



Beyond Title IX

Power-Based Violence, State Requirements, and Creating a Safe Campus Culture

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BOR Uniform Policy Introduction



BOR Uniform Policy on Power-Based Violence/Sexual Misconduct

- The comprehensive scope of the Uniform Policy on Power-Based Violence/Sexual Misconduct includes procedures to address both power-based violence (which includes sexual misconduct) and Title IX conduct (governed by the Title IX Formal Grievance Procedures).
- Power-based violence, addressed in the BOR Uniform Policy, 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.
- When power-based violence meets the criteria specified in the Title IX Regulations, it must be addressed under the Title IX Formal Grievance Procedure, and not this overarching Power-Based Violence Policy, to the extent the processes differ between the two policies.
- Combined, BOR’s and Louisiana’s public postsecondary education systems and their 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.



Title IX: *Sexual Harassment*

3 categories of misconduct that meet the regulatory definition of “sexual harassment”

- 1) “**An employee** of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in **unwelcome** sexual conduct;” [*quid pro quo*]
- 2) “**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); or
- 3) “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.”

34 C.F.R. 106.30(a).



BOR Uniform Policy: Scope

- Power-based violence that is not covered by the Title IX Grievance Procedure, such as off-campus power-based violence alleged to have an on-campus effect or occurring during a study-abroad program, may be addressed under the broader BOR Uniform Policy.
- **Power-based Violence**: Any form of interpersonal violence intended to control or intimidate another person through the assertion of power over the person, to include the following:
 - Dating violence;
 - Domestic abuse and family violence;
 - Nonconsensual observation of another person's sexuality without the other person's consent;
 - Sexual assault;
 - Sexual exploitation;
 - Sexual harassment (differentiated from 106.30 sexual harassment);
 - Stalking and cyberstalking;
 - Unlawful communications; or
 - Unwelcome sexual or sex- or gender-based conduct that is objectively offensive and has a discriminatory intent.



BOR Uniform Policy Definitions

- **Reporter**: 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 (“First Party Reporter”) or that they have knowledge of power-based violence happening to or affecting someone else (“Third Party Reporter”).
- **Formal Complaint**:
 - First-Party Reporter files a written and signed document with the Title IX Coordinator describing an incident of power-based violence and indicating that they want the Institution to take further steps, such as conducting a full investigation and possibly holding an adjudication to resolve the alleged issue.
 - An Institution can convert a Report to a Formal Complaint if the Institution determines that, in order to meet its Title IX obligations to provide a safe and nondiscriminatory environment, it must take further steps to address and resolve the matter.

BOR Uniform Policy Definitions

- **Complainant**: An individual who is alleged to have been subjected to an incident of power-based violence
 - First-Party Reporter or a victim or person who has otherwise been affected by power-based violence, or
 - Under the Title IX Formal Grievance Procedure governing sexual harassment, an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- **Respondent**: An individual who has been accused of conduct that could constitute power-based violence prohibited under this Policy
 - Or, under the Title IX Formal Grievance Procedure governing sexual harassment, an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.



Safety Education

- The administration of each Institution, in consultation with campus or local law enforcement agencies, shall develop and distribute information to students regarding 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:
 - 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;
 - 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
 - Where to find reports regarding campus safety.

BOR Uniform Policy V



Safety Education

- The reporting process for possible threats to the campus shall, at a minimum, include:
 - 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:
 - Name of Institution, person, or group being threatened;
 - Name of student, individual, or group threatening violence;
 - Date and time the threat was made; and
 - 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.
 - 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.

BOR Uniform Policy V



Retaliation

- 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:
 - In good faith reports what they believe is power-based violence,
 - Cooperates with an investigation or proceeding under this Policy, or
 - Opposes conduct that they believe to violate this Policy.
- 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 Policy and may be subject to disciplinary action, up to and potentially including termination for employees and expulsion for students.

BOR Uniform Policy VI



BOR Uniform Policy—The Process

Report



Investigation



Adjudication/Resolution



Reporting Power-Based Violence

- To make a Report, a reporting individual should report the incident to the Title IX Coordinator or Deputy Coordinator.
- Institutions are required to make available **contact information** for the Title IX Coordinator and any Deputy Coordinator(s), as well as **methods for reporting** power-based violence.
- Reporting methods may vary by Institution but shall include, at a minimum, **in-person reporting, reporting by mail, and reporting via email.**
- After making a Report, an individual may choose to file or request a Formal Complaint and pursue resolution (under this policy or the Title IX Formal Grievance Procedure, as applicable) or, if applicable, an Informal Resolution involving the Respondent; may choose to be involved or not be involved in an Institution's investigation and any related proceedings; or may choose to end involvement in the process.

BOR Uniform Policy VII(A)



Online Reporting

- Institutions shall provide an online reporting system to collect anonymous disclosures of incidents of power-based violence and crimes, and track patterns of power-based violence and crimes on campus.
- The online system shall also include information regarding how to report an incident of power-based violence or crime to a Responsible Employee and law enforcement and how to contact a Confidential Advisor.

BOR Uniform Policy VII(A)(a)





Mandatory Reporting for Employees

- Responsible Employee: An employee who receives a direct statement regarding or witnesses an incident of power-based violence **committed by or against a student.**
- **A Responsible Employee shall promptly report the incident to the Institution’s Title IX Coordinator.**
- A Responsible Employee must report the following to the Title IX Coordinator:
 - The identity of the alleged victim;
 - The identity of the alleged perpetrator;
 - The type of power-based violence or retaliation alleged to have been committed;
 - Any other information about witnesses, location, date, and time that the incident occurred; and
 - Any other relevant information.
- Students are generally not Responsible Employees, “unless the student works for the Institution in a position such as a teaching assistant or residential advisor.”
- State law exceptions

BOR Uniform Policy VII(B)

Responsible Employees

- A Responsible Employee who is determined by the Institution's disciplinary procedures to have knowingly failed to make a Report or, with the intent to harm or deceive, made a Report that is knowingly false **shall be terminated.**



Confidential and Anonymous Reporting

- In accordance with state law, unless waived in writing by the alleged victim, the identity of an alleged victim of an incident reported under R.S. 17:3399.13 is confidential and not subject to disclosure except to:
 - A person employed by or under contract with the Institution to which the report is made, if the disclosure is necessary to conduct the investigation of the report or any related hearings;
 - A law enforcement officer as necessary to conduct a criminal investigation of the report;
 - A person alleged to have perpetrated the incident, to the extent required by law; or
 - A potential witness to the incident as necessary to conduct an investigation of the report.



Confidential Advisors

- Each Institution shall designate individuals who shall serve as Confidential Advisors, such as health care staff, clergy, staff of a women's center, or other such categories.
- Each Institution's website shall provide the contact information for obtaining a Confidential Advisor.
- The Confidential Advisor to an alleged victim of power-based violence shall inform the alleged victim of the following:
 - The rights of the alleged victim under federal and state law and the policies of the Institution;
 - The alleged victim's reporting options, including the option to notify the Institution, the option to notify local law enforcement, and any other reporting options;
 - If reasonably known, the potential consequences of those reporting options;
 - The process of investigation and disciplinary proceedings of the Institution;
 - The process of investigation and adjudication of the criminal justice system;
 - The limited jurisdiction, scope, and available sanctions of the institutional student disciplinary proceeding, and that it should not be considered a substitute for the criminal justice process;
 - Potential reasonable accommodations that the Institution may provide to an alleged victim; and
 - The name and location of the nearest medical facility where an alleged victim 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 a facility.



Administrative Reporting Obligations

- **Title IX Coordinator**: Not later than **October Tenth (10)** and **April Tenth (10)** of each year, the Title IX Coordinator of an Institution shall submit to the Chancellor of the Institution a written report on the reports received in accordance with the information required in Appendix B.
- **Chancellor**: The Chancellor of each Institution shall submit a report to the Institution's Management Board and System President within **fourteen (14) days** of receiving the report from the Title IX Coordinator in accordance with the information required in Appendix B. The report shall be posted on the Institution's website.
- **System President**: The System President shall submit a system-wide summary report within **fourteen (14) days** of receiving the reports from the Chancellors to the System Management Board in accordance with the information required in Appendix B. The report shall be published on the website of the system.
- **System Management Board**: The System Management Board shall send an annual system-wide summary report to BOR by **December Thirty-First (31)** in accordance with the information required in Appendix B. BOR shall post the report on its website.
- **Board of Regents**: BOR shall annually submit a report to the Governor, the president of the Senate, the speaker of the House of Representatives, and the Senate and House Education Committees by **January Fifteenth (15)** which shall include the statewide information. The report shall also include any recommendations for legislation. The report shall be published on BOR's website.

BOR Uniform Policy VII(D)



Transcript Withholding, Notation, and Communication

- At a minimum, for any student who is the subject of a power-based violence Formal Complaint and who attempts to transfer to another institution, the Institution from which the student seeks to transfer (“Sending Institution”) shall either (1) withhold the transcript of the student or (2) place a notation on the student’s transcript. If the Sending Institution does not know whether the student seeks to transfer to another Institution, the student’s transcript shall either be withheld or notated.
- The Sending Institution shall notify the student that their transcript has been withheld or notated, and of the appeals process to have the hold or notation removed. Either the transcript is withheld or the notation remains on the transferring student's transcript until the Institution makes a determination that the transferring student is not responsible for power-based violence or the transferring student prevails in a request to appeal the withholding of a transcript or notation pursuant to Part c of this Section, whichever occurs first.



Transcript Withholding, Notation, and Communication

- For a transferring student who is the subject of a pending investigation, the notation on the transcript shall read: **“ADMINISTRATIVE MATTER PENDING”** or other notation sufficient to place the Receiving Institution on notice and trigger an inquiry regarding the notation directed to the Sending Institution.
- For a transferring student for whom a final decision has been rendered, and the student has been found to be responsible for power-based violence, the notation on the transcript shall read: **“STUDENT FOUND RESPONSIBLE IN VIOLATION OF CODE OF CONDUCT”** or other notation sufficient to place the Receiving Institution on notice and trigger an inquiry regarding the notation directed to the Sending Institution.
- If a student is not found responsible, the Sending Institution must remove the notation and must send an updated version of the student’s transcript to the Receiving Institution (if known).
- State law requires that all Louisiana public postsecondary institutions implement this Transcript, Withholding, Notation, and Communication policy; all Louisiana non-public postsecondary institutions are encouraged to implement this policy.



Adjudication and Resolution—Best Practices

- Once the Title IX Coordinator learns of any Report of alleged power-based violence or sex/gender discrimination, they should implement Supportive Measures as needed and initiate an investigation into the alleged incident.
- **The form of the investigation may vary depending on whether the alleged conduct falls within the scope of power-based violence/sexual misconduct or Title IX Conduct.**
 - If the alleged power-based violence satisfies the USDOE’s definition of Title IX sexual harassment (i.e., Title IX Conduct), the Title IX Coordinator should ensure investigation and adjudication of the allegation pursuant to the Title IX Formal Grievance Procedure.
 - If the alleged conduct does not satisfy the USDOE’s definition of Title IX Sexual Harassment, the Title IX Coordinator will refer to the part of this Policy that addresses BOR’s best practices



Initial Contact with Potential Complainant

In initial contact with a potential Complainant, the Title IX Office should:

- Notify the alleged victim of the option to have an Advisor accompany them to any meeting or interview related to the power-based violence process;
- Give the potential Complainant a copy of the relevant policies;
- Explain the process for filing a Formal Complaint with the Title IX Office;
- Provide the potential Complainant with information regarding the rights/responsibilities as a party;
- Explain the process for investigating and resolving a power-based violence Formal Complaint (including the available appeal procedures);
- Explain the procedural differences based on Title IX vs power-based violence conduct;
- Instruct the potential Complainant not to destroy any potentially relevant documentation in any format;
- Inform the individual of the availability of Supportive Measures with or without the filing of a Formal Complaint;
- Discuss the potential Complainant's expressed preference for manner of resolution and any barriers to proceeding (e.g., confidentiality concerns);
- Explain the prohibition against retaliation; and
- Communicate necessary details of the report to the campus police department for entry into the Institution's daily crime log.

Supportive Measures

- Supportive Measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent regardless of whether a Complaint (or Formal Complaint) has been filed.
- Such measures may include:
 - counseling,
 - extensions of deadlines or other course-related adjustments,
 - modifications of work or class schedules,
 - campus escort services,
 - mutual restrictions on contact between the parties,
 - changes in work or housing locations,
 - leaves of absence, and
 - increased security and monitoring of certain areas of the campus, and other similar measures.



Formal Complaints

- 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, etc.).
- Forms: paper (hard copy), electronic, in person, meeting with Title IX Coordinator
- **Note:** If the Complaint filed satisfies the requirements of a Title IX Formal Complaint as defined by 34 CFR §106.30, the Title IX Office ***should proceed under the Title IX Formal Grievance Procedure***.

- The following slides describe the investigation and resolution process for cases in which the Respondent is a student and in which the conduct alleged does not fall within the scope of the Title IX Regulations' definitional and jurisdictional requirements for "sexual harassment."
- Note: Institutions should also include policies that address procedures for cases involving employees.



Notice to Respondent

- The Respondent should be notified in writing that a Formal Complaint alleging power-based violence has been filed against them. The Respondent should be advised that they may have an Adviser accompany them to any meeting or interview related to the investigation and resolution process.
- Within seven (7) business days of receiving notice of the Formal Complaint, the Respondent should arrange to meet with the Title IX Office. The Title IX Office is required to provide the same information that was presented to the Complainant during their initial contact.
- After reviewing the Formal Complaint and meeting with the Title IX Office and appropriate decision makers, the Respondent may choose to end the resolution process by accepting responsibility for the conduct alleged in the Formal Complaint.
 - If the Respondent accepts responsibility for the conduct alleged in the Formal Complaint, the appropriate decision makers should determine the appropriate sanction for the Respondent.
 - If the Respondent disputes the allegations in the Formal Complaint, the matter will proceed to an investigation.



Investigations

- Assigned Investigators should not be the Title IX Coordinator or the Decision Makers (no “single investigator model”).
- Intake meetings
 - interviewing the Complainant or Reporter, the Respondent, and any witnesses;
 - reviewing law enforcement investigation documents if applicable;
 - reviewing relevant student or employment files; and
 - gathering and examining other relevant documents and evidence.
- Provide an opportunity for all parties to present written statements, identify witnesses, and submit other evidence.
- Parties should be advised that Advisors are not permitted to participate directly in Resolution Hearings or Informal Resolution Conferences, **except to the extent an Advisor’s participation is required during Title IX grievance hearings.**



Findings & Investigative Report

- At the conclusion of the investigation, Investigators should prepare a report (the “Investigative Report”) summarizing and analyzing the relevant facts determined through the investigation, with reference to any supporting documentation or statements.
 - The report should be delivered to the Title IX Coordinator, who should analyze the report to ensure that the investigation was prompt, impartial, thorough, and consistent with this Policy.
- A Complainant or Respondent should submit any comments about their own statement, or on any investigation summary that might be provided, to the Investigators within **five (5) calendar days** after the statement or summary was provided.
- The final Investigative Report should provide a summary of the Investigators’ impressions, including context for the evidence collected, but **should not make a final determination as to whether a violation of the Power-Based Violence Policy occurred**, reserving that decision (and any sanctions) for the appropriate decision maker(s). The parties should be provided with a copy of the final Investigative Report simultaneously.



Informal Resolution

- For Formal Complaints with a student Respondent, at the discretion of the Title IX Coordinator, the parties should be advised of their option to pursue an Informal Resolution as an alternative to a Formal Resolution.
- An Informal Resolution should involve a **remedies-based, non-judicial process** designed to eliminate or address potential power-based violence. This process should aim to assure fairness, to facilitate communication, and to maintain an equitable balance of power between the parties.
- **Institutions should not compel face-to-face confrontation** between the parties or participation in any particular form of Informal Resolution.
- If both parties then agree to pursue that path, the Institution will halt any investigation or scheduled Resolution Hearing so that the parties can explore the possibility of Informal Resolution. Participation in an Informal Resolution is voluntary, and either party can request to end the Informal Resolution process at any time and commence or resume the investigation process.

Formal Resolution

- The BOR Uniform Policy grants significant discretion to individual Institutions with respect to formal adjudication and resolution:
 - Institutions must provide for a process to resolve Formal Complaints. That process should be delineated in their policy. Institutions should avoid the “single 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.

BOR Uniform Policy X(H)(b)

Sanctions

- Institutions should describe the range of sanctions for employees and students.
 - Individual campuses have discretion to choose appropriate sanctions. These may include, but are not limited to:
 - Residence hall suspension/expulsion
 - Disciplinary probation
 - Warnings
 - Fines
 - Loss of privileges
 - Restitution
 - College/university suspension/expulsion





Appeals

Appeals

- Appeals should only be raised on one or more of the following grounds, for example:
 - a procedural irregularity that affected the outcome of the matter;
 - 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;
 - the Title IX Coordinator, Investigator, or Adjudicator(s) had a conflict of interest or bias that affected the outcome of the matter;
 - the decision reached was not supported by [an Institution's chosen burden of proof]; or
 - the sanctions were disproportionate to the findings.
- As to all appeals the Institution should, at a minimum:
 - Notify the other party in writing when the appeal is filed and implement appeal procedures equally for both parties;
 - 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;
 - Give both parties a reasonable, equal opportunity to submit a written statement in support of or challenging the outcome;
 - Issue a written decision describing the result of the appeal and the rationale for the result; and
 - Provide a written decision simultaneously to both parties.



State Law Requirements— Louisiana



Power-Based Violence Climate Survey

- Beginning in the 2022-2023 academic year, each Institution shall administer an anonymous Power-Based Violence Climate Survey (Survey) to its students once every three (3) years. If an Institution administers other surveys with regard to campus safety, this Survey may be included as a separate component of any such survey, provided that the power-based violence component is clearly identified as such.
- Institutions must:
 - Administer a survey during the 2022-2023 academic year and every third year thereafter;
 - Report Survey results to the System Management Board and BOR; and
 - Publish the Survey results in a prominent, easily accessible location on the Institution's website.

BOR Uniform Policy XII(A)



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 (10)** and **October Tenth (10)** of each academic year.
- 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.

BOR Uniform Policy XII(B)



Sex Crime Data Report

- By **February Fifteenth (15)** 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 Chancellor, and the Institution's Title IX Coordinator.
- The Chancellor shall ensure the report is posted on the Institution's website.



Law Enforcement Involvement—MOU

- On or before **January 1, 2022**, each Institution and law enforcement and criminal justice agency located within the parish of the campus of the Institution, including the campus police department, if any, the local district attorney's office, and any law enforcement agency with criminal jurisdiction over the campus, shall enter into and maintain a written memorandum of understanding (MOU) to clearly delineate responsibilities and share information in accordance with applicable federal and state confidentiality laws, including but not limited to trends about power-based violence committed by or against students of the Institution.
- This MOU must be signed by all parties.
- Each executed MOU shall be reviewed annually by each Institution's **Chancellor, Title IX Coordinator, and the executive officer of the criminal justice agency**, and shall be revised as considered necessary.

Campus Power-Based Violence Policies

- Each Institution's Management Board shall institute policies incorporating the policies and best practices prescribed by 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:
 - **Confidential Advisors**
 - **Website**
 - **Online Reporting**
 - **Amnesty Policy**
 - **Training**
 - **Inter-campus Transfer Policy**
 - **Victims' Rights Policy**





Website Compliance

- In addition to publishing the specified reports outlined in this Policy, Institutions must list on their websites:
- Contact information for obtaining a Confidential Advisor;
- Reporting options for alleged victims of power-based violence;
- The process of investigation and disciplinary proceedings of the Institution;
- The process of investigation and adjudication of the criminal justice system;
- Potential reasonable accommodations that the Institution may provide to an alleged victim;
- 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;
- 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;
- 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
- Data publications as specified in Section XII of the BOR Policy.

BOR Uniform Policy XV



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