

THE LOUISIANA BOARD OF REGENTS UNIFORM POLICY ON SEXUAL MISCONDUCT

I. POLICY STATEMENT

All Louisiana public postsecondary institutions shall prohibit sexual misconduct. All Louisiana public postsecondary institutions 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 Louisiana public postsecondary institutions shall implement policies and procedures to prevent acts of sexual misconduct 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 Louisiana public postsecondary institutions shall provide support and assistance to complainants¹ of sexual misconduct and shall report instances of sexual misconduct in accordance with law.

II. INTRODUCTION

To aid in the state's efforts to establish statewide mandatory requirements and in accordance with Executive Order No. BJ 2014-14, the Louisiana Board of Regents ("BOR") hereby adopts this Uniform Policy on Sexual Misconduct ("Policy") applicable to all Louisiana public postsecondary education institutions. This Policy is designed to help public postsecondary institutions create and maintain safe learning, working and living environments for all individuals who participate in the institutions' activities and

¹ In recognition of the principle of due process, the use of terms such as "victim" and "perpetrator" are carefully avoided to refer to individuals involved in a complaint that has not yet been validated through investigation and/or adjudication. The term "complainant," as used in this Policy, refers to an individual whose report of sexual misconduct has not yet been investigated and validated. The term "victim" is used for those individuals who, after all due investigation and/or adjudication, have been found to be the target of sexual misconduct. Similarly, the term "respondent" is used to refer to individuals against whom a sexual misconduct complaint is brought, which complaint has not yet been validated through investigation and/or adjudication. In contrast, the term "perpetrator" is used to refer to an individual found guilty of sexual misconduct.

programs, including online instruction. Any non-confidential report of sexual misconduct as defined herein will 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, and must be amended to reflect any changes to federal and state laws and regulations.

BoR recognizes that Louisiana's postsecondary institutions all possess unique characteristics (e.g., commuter vs. residential campuses, large vs. small campuses, presence of campus police and health centers vs. the lack thereof). Thus, it is within the purview of each institution's management board to review, evaluate and apply this Policy in a manner that ensures that it adequately aligns with each institution's campus characteristics and resources, provided that the interpretation and implementation are in furtherance of the requirements of this Policy and do not result in substantive changes to the Policy. Institutions may also develop supplementary procedures to further support the implementation of this Policy. However, while all Louisiana public postsecondary education institutions may develop individualized policies specifying how instances of campus sexual misconduct are addressed and resolved, this Policy establishes various mandatory obligations with which all institutional policies must comply.

This Policy shall be effective as of February 23, 2015. Each institution (or a management board for each of its member institutions) shall begin establishing policies and procedures in full compliance with this Policy no later than July 1, 2015 and shall implement those policies no later than October 1, 2015. Each management board must review the policies of each of its member institutions for compliance with this Policy and applicable laws and regulations and upon verification of such compliance, shall forward the institutional policies by September 15, 2015 to the BoR. Prior to the date of implementation of this Policy, each institution is strongly encouraged to continue its efforts on an interim basis in designing, evaluating, and implementing strategies that prevent and address sexual misconduct.

Upon the effective date of this Policy, all institutions shall immediately begin complying with this Policy as well as the institutional policy, once adopted, under the supervision and control of their management board. Each institution shall maintain the institutional policy at all times in an easily accessible manner on its website. The institutional policy shall thereafter be annually provided to all Title IX Coordinators, responsible employees, campus law enforcement officers and security personnel. Further, the institutional policy shall be presented at student orientation and at student awareness and prevention trainings, and made broadly available at each campus. Each management board shall ensure that its member institutions apply and implement the institutional policy in accordance with all federal and state laws and regulations.

III. DEFINITIONS

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.

Public universities in the state of Louisiana shall use the federal and state definitions of the following terms when making all decisions regarding sexual misconduct including publication of definitions, disciplinary decisions, Clery reporting decisions, campus climate decisions, and training and prevention decisions. If there are any changes to state and federal law, definitions must be amended to reflect any changes to federal and state laws and regulations

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:**

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.

Non-Consensual Sexual Contact: Any intentional sexual touching, or attempted sexual touching, without Consent.

c. **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.

d. **Stalking as defined by Clery Act:** 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)(ii)

- e. **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 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. RS § 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. RS § 14:40.2(C)
- f. **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 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
- g. **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. RS § 46.2121.1(2)
- h. **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)
- i. **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. 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.
- j. **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. RS § 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 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.

Although the following definitions are not defined by state and/or federal law, the following definitions shall also be used in institutional policy and in the implementation thereof by all Louisiana public postsecondary education institutions.

- k. **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."
- l. **Retaliation**: 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 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.

- m. **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.
- n. **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. 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.

- o. **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.

- p. **Responsible Employee**: Each institution must designate and publish the names and contact information for easily accessible institution 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, an institutional decision to make all institution 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 institutional 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.

IV. COMPLIANCE WITH FEDERAL AND STATE LAWS

Each management board's and/or institution's policy must comply with applicable federal and state laws and regulations, and must be amended to reflect any changes to federal and state laws and regulations, including but not limited to the following:

- (A) Title IX of the 1972 Education Amendments which (i) prohibits discrimination on the basis of sex in educational institutions and (ii) requires colleges and universities receiving federal funding to combat gender-based violence and

harassment, and respond to survivors' needs in order to ensure that all students have equal access to education;

- (B) The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), which requires (i) policies and procedures for sexual assault and (ii) requires timely warning and external reporting of crimes; and
- (C) Section 304 of the Violence against Women Reauthorization Act of 2013 (VAWA), which extends the Clery Act to include dating violence, domestic violence and stalking.

Failure to comply with any applicable requirements of federal laws and regulations including those listed above shall constitute a failure to comply with this Policy. Each management board, as the entity with the authority over the day-to-day operations of its member institutions, shall make all due diligence efforts to monitor its member institutions' compliance with applicable laws and regulations, including those listed above.

A checklist released in April 2014 by the White House Task Force to Protect Students from Sexual Assault provides relevant guidance on the core components of an institutional policy. The checklist is attached hereto as Appendix A. Institutions may add supplemental provisions to those identified in the Checklist (or any future guidelines issued by the state or federal government) as necessary to protect the safety, privacy and due process rights of all concerned.

V. MANDATORY STATE REQUIREMENTS (IDENTIFIED AS BEST PRACTICES BY BoR)

In addition to compliance with federal and state laws and regulations, including those listed above, all Louisiana postsecondary education institutions shall implement the following measures to prevent and address campus sexual misconduct:

A. Campus Climate Survey

To adequately assess perceptions and behaviors of sexual misconduct on each campus, each institution must administer the statewide campus climate survey to their students within 120 days of the adoption of a statewide survey and at least once every three (3) years thereafter. BoR shall coordinate the development of the statewide survey with the management boards and their member institutions. Efforts will be taken to ensure that the survey avoids known biases regarding the gender and/or sexual orientation of victims and perpetrators of sexual misconduct. The statewide survey is intended as a tool for each institution to assess campus safety and to identify vulnerabilities. As previously mentioned, each postsecondary institution possesses unique characteristics (e.g., commuter vs. residential campuses, large vs. small campuses, presence of campus police and health centers vs. the lack thereof). Therefore each institution is encouraged to supplement the statewide survey by collecting additional information that can be utilized to develop prevention and intervention strategies appropriate for that institution.

B. Prevention and Awareness Programs

1. Each institution 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. Each institution must provide and document all training programs.

- a. Awareness Programs

Awareness programs consist of community-wide or audience-specific programming, initiatives, and strategies that increase audience knowledge and share information and resources to prevent violence, promote safety, and reduce sexual misconduct.

- b. Bystander Intervention

Bystander intervention consists of safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault, or stalking. It also includes recognizing situations of potential harm, understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action to intervene.

c. Ongoing Prevention and Awareness Campaigns

Ongoing prevention and awareness campaigns must consist of programming, initiatives, and strategies that are sustained over time and focus on increasing understanding of topics relevant to, and skills for addressing, dating violence, domestic violence, sexual assault, and stalking, using a range of strategies with audiences throughout the institution.

d. Prevention Programs

Primary prevention programs must consist of initiatives and strategies informed by research or assessed for value, effectiveness, or outcome that are intended to stop dating violence, domestic violence, sexual assault, and stalking before they occur through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe bystander intervention, and seek to change behavior and social norms in healthy and safe directions.

e. Risk Reduction

Risk reduction consists of options designed to decrease perpetration and bystander inaction and to increase empowerment for victims to promote safety and to help individuals and communities address conditions that facilitate

violence. Additional options may include designation and publication of “red zones” (i.e., times and places of high incidence of crimes, including sexual violence).

C. Coordination with Local Law Enforcement

Each institution must develop protocols for how it will coordinate its efforts with those of local law enforcement agencies and other organizations such as crisis centers as appropriate. The arrangement with local law enforcement or local organizations should preferably be reflected in a Memorandum of Understanding (MOU) or other such agreement. The MOU could provide for joint or shared trauma-informed training specific to assisting sexual assault victims.

D. Institutional Task Forces

Each institution must establish a task force to address sexual misconduct. All student stakeholder groups must be invited to be represented on the task force through the student body government.

VI. MANDATORY ELEMENTS OF INSTITUTIONAL POLICIES

In addition to the above requirements, each institution’s policy shall ensure prompt, fair and thorough investigation, reporting and resolution of any complaint of sexual misconduct. Issues to be addressed in the institutional policy shall adhere to the following principles:

A. Freedom of Speech

BoR supports an individual’s right to freedom of speech as guaranteed by the First Amendment to the United States Constitution. The intent of this Policy is to protect all members affiliated with Louisiana’s postsecondary institutions, not to regulate protected speech. Thus, all institutions shall

ensure that their policies and procedures do not infringe on any form of speech or conduct that is protected by the First Amendment.

B. Retaliation

Retaliation against an individual who in good faith complains of alleged sexual harassment or provides information in an investigation about alleged sexual misconduct, including sexual violence, is prohibited. Each institution must prohibit retaliation through its institutional policy and faithful enforcement of such policies. It must further ensure that any employee or student bringing a sexual misconduct complaint or assisting in the investigation of such a complaint will not be adversely affected in terms and conditions of employment and/or academic standing, nor discriminated against, terminated, or expelled because of the complaint.

C. Education and Prevention.

Each institution must offer education and prevention programs to students during the first semester of enrollment at that institution and on an ongoing basis throughout their enrollment. These programs must cover, at a minimum: (1) statements that the institution prohibits all forms of Sexual Misconduct, as defined by this Policy, and the crimes of dating violence, domestic violence, sexual assault, and stalking, as defined by federal law; (2) the definitions of dating violence, domestic violence, sexual assault, and stalking under state law; (3) the definition of "Consent," as provided in this Policy, (4) safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or to intervene when there is a real or perceived risk of dating violence, domestic violence, sexual assault, or stalking against a person other than the individual; (5) information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks; (6) information about the procedures that complainants should follow, and that the institution will follow, after an incident of dating violence, domestic violence, sexual

assault or stalking has occurred; and (7) any other content or resources that support prevention and reduction of sexual misconduct.

Every institution's education and prevention programs must reflect comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to prevent dating violence, domestic violence, sexual assault and stalking that are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research or assessed for value, effectiveness, or outcome. These programs must be designed to consider environmental risk and preventative strategies at the individual, relationship, institutional, community, and societal levels.

D. Procedures for Reporting and Responding to Reports of Sexual Misconduct

a. **Complainant May or May Not Choose to Report.** Institutions must allow complainants to file both informal and formal complaints against the respondent. If the complainant chooses to file an informal complaint, the complainant must be notified of the right to end the informal process at any time and the right to pursue a formal complaint and/or take legal action.

b. **Confidentiality**

Institutions that receive a report of sexual misconduct will take all reasonable measures to protect the privacy of the complainant and of the respondent, while promptly investigating and responding to the report. Institutions must take appropriate action to maintain the confidentiality of the information reported, which information is subject to privacy requirements of the Family Educational Rights and Privacy Act ("FERPA"), while considering its responsibility to provide a safe and nondiscriminatory environment for students, including the complainant.

Confidential resources, such as on- or off-campus counseling and psychological services, health services providers, member(s) of the clergy, and the local Sexual Assault Crisis Centers are protected under state statutes and professional ethics from disclosing information about reports without written releases. Information provided to a confidential resource by a complainant of sexual misconduct cannot be disclosed legally to any other person without consent, except under very limited circumstances, such as an imminent threat of danger to self or others, and if the complainant is a minor, efforts shall be taken to comply with any additional legal requirements. Therefore, any individual who seeks the fullest legal protections and discloses in full confidentiality must speak with a confidential resource. Each institution must provide a list of such confidential resources within its campus geographic region to complainants as well as publish these resources on-line, and in various publications, including the student handbook.

c. **Support Services, including medical and mental health services**

All institutions that receive a report of sexual misconduct must immediately provide to complainants and respondents the following: on- and off-campus resources, including but not limited to local advocacy, counseling, health and mental health services, as applicable. These support services will be offered regardless of whether the complainant chooses to formally report the incident. All institutions shall develop and distribute contact information for this purpose as well as provide such information on-line. Institutions that do not have health clinics and resources available on campus are encouraged to make arrangements with local health organizations that should be reflected in an MOU.

d. **Options for Changing Academic, Transportation and Working Arrangements**

All institutions will offer assistance to complainants and respondents of sexual misconduct, including but not limited to, reasonably available options for changing academic, campus transportation, housing or working situations as well as honoring lawful protective or temporary restraining orders. Each institution shall create and provide information specific to its campus detailing the procedures to follow after the commission of such misconduct, including people or agencies to contact for reporting purposes or to request assistance, and information on the importance of preserving physical evidence.

e. **Resolution Process**

The Title IX Coordinator and/or the investigator must provide information on the investigation and resolution process outlined in the institutional policy to the complainants and respondents. The process must be fair and timely, regardless of whether it is an informal administrative resolution phase or a formal adjudication, for complainants and respondents.

Disciplinary proceedings shall begin promptly, shall be conducted by an official trained in issues relating to sexual misconduct and shall use the preponderance of the evidence standard in making a determination concerning the alleged sexual misconduct. Both the complainant and respondent are entitled to be accompanied to any meeting or proceeding relating to the allegation of such sexual misconduct by an advisor or support person of their choice, provided the involvement of such advisor or support person does not result in the postponement or delay of such meeting as scheduled, and each shall have the opportunity to present evidence and witnesses on their behalf during any disciplinary proceeding. Both the complainant and respondent are entitled to be informed in writing of the results of any disciplinary

proceeding not later than ten (10) business days after the resolution. Sanctions may range from a warning to expulsion, depending upon the behavior and its severity.

Appendix A: Louisiana Campus Sexual Misconduct Policy

Federal Regulations

1. Introduction

- a. Clear statement of institution's prohibition against sex discrimination, which includes sexual misconduct.
- b. Statement of the institution's commitment to address sexual misconduct.

2. Scope of the Policy

- a. Identify the persons, conduct, locations (including off campus), programs, activities, and relationships covered by the institution's sexual misconduct policy.
- b. Clearly state the policy applies to all students and employees, regardless of sexual orientation or gender identity, and explain that the policy applies to third parties.
- c. Briefly explain the institution's confidentiality policy, including reference to the more detailed confidentiality provisions in the policy. For a sample confidentiality policy go here: <http://notalone.gov/assets/reporting-confidentiality-policy.pdf>

3. Options for Assistance Following an Incident of Sexual Misconduct

- a. Immediate Assistance
 - i. Identify and provide contact information for the trained on- and off-campus advocates and counselors who can provide an immediate confidential response in a crisis situation (e.g., obtain needed resources, explain reporting options, and help navigate the reporting process);
 - ii. Provide emergency numbers for on- and off- campus safety, law enforcement, and other first responders (e.g., the Title IX coordinator);
 - iii. Describe the sexual assault response team (SART) process and resources SART members can offer;
 - iv. Identify health care options, both on- and off- campus:
 1. Ensure the complainant is aware of the options to seek treatment for injuries, preventative treatment for sexually transmitted diseases, and other health services.

2. Discuss the option of seeking medical treatment in order to preserve evidence.

3. Identify where/how to get a rape kit or find a Sexual Assault Nurse Examiner (SANE).

4. List locations, including contact information, for an advocate (e.g., a local rape crisis center, on-campus advocacy program) who can accompany a complainant to the hospital or health provider.

b. Ongoing Assistance

i. Counseling, Advocacy, and Support – On and Off Campus

1. Identify counseling and support for complainants of sexual misconduct, whether or not a complainant chooses to make an official report or participate in the institutional disciplinary or criminal process.

2. Identify options for disclosing confidentially with counseling, advocacy, health, mental health, or sexual-misconduct-related sources, both on and off campus.

3. Identify those who can provide ongoing support during the institutional disciplinary or criminal process.

ii. Academic Accommodations and Interim Measures

1. Describe the immediate steps and interim measures that the institution can provide to ensure the safety and well-being of the complainant, such as the ability to move dorms, change work schedules, alter academic schedules, withdraw from/retake a class without penalty, and access academic support (e.g., tutoring).

2. Describe additional interim measures that the institution may be able to provide for complainants while an investigation is pending such as no contact orders and changing the alleged perpetrator's living arrangements or course schedule. See *Section 7.g* about interim measures.

4. Title IX Coordinator:

a. Identify the institution's Title IX coordinator and briefly explain the Title IX coordinator's role in the institution's overall response to sexual misconduct; provide references to sections of the policy that provide greater details regarding the Title IX coordinator's duties.

5. **Definitions**

a. Clearly define all conduct prohibited by the policy, including::

- i. Sexual harassment
- ii. Hostile environment caused by sexual harassment
- iii. Sexual assault
 1. Non-consensual sexual contact, and
 2. Non-consensual sexual intercourse
- iv. Domestic violence
- v. Dating violence
- vi. Sexual exploitation
- vii. Stalking
- viii. Retaliation
- ix. Intimidation

b. Additional terms that should be defined include:

i. Consent

The input of students and sexual assault experts can be helpful in developing a definition of consent. At minimum, the definition should recognize that:

- consent is a voluntary agreement to engage in sexual activity;
- someone who is incapacitated cannot consent;
- past consent does not imply future consent;
- silence or an absence of resistance does not imply consent;
- consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another;
- consent can be withdrawn at any time; and
- coercion, force, or threat of either invalidates consent.

ii. Incapacitation (such as due to the use of drugs or alcohol, when a person is asleep or unconscious, or because of an intellectual or other disability that prevents the student from having the capacity to give consent)

6. Reporting Policies and Protocols

a. Identify formal reporting options – e.g., criminal complaint, institutional complaint, report to “responsible employee,” including the Title IX coordinator. Explain how each option works and include contact information for the people to whom one can make a report.

b. Identify alternatives to reporting – e.g., privileged or confidential disclosures

c. Describe policies governing confidentiality

i. Specify those employees to whom a student can disclose in confidence and those “responsible employees” who must report incidents (including personally identifying details) to the Title IX Coordinator. Consider particularly how a institution will ensure that a student understands an employee’s reporting obligation before he or she reveals any information to that employee.

ii. Describe what information will be kept confidential and what information may be disclosed, to whom it will be disclosed, and why.

iii. Explain when the institution may not be able to honor a student’s request that his or her name not be disclosed to the alleged perpetrator or that no investigatory or disciplinary action be taken. Identify the employee responsible for evaluating such requests for confidentiality or no action.

d. Explain the institution’s reporting obligations under the Clery Act, including the annual reporting responsibilities of Campus Security Authorities and the institution’s obligation to issue timely warnings.

e. Explain the process for third-party and anonymous reporting.

f. Ensure the policy prohibits retaliation against those who file a complaint or third-party report, or otherwise participate in the investigative and/or disciplinary process (e.g., as a witness), and explain that the institution will take strong responsive action if retaliation occurs.

g. Describe when the institution will grant amnesty from drug, alcohol, and other student conduct policies.

7. Investigation Procedures and Protocols

a. Identify the Title IX Coordinator(s) and explain roles and responsibilities.

b. Identify who conducts the investigation and what an investigation might entail.

c. Specify a reasonably prompt time frame for conducting the investigation and resolving the complaint, as well as the process for extending the timeframe.

d. Explain the processes for preserving evidence.

e. Provide the respondent and complainant equitable rights during the investigative process.

f. Set forth parameters and clarify what information may and may not be shared during a parallel investigation with law enforcement (e.g., via a Memorandum of Understanding with local law enforcement).

g. Explain that where necessary, the institution will take immediate steps to protect complainants pending the final outcome of an investigation, including academic accommodations and other interim measures. These steps may include the ability to change housing or dining facilities; change work schedules; alter academic schedules; withdraw from/retake a class without penalty; access academic support such as tutoring; issue no contact orders; and change the alleged perpetrator's living arrangements or course schedule.

h. Explain the institution's response if a complainant's request for confidentiality limits the institution's ability to investigate a particular matter. A institution may take steps to limit the effects of the alleged sexual misconduct and prevent its recurrence without initiating formal action against the alleged perpetrator or revealing the identity of the student complainant. Examples include: providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred; providing training and education materials for students and employees; revising and publicizing the institution's policies on sexual misconduct; and conducting climate surveys regarding sexual misconduct.

8. Grievance/Adjudication Procedures

a. Explain the grievance/adjudication process, including:

i. that mediation is never appropriate in sexual misconduct cases;

ii. that the preponderance-of-the-evidence (i.e., more likely than not) standard will be used in any Title IX fact-finding and related proceedings, including any hearings;

iii. identify the adjudicators, including:

1. the trained individuals who determine whether the alleged sexual misconduct occurred

2. the individuals who determine the sanction

3. a process by which either party may raise issues related to potential conflicts of interest of such individuals

iv. the persons who may attend and/or participate in the adjudication process and the extent of that participation.

b. Outline the rights and roles of both parties in the adjudication process, including:

i. notice of hearing(s) to both parties;

ii. an opportunity for both parties to present witnesses and other evidence, including:

1. a description of the types of evidence that may or may not be presented, including but not limited to:

a. prohibiting questioning or evidence about the complainant's prior sexual conduct with anyone other than the alleged perpetrator

b. clarifying that evidence of a prior consensual dating or sexual relationship between the parties by itself does not imply consent or preclude a finding of sexual misconduct

2. if the institution conducts a hearing, and generally allows for cross-examination, a description of alternative methods that preclude the respondent from personally cross-examining the complainant

iii. extension of any other rights given to the alleged perpetrator to the complainant.

c. Explain the possible results of the adjudication process, including

- i. sanctions;
 - ii. remedies/accommodations for the complainant;
 - iii. additional remedies for the institution community.
- d. Outline how the parties will be informed of the results of the adjudication, including:
 - i. simultaneous written notice to both parties of the outcome of the complaint and the option to appeal, if applicable;
 - ii. a statement that the institution will not require a party to abide by a nondisclosure agreement, in writing or otherwise, that would prevent the redisclosure of information related to the outcome of the proceeding.
- e. Describe the appellate procedures (if appeals are permitted), including grounds for appeal, standards of review, the person/entity that will decide appeals, and the applicable reasonably prompt time frames.

9. Prevention and Education

Outline the institution's approach to prevention, including type and frequency of prevention programming and educational/outreach activities. Include bystander intervention and programs to educate students about the institution's sexual misconduct policies.

10. Training

- a. Outline how faculty and staff are trained and on what issues.
- b. At a minimum, the Title IX coordinator, law enforcement, "responsible employees," complainant advocates, and anyone else who is involved in responding to, investigating, or adjudicating sexual misconduct must receive adequate training.