



# SEXUAL MISCONDUCT COMPLAINT POLICY

**Department of Human Resources**

Effective: July 9, 2012

Revised: April 14, 2014

## **FORWARD**

It is the policy of the University of Louisiana at Monroe that all employees, students, visitors, and authorized users of the university's facilities be able to enjoy a campus environment free from all forms of harassment based upon race, sexual orientation, age, gender, national origin, religion, color, disability, or veteran status.

Politeness and friendliness are virtues that members of the university community seek to demonstrate in their day-to-day interactions. Rude and/or hostile behaviors not only violate the university's tradition of respect for others, but also they undermine rational discourse and interfere with the educational process.

The University of Louisiana at Monroe is committed to offering all employees, students, visitors, and authorized users of university facilities a campus environment free from all forms of sexual misconduct and workplace harassment. No employee (i.e., staff, faculty, or administrator) or student, male or female, should be subjected to unsolicited and unwelcome verbal or physical overtures or conduct. All members of the university community should be treated with dignity and fairness without harassing conduct, which stifles productivity and hampers academic and professional motivation.

All students, faculty, staff, administrators, and contracted personnel will be held accountable for compliance with this policy; any violation of this policy may lead to disciplinary action to include suspension or removal. Every member of the university community is hereby apprised that sexual misconduct may subject an individual not only to institutional discipline but also to personal liability. In cases where it is determined that sexual misconduct may have occurred, the university will take appropriate disciplinary action with or without the concurrence of the complainant.

Further, it is incumbent upon all members of the university community to report documentable instances of sexual misconduct. Failure to do so could result in disciplinary action up to and including suspension or termination. Any person who receives or becomes aware of a complaint of sexual misconduct or other violation of this policy should report the complaint to the Title IX/EEO coordinator as soon as possible (normally within two work days of being made aware of the violation).

The health, safety, and well-being of students, employees, campus visitors, and authorized users are the university's primary concern. If you or someone you know may be the victim of any form of sexual misconduct, you are strongly urged to seek immediate assistance.

If the University is open, employees, students and non-students may file a report in person during regular business hours (7:30 a.m. to 5:00 p.m., Monday – Thursday; 7:30 a.m. to 11:30 a.m., Friday) with the Title IX/EEO coordinator in Student Services, Student Center 239:

Pamela Jackson, M.Ed.  
Interim Dean of Students, Student Affairs  
**Title IX Coordinator**  
Office of Student Services  
University of Louisiana Monroe  
700 University Ave, Student Center 239  
Monroe, LA 71209-2300  
(318) 342-5230 (voice)  
(318) 342-3494 (fax)

Assistance can be obtained 24 hours a day, seven days a week from the following:

- **University Police**
  - 1-911, emergency; on-campus
  - (318) 342-5350, off campus
  
- **Local Hospitals:**
  - Glenwood Regional Medical Center: (318) 329-4200
  - University Health Conway: (318) 330-7000
  - St. Francis Medical Center: (318) 966-4000

In addition, the ULM Counseling Center (342-5220) and the ULM Student Health Center (342-1651), both located at 1140 University Avenue, offer medical services, guidance, and support in collaboration with the Student Services Office (318-342-5230) located in the Student Center, Room 239.

A report of sexual misconduct can also be filed online 24 hours a day by clicking on the following link: <http://www.ulm.edu/titleix>.



## OVERVIEW AND PURPOSE

This policy covers complaints of alleged sexual misconduct that involves a student or employee either as an alleged perpetrator (accused) or as the victim (complainant). Sexual misconduct, as defined by the *Policy and Procedure for Sexual Misconduct Complaints* (hereafter referred to as "Policy"), comprises a broad range of behaviors that will not be tolerated in the university's community of trust. For purposes of this Policy, sexual misconduct includes sexual exploitation, sexual harassment, non-consensual sexual contact, and non-consensual sexual intercourse, each as more fully defined below.

Sexual misconduct violates university policy and federal civil rights law and may also be subject to criminal prosecution. The university is committed to fostering a community that promotes prompt reporting of all types of sexual misconduct, as well as timely and fair resolution of sexual misconduct complaints. Creating a safe environment is the responsibility of all members of the university community.

As a public institution, the university also must provide due process to students or employees accused of sexual misconduct. This Policy is designed to provide a fair process for both parties while ensuring a complainant's protections under Title IX. Consistent with due process, the accused is presumed not responsible until proven otherwise under this Policy

The university is also required and committed to upholding the First Amendment of the United States Constitution. Nothing in this policy is intended to abridge the rights or freedoms guaranteed by the First Amendment.

## **DEFINITIONS**

Appeals Committee - the group of employees who will be appointed by the president from the group of trained employees to hear appeals of determinations of complaints regarding sexual harassment. The composition of the committee will include full time faculty and staff employed by the university. The faculty committee members should be tenured and hold a nine- or twelve-month appointments.

Clery Act - the Jeanne Clery Disclosure of Campus Security Police and Campus Crime Statistics Act, 20 U.S.C. Section 1092(f) 34 C.F.R. Part 668.46.

Dating Violence - violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Domestic Violence - includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, 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.

Effective Consent - words or actions that show a knowing and voluntary agreement to engage in mutually agreed-upon sexual activity. Effective consent cannot be gained by force, by ignoring or acting without regard to the objections of another, or by taking advantage of the incapacitation of another where the accused knows or reasonably should have known of such incapacitation. Effective consent is also absent when the activity in question exceeds the scope of effective consent previously given. Incapacitation may, but does not always, affect whether someone is knowingly and voluntarily engaging in particular conduct. See Incapacitation.

Force - physical force, violence, threat, intimidation, or coercion.

Hostile Environment – environment created by harassment based upon sex or on gender stereotypes which, because it is so severe or pervasive, unreasonably interferes with a person's University employment, academic performance or participation in university programs or activities and creates a working, learning, program or activity environment that a reasonable person would find intimidating, hostile, or offensive.

Human Resources Office - the office of Human Resources, located in Coenen Hall, Room 115.

Incapacitation - the physical and/or mental inability to make informed, rational judgments. States of incapacitation include, without limitation, sleep, blackouts, and flashbacks. Where alcohol or other drug is involved, one does not have to be intoxicated or drunk to be considered incapacitated. Rather, incapacitation is determined by how the alcohol consumed impacts a person's decision-making capacity, awareness of consequences, and ability to make informed judgments<sup>1</sup>. The question is whether the accused knew, or a sober, reasonable person in the position of the accused should have known, that the complainant was incapacitated. Because incapacitation may be difficult to discern, individuals are strongly encouraged to err on the side of caution (i.e., when in doubt, assume that another person is incapacitated and therefore unable to give effective consent). Being intoxicated or drunk is never a defense to a complaint of sexual misconduct under this Policy.

Investigators - the individuals designated by the president to conduct investigations of alleged sexual misconduct, and to determine whether there is good cause to grant a hearing as further described below.

Non-Consensual Sexual Contact - sexual contact that occurs without effective consent.

Non-Consensual Sexual Intercourse – any sexual intercourse, however slight, which occurs with any object by a man or woman upon a man or woman and which is by force and/or without consent. Intercourse includes vaginal penetration by a penis, object, tongue, or finger; anal penetration by a penis, object, tongue, or finger; and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the contact or penetration.

Preponderance of Evidence - the information shows that it is “*more likely than not*” that the accused individual violated this Policy.

Sexual Assault - a forcible or nonforcible sex offense as further defined in the Clery Act. A single instance of sexual assault can constitute a hostile environment.

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<sup>1</sup> Sokolow, Brett A., Lewis W. Scott, Shuster, Sandra K., *NCHERM Institute on Responding to Campus Sexual Misconduct*. 2010, p. 49.



Sexual Contact - the deliberate touching of a person's intimate parts, including genitalia, groin, breast, buttocks, or clothing covering any of those areas; or using force to cause a person to touch his or her own intimate parts or the intimate parts of another person.

Sexual Exploitation - taking sexual advantage of another person without effective consent and includes, without limitations, causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over such other person; causing the prostitution of another person; recording, photographing, or transmitting identifiable images of private sexual activity and/or the intimate parts of another person, including genitalia, groin, breasts, or buttocks; allowing third parties to observe private sexual acts; engaging in voyeurism; and/or knowingly or recklessly exposing another person to a significant risk of sexually-transmitted infection, including HIV.

Sexual Harassment - any unwelcome conduct of a sexual nature. Sexual harassment includes, but is not limited to, unsolicited, deliberate, or repeated:

1. Frequent and/or repeated touching, sexual flirtation, advances, or propositions which are not welcomed and/or desired;
2. Unwelcome jokes, stories, comments, innuendos, or other sexually-oriented statements which are specifically designed to embarrass or humiliate through their sexual subject matter content;
3. Unwelcome sexual communication, such as graphic or degrading comments about one's gender related to personal appearance;
4. Unwelcome sexual advances, requests for sexual favors, or other offensive verbal or physical contact of a sexual nature;
5. Unwelcome display of sexually-explicit materials, objects, or pictures in an individual's place of work or study;
6. Creating or arranging situations specifically designed to violate privacy in an unwelcome and undesired manner.

Sexual Intercourse - includes vaginal penetration by a penis, object, tongue or finger; anal penetration by a penis, object, tongue or finger; and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the contact or penetration.

Sexual Misconduct - a broad term encompassing sexual exploitation, sexual harassment, non-consensual sexual contact, and non-consensual sexual intercourse, as defined in this Policy. Sexual misconduct can occur between strangers or acquaintances, including people involved in an intimate sexual relationship. Sexual misconduct can be committed by men or women, and it can occur between people of the same or different sex.

Student Services Office - the office of Student Services/Student Conduct, located in the Student Center, Room 239.

Stalking - engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

Standards of Conduct - the University's Standards of Conduct.

Title IX Coordinator – individual whose responsibilities include overseeing all Title IX complaints and identifying and addressing any patterns or systemic problems that arise during the review of such complaints.

University - the University of Louisiana at Monroe.

## **JURISDICTION**

### **Personal Jurisdiction**

Any person may file a complaint of sexual misconduct against employees, students, visitors, and authorized users of university facilities and/or resources under this Policy. A university student means any student who is registered or enrolled at the university (a) at the time of the alleged sexual misconduct [including sexual misconduct that is alleged to have occurred during any academic recess, provided that there is an expectation of such student's continued enrollment at the University]; and (b) at the time that a formal complaint is delivered to the Investigators.

### **Geographic Jurisdiction**

This Policy applies to any allegation of sexual misconduct that involves a university student or employee regardless of where the alleged sexual misconduct occurred. Although there is no geographical limitation to invoking this Policy, sexual misconduct that is alleged to have occurred at a significant distance from the university may be more difficult to investigate. In addition, with respect to any complaint (a) by a person who is not a member of the university community and (b) relating to conduct that occurs off of the physical property of the University but which is sufficiently related to the university, the university reserves the right to determine, in its sole discretion, whether the conduct described in the complaint constitutes a sufficient risk to the university community to warrant investigating the complaint.

## **TIMING**

### **Timing of Complaints and Availability of Procedures**

If it is determined that there is personal jurisdiction over the accused student, there is no time limit to invoking this Policy in responding to complaints of alleged sexual misconduct. Nevertheless, individuals are encouraged to report alleged sexual misconduct immediately in order to maximize the university's ability to obtain evidence and conduct a thorough, impartial, and reliable investigation. Failure to promptly report alleged sexual misconduct may result in the loss of relevant evidence and witness testimony and may impair the university's ability to enforce this Policy.



## **RETALIATION AND RELATED MISCONDUCT**

### **Retaliation**

It is a violation of university policy, as well as state and federal laws, to retaliate against any person making a complaint of sexual misconduct or against any person cooperating in the investigation of any allegation of sexual misconduct, including testifying as a witness. The university will not tolerate any form of retaliation against any employee, student, or others for filing a bona fide complaint under this Policy or for assisting in a complaint investigation. For these purposes, retaliation includes intimidation, threats, harassment, and other adverse actions threatened or taken against any such complainant or third party. Retaliation should be reported promptly to the Title IX coordinator and may result in disciplinary action independent of the sanctions or interim measures imposed in response to the underlying allegations of sexual misconduct.

### **Other Related Misconduct**

In accordance with this Policy, the Title IX coordinator is empowered to hear allegations of sexual misconduct *and* any violations of the University's Standards of Conduct directly related to the alleged sexual misconduct or any alleged violations of this Policy, as well as to recommend sanctions in response. Such related misconduct may include, without limitation, violations of rules of privacy, violations of university directives, and/or violations of other Standards of Conduct that occurred in the course of the alleged sexual misconduct.

Individuals who participate in the investigation process, whether as parties to the investigation or as witnesses, are expected to provide truthful information in accordance with the university's Standards of Conduct. It is not the practice of the university to pursue disciplinary action against a complainant or witness for his or her improper use of alcohol or drugs (e.g., underage drinking), provided that such student is acting in good faith as a complainant or witness to the events of the alleged sexual misconduct.

## **CRIMINAL PROCEEDINGS**

### **Effect of Criminal Proceedings**

Since sexual misconduct may constitute *both* a violation of university policy *and* criminal activity, the university encourages individuals to report alleged sexual misconduct promptly to law enforcement agencies. Because the standards for finding a violation of criminal law are different from the standards for finding a violation of this Policy, criminal investigations or reports are *not* determinative of whether sexual misconduct for purposes of this Policy has occurred. In other words, conduct may constitute sexual misconduct under this Policy even if law enforcement agencies lack sufficient evidence of a crime and therefore decline to prosecute.

The filing of a complaint of sexual misconduct under this Policy is independent of any criminal investigation or proceeding. Except that the university's investigation may be delayed temporarily while criminal investigators are gathering evidence, the university will not wait for the conclusion of the criminal investigation or proceedings to commence its own investigation and take interim measures to protect the complainant and the university community as necessary.

Victims of domestic violence, dating violence, sexual assault, or stalking have a right to notify or not notify proper law enforcement authorities, including on-campus and local police and may

also opt to be assisted by campus authorities in notifying such authorities if the student or employee so chooses. In the event that incidents which meet the definition of domestic violence, dating violence, sexual assault, or stalking are reported through this complaint policy, additional information will be provided to the complainant in accordance with the Clery Act.

## **ROMANTIC RELATIONSHIPS IN POWER DIFFERENTIALS**

Louisiana law does not allow the university to prohibit romantic relationships between faculty and students, teaching assistants and students, supervisors and subordinates, or employees and students; but such relationships are deemed unwise and inappropriate and therefore are strongly discouraged. Employees and students should be aware that such consensual romantic relationships could lead to charges of misconduct, particularly if these relationships involve a significant power differential, as they place the individuals involved in a working or learning environment which may be uncomfortable or negative.

If a personal relationship should develop between two people with power differentials, anyone with a supervisory or educational responsibility for the employee, faculty member, or student should arrange with his or her supervisor to divest himself/herself of that responsibility. These relationships may be subject to concerns about the validity of consent, conflicts of interest, and unfair treatment of other students or employees. Further, such relationships can undermine the atmosphere of trust essential to the educational process and the employment relationship.

## **ACADEMIC FREEDOM**

It is important to safeguard academic freedom and protect the openness and integrity of the teaching process inside the classroom. As such, it is understood that discussion of certain sexual topics and/or touching of students within certain classroom settings may well be professionally appropriate and do not necessarily constitute sexual misconduct. The context of the actions will be considered in determining whether allegations are appropriately addressed under this Policy or another university policy,

## **THE PROCESS**

Upon delivery of a complaint to the Title IX coordinator, the complaint will be reviewed to determine its validity and identify options for possible resolution. All proceedings will be kept confidential to the extent required under state and federal law and to the extent possible under each specific set of circumstances.

### **Informal Resolution**

Introduction: A complainant who wishes to file a formal complaint but does not wish to pursue Formal Resolution may request a less formal proceeding, known as "Informal Resolution." Although less formal than Formal Resolution, Informal Resolution is an appropriate resolution process; it is not mediation.

Purpose of Informal Resolution: **Informal Resolution is not acceptable for acts of sexual violence or sexual assault.** Informal resolution provides an opportunity for the complainant to ensure that the Accused is made aware of his or her complaint by the university. The Title IX coordinator or delegate will notify the Accused of the complaint. Additionally, the Complainant can be offered an opportunity to confront the accused, if they so wish, in the presence of and facilitated by the Title IX coordinator and to communicate his or her feelings and perceptions



regarding the incident, the impact of the incident, and his or her wishes and expectations regarding protection in the future. The accused individual will have an opportunity to respond during this meeting.

Informal Resolution Where Accused Acknowledges Responsibility: If, during the course of the Informal Resolution, the accused individual elects to acknowledge his or her actions and take responsibility for the alleged Sexual Misconduct, the Title IX coordinator will propose a sanction(s). If both the Complainant and the Accused agree to such proposed sanction(s), the complaint will be resolved without any further rights of appeal by either party. If the accused individual fails to agree to the proposed resolution, the Formal Resolution process will be initiated.

Informal Resolution Where Accused Contests Responsibility: If the accused individual contests the complaint, the Title IX coordinator may impose temporary remedial measures if determined necessary. Based on information derived from the Informal Resolution proceedings and any other relevant information known to the university at the time of the Informal Resolution, Formal Resolution processes may be initiated.

Temporary Remedial Measures: As early as possible, the Title IX coordinator will determine whether temporary remedial measures are warranted, such as suspension from employment with or without pay, suspension from classes, issuance of a no-contact directive, reassignment of job duties, or changing class or classroom assignments. If immediate action is required to protect the complainant, the Title IX coordinator shall work with the appropriate administrator to implement such measures.

Advisors: The complainant and the accused may each bring an advisor to the Informal Resolution if desired. This individual can serve in a supportive capacity or may speak on the party's behalf during the resolution meeting. The Title IX coordinator or delegate will preside over the Informal Resolution and may elect to be assisted by a trained member of the university staff.

Election of Formal Resolution: The university or the complainant may, at any time prior to the conclusion of the Informal Resolution, elect to end such proceedings and initiate a Formal Resolution instead. In such cases, statements or disclosures made by the parties in the course of the Informal Resolution may be considered in the subsequent Formal Resolution.

Privacy of Informal Resolution: In order to promote honest, direct communication, information disclosed during Informal Resolution must remain private while the Informal Resolution is pending, except where disclosure may be required by law or authorized in connection with duties on behalf of the university.

## **Formal Resolution**

Purpose of Formal Resolution: In the event that Informal Resolution is not utilized or is ineffective in resolving the complaint, a preliminary investigation will be conducted by the Title IX coordinator as part of the Formal Resolution process. The Title IX coordinator will determine whether there is sufficient evidence to support the sexual misconduct allegations and will provide the parties with a written decision as to whether there is sufficient evidence to indicate that the allegation of sexual misconduct has merit.

Investigation Process: The Title IX coordinator may transfer the complaint to a different complaint process or may initiate a formal investigation if it is determined that sufficient evidence exists to warrant further investigation. Both the complainant and the accused will receive information from the Title IX coordinator in writing relative to any instructions regarding the investigation process, to include an anticipated timeline for completion.

Parties to the complaint are not to conduct their own investigations such as gathering witness statements and evidence but are encouraged to provide any relevant information to the Title IX coordinator for consideration in the investigation process, including names of potential witnesses. Both parties are encouraged to provide information to the Title IX coordinator including relevant documents and names of potential witnesses to be contacted by a university-appointed investigator.

Timeline: The anticipated timeline to complete such an investigation will depend on the complexity of the investigation and the severity and extent of the harassment. The parties will be informed by the Title IX coordinator if the time period for the investigation extends past the timeline that is initially anticipated, and the coordinator's decision regarding extensions will be final.

Determination: The Title IX coordinator will receive the investigation reports and will make a recommendation regarding a determination that is designed to bring an end to any discriminatory conduct, reasonably prevent its reoccurrence, and remedy any effects on the victim. Both parties will be notified in writing regarding the Title IX coordinator's determination through the issuance of a *Determination Letter* as well as a *Memorandum Opinion*. Upon written request, either party to the complaint has the opportunity to review the information that was considered by the Investigator at a mutually-agreeable time and location on the university campus as determined by the Title IX coordinator. In the event the determination is that faculty or employee employment actions should take place, such actions will conform with all required employee/faculty procedures and requirements that are relevant to the particular individual's employment.

Appeal: The Title IX coordinator's *Determination Letter* can be appealed in writing by either party to the Appeals Committee within seven (7) calendar days. The Appeals Committee will consider all information generated in the investigation and any additional information provided by either party before rendering a written recommendation to the university president. The president will either uphold or overturn the Title IX coordinator's determination or put forward a combination thereof.

The Appeals Committee will provide the opportunity for the Complainant and Accused to appear before the committee to provide a verbal or written statement. The Appeals Committee also may ask either party to provide additional information to the committee.

Advisors: Legal counsel or advisors may be present at this time on behalf of either party. Such counsel may consult privately with and advise the parties during the process but may not directly address the Committee on behalf of either party. An advisor/legal counsel may not direct questions or comments to the committee but may consult with the individual being assisted. Members of the committee may ask clarifying questions.

Final Determination: The Appeals Committee will generate a report to the president, who will review the Appeals Committee's report and make a decision regarding the status of the



employee or student. This decision may be appealed to the University of Louisiana System Board of Supervisors pursuant to any UL System Appeals Process that may be in effect.

All written determinations and reports shall comply with Title IX and Clery Act requirements, as well as any other applicable laws and regulations.

Privacy of Formal Resolution: In order to promote honest, direct communication, information disclosed during Formal Resolution must remain private while the Formal Resolution is pending, except where disclosure may be required by law or authorized in connection with duties on behalf of the university.

**Amendments:**

This policy may be amended in writing by the president or the president's designee at any time.

**Adopted:**

  
\_\_\_\_\_  
Authorizing Agent

*President*  
\_\_\_\_\_  
Title

*4/26/14*  
\_\_\_\_\_  
Date

Revised: November 13, 2013