:

1. Confidential Advisors (See Section about Confidential Advisors)
2. Website (See Section about Website Compliance)
3. Online Reporting (See Section about Online Reporting)
4. Amnesty Policy (See Section about Immunities and Amnesty)
5. Training (See Section about Training)
6. Inter-campus Transfer Policy (See Section about Transcript Notation)
7. Victims' Rights Policy (See Section about Victims' Rights Policy)

XIV. WEBSITE COMPLIANCE

In addition to publishing the specified reports outlined in this Policy, Institutions must list on their websites:

- a. Contact information for obtaining a Confidential Advisor;
- b. Reporting options for alleged victims of power-based violence;
- c. The process of investigation and disciplinary proceedings of the Institution;

- d. The process of investigation and adjudication of the criminal justice system;
- e. Potential reasonable accommodations that the Institution may provide to an alleged victim;
- f. The telephone number and website address for a local, state, or national hotline providing information to victims of power-based violence, which shall be updated at least on an annual basis;
- g. The name and location of the nearest medical facility where an individual may have a rape kit administered by an individual trained in sexual assault forensic medical examination and evidence collection, and information on transportation options and available reimbursement for a visit to such facility;
- h. Each current memorandum of understanding between the Institution and local law enforcement and criminal justice agency located within the parish of the campus (12:15-13:5); and
- i. Data publications as specified in Section XII of this Policy.

XV. APPENDICES

A. DEFINITIONS

For purposes of this Policy, the following terms will have corresponding definitions.

Advisor: A person chosen by a party or appointed by the Institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.

Chancellor/President: The chief executive officer of a public postsecondary education institution.

Coercion: 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: An individual who is alleged to be the victim of behavior that could constitute power-based violence under this policy (or an individual who is alleged to be the victim of conduct that could constitute sexual harassment under Title IX) irrespective of whether a Formal Complaint has been filed.

Confidential Advisor: A person designated by an Institution to provide emergency and ongoing support to students who are alleged victims of sexual misconduct and power-based violence.

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 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.

Decision Maker(s) – individual(s) who is/are effectively the decider of Title IX cases: They render a determination based on the preponderance of the evidence, that is, whether it is more likely than not that the Respondent violated the Policy as alleged findings. Decision Makers or the hearing coordinator monitor the questioning and cross-examination process and identify irrelevant questions.

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. RS 46:2132(3)

Employee: An employee is defined as:

An administrative officer, official, or employee of a public postsecondary education board or Institution.

Anyone appointed to a public postsecondary education board or Institution.

Anyone employed by or through a public postsecondary education board or Institution.

Anyone employed by a foundation or association related to a System Management Board or Institution.

The employee category does not include a student enrolled at a public postsecondary Institution whose employment is contingent upon enrollment as a student, unless the student works for the Institution in a position such as a teaching assistant o

For purposes of alleged misconduct that satisfies the jurisdictional requirements of Title IX, see Formal Complaint in the Title IX Grievance Policy.

Incapacitation: 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. 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.

Informal Resolution: A voluntary process that is separate and distinct from an Institution

- d. Sexual assault ([R.S. 14:41](#), [42](#) through [43.5](#), [89](#), [89.1](#), and [106](#)).
 - i. Sexual Battery ([14:43.1](#))
 - ii. Misdemeanor sexual battery ([14:43.1.1](#))
 - iii. Second degree sexual battery ([14:43.2](#))
 - iv. Oral sexual battery ([14:43.3](#))
 - v. Female genital mutilation ([14:43.4](#))
 - vi. Intentional exposure to HIV ([14:43.5](#))
 - vii. Crime against nature ([14:89](#))
 - viii. Aggravated Crime against nature ([14:89.1](#))
 - ix. Obscenity ([14:106](#))

- e. Sexual exploitation means an act

- A. An employee of the Institution conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- B. 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 recipient's education program or activity; or
- C. 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).

Victim - an individual who, after all due investigation and/or adjudication, has been found to be the t,

B. INITIAL CONTACT WITH POTENTIAL COMPLAINANT

After receiving a Report of power-based violence, an Institution's Title IX Office should

Supportive Measures should be designed to restore or preserve access to the Institution's education program or activity, including measures designed to protect the safety of all parties and the Institution's educational environment.

D. FILING A FORMAL COMPLAINT

If a potential Complainant wishes to pursue an incident of power-based violence beyond simply reporting it, they may file a Formal Complaint. The filing of a Formal Complaint means that the individual is asking an Institution to take further steps, such as a full investigation and possibly an adjudication to resolve the alleged issue. Any Complainant (i.e., an alleged victim or survivor or someone who has otherwise been directly affected by power-based violence) may file a Formal Complaint, and the Institution will treat it as such.

An individual who is alleged to have been subjected to an incident of power-based violence (i.e., a victim or a person who has been directly affected by power-based violence) and subsequently files a Formal Complaint will be referred to as a Complainant.

Any Third-Party Reporter (i.e., someone who has knowledge of or witnessed power-based violence) may request for an Institution to treat their Report as a Formal Complaint, but that request would not make the Third-Party Reporter into a Complainant.

Similarly, the fact that the Title IX Coordinator converts a Report to a Formal Complaint does not make the Title IX Coordinator a Complainant. However, the Title IX Coordinator reserves the right to initiate a Formal Complaint in order to meet an Institution's Title IX obligations to provide a safe and nondiscriminatory environment and if the Institution determines that it must take additional steps to protect the campus community. Depending on the conduct alleged and the location of the incident, a Formal Complaint and subsequent investigation will be governed by either this Policy or the Title IX Formal Grievance Procedure.

a. HOW TO FILE A FORMAL COMPLAINT

Individuals seeking to file a Formal Complaint may do so with the Title IX Coordinator. Formal Complaints should be in writing, signed and include all information the individual believes to be relevant (e.g., time, location, and nature of incident, names of individuals involved, witnesses to the incident, names of other persons affected by the incident, etc.).

Individuals seeking to file a Report should be allowed to submit on paper (hard copy), in electronic form, or in person, whereby the individual can file a Formal Complaint by meeting with the Title IX Coordinator (or Deputy Coordinator) to provide a verbal description of the power-based violence which the Title IX Office will use to draft a written document that the individual will review, verify, and sign to constitute a Formal Complaint.

investigator or sole investigator model and ensure that the Title IX Coordinator and investigator(s) do not serve as the decision-maker(s) for a Formal Complaint.

I. SANCTIONS

Institutions should describe the range of sanctions for employees and students.

J. GRIEVANCE PROCEDURE APPEALS

Institutions policies should provide an appeal process that is equally available to the parties and includes the procedures and permissible basis for the Complainant and Respondent to appeal.

Appeals should only be raised on one or more of the following grounds, for example:

- a. a procedural irregularity that affected the outcome of the matter;
- b. to consider new facts or information that were not known or knowable to the appealing party before or during the time of the resolution and that are sufficient to alter the decision;
- c. the Title IX Coordinator, Investigator, or Adjudicator(s) had a conflict of interest or bias that affected the outcome of the matter;
- d. the decision reached was not supported by a preponderance of evidence; or
- e. the sanctions were disproportionate to the findings.

As to all appeals the Institution should, at a minimum:

1. Notify the other party in writing when the appeal is filed and implement appeal procedures equally for both parties;
2. Ensure the decision maker(s) for the appeal **is/are not** the same individual(s) who reached the determination regarding responsibility or dismissal, the Investigator(s) or the Title IX Coordinator;
3. Give both parties a reasonable, equal opportunity to submit a written statement in support of or challenging the outcome;
4. Issue a written decision describing the result of the appeal and the rationale for the result; and
5. Provide a written decision simultaneously to both parties.

