I. PURPOSE, INTENT AND TITLE IX COORDINATORS

The University of South Florida System (USF System) community is most successful when it is based on respect and fair treatment of all people. The USF System strives to provide a work and study environment for faculty, staff and students that is free of discrimination and sexual harassment, including sexual violence. As part of the effort to maintain an environment that is comfortable for all people, the USF System establishes this Policy.

Sexual harassment, including sexual violence, is prohibited within the USF System, and complaints of such conduct are to be filed with one of two designated offices within the USF
System: specifically, the Office of Diversity, Inclusion and Equal Opportunity (DIEO) or the Office of Student Rights and Responsibilities (OSRR). The designated office will review such complaints and provide appropriate response including counseling, mediation (in limited circumstances), and/or referral for disciplinary action, up to and including termination from employment and/or expulsion from the USF System.

Pursuant to Title IX, the University does not discriminate on the basis of sex in educational programs or activities that it operates. Such protection extends to both employees and students. Any questions or inquiries concerning to the application of Title IX may be referred to the Title IX Coordinator, the Title IX Senior Deputy Coordinator, or to any of the University’s Title IX Deputy Coordinators. The most up-to-date information on the University’s Title IX Coordinator and Deputy Coordinators can be found in the webpage for the Office of Diversity, Inclusion and Equal Opportunity, located at http://www.usf.edu/diversity/. The Title IX Coordinator is:

Dr. Jose Hernandez, Chief Diversity Officer

4202 E. Fowler Avenue, ALN 172, Tampa, Florida 33620

(813) 974-0537; jehernan@usf.edu

Discrimination and harassment on the basis of race, color, marital status, sex, religion, national origin, disability, age, genetic information, gender identity and expression, sexual orientation, or veteran status are also prohibited. (Please see USF System Policy Number 0-007, Diversity & Equal Opportunity: Discrimination & Harassment).

When appropriate, the University will take steps to prevent the recurrence of harassment, including sexual violence, and to correct any discriminatory effects of harassment on the complainant and others.
II. STATEMENT OF POLICY

A. The following actions are prohibited:

1. Sexual harassment, including sexual violence, by or between any faculty member, staff, or student, including individuals of the same sex, in all academic, educational, extracurricular, athletic, and other programs of the University, whether those programs take place in University facilities, at a class or training program sponsored by the University at another location, or elsewhere.

2. Sexual harassment, including sexual violence, by any faculty member, staff or student while assigned to duties or academic programs within the USF System (regardless of their work location) against any individual who is not a faculty member, staff or student, including USF System program invitee(s).

3. Sexual harassment, including sexual violence, by any vendor or individual external to the USF System against any faculty member, staff, student, or USF System program invitee during the transaction of business with the USF System, during any program or activity coordinated through the USF System, and/or while on USF System premises.

4. Retaliation by any faculty member, staff or student against any individual who, in good faith, has made any allegation of sexual harassment (including sexual violence) or who has testified, assisted, or participated in any way in any investigation, proceeding, or hearing conducted under this Policy or any federal or state law. For a more detailed discussion of the University’s anti-retaliation provisions, please refer to Policy # 0-020, Retaliation, Retribution, Or Reprisals Prohibited.

5. Knowingly making false accusations or allegations of sexual harassment (including sexual violence), or knowingly making false statements regarding alleged sexual harassment (including sexual violence) in any investigation, proceeding, or hearing conducted under this Policy or any federal or state law.
6. Gender-based harassment, which may include acts of verbal, non-verbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.

B. **Examples of prohibited conduct include, but are not limited to:**

1. Requesting or coercing sexual intercourse or sexual favors, or attempting to or actually engaging in a sexual assault or sexual battery.

2. Inappropriate and unwelcome sexual attention or touching, including—but not limited to—leering, patting, fondling, pinching, and attempted or actual kissing.

3. Making actual or implied threats to impede or interfere with employment or educational opportunities or benefits for failing to agree to or engage in sexual activity.

4. Making actual or implied promises of an employment or educational opportunity or benefit in exchange for sexual activity.

5. Inferring or displaying favoritism that benefits or adversely affects another based on sexual involvement or a sexual relationship.

6. Making sexually explicit or suggestive gestures or sounds.

Prohibited conduct does not include verbal expression, written or other material that is relevant and appropriately related to the subject matter of a USF System course/curriculum or to an employee's duties.
C. Examples of potential participants in a Sexual Harassment situation (including sexual violence) include, but are not limited to:

- Faculty – Faculty
- Faculty – Student
- Faculty – Staff
- Teaching Assistant – Student
- Supervisor – Employee
- Student – Student
- Administrator – Faculty Member
- Administrator – Staff Member
- Staff Member/Administrator – Student
- Staff Member – Staff Member
- USF System Program Invitee – Employee
- USF System Program Invitee – Student

D. Consensual amorous or sexual relationships

The USF System strives to create and maintain a professional, collegial environment for work and study. Professional and collegial relationships are based on mutual respect and trust. When persons in positions of unequal power engage in amorous or sexual relationships, they should be aware that they may be at risk of being accused of sexual harassment (including sexual violence), either during the relationship or after the relationship ends, or being accused of having a conflict of interest. For additional information concerning conflicts of interest, please refer to Chapter 112, Part III, Florida Statutes, the applicable collective bargaining agreement, Board of Governors Rules/Regulations and USF System Regulations.

The USF System recognizes that consensual amorous or sexual relationships between two people of unequal position or power (e.g. between a supervisor and an employee, faculty member and student, or staff member and student) may become exploitative or lead to charges of sexual harassment, including sexual violence. Accordingly, the USF System has adopted a Policy governing consensual relationships (Please see USF System Policy 1-022-Consensual Relationships).
E. Cooperation

All employees and students are strongly encouraged to cooperate fully with any investigation and/or compliance review conducted under this Policy. Failure to cooperate may impede or hamper the University’s ability to conduct a full and fair investigation.

III. DEFINITION OF TERMS

A. Sexual Harassment (which includes sexual violence) is any of the conduct below:

1. Sexual violence, including rape, sexual assault, sexual battery and sexual coercion, means physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent.¹ A summary of general information regarding the terms and the conduct that constitute Sexual Battery/Rape may be accessed on the DIEO website at (http://www.usf.edu/diversity/) and is included beginning on page 14 below for reference.

2. Unwelcome sexual advances, requests for sexual favors and other verbal, non-verbal or physical conduct of a sexual nature when:
   a. Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment or educational experience;
   b. Submission to or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting that individual; or

¹ For additional information and State of Florida definitions, refer to Florida Statutes Chapter 794, which includes the definition of sexual battery as the “oral, anal or vaginal penetration by, or union with the sexual organ of another or the anal or vaginal penetration of another by any other object” without the person’s consent.
c. Such conduct is sufficiently severe\textsuperscript{2} or pervasive so as to alter the conditions of, or have the purpose or effect of substantially interfering with, an individual's work or academic performance by creating an intimidating, hostile, or offensive working or educational environment. This may include off-campus acts of sexual harassment, including sexual violence, that have effects on campus which may contribute to a sexually hostile environment.

3. Specific Acts of Violence defined by the Violence Against Women Act including:

a. Domestic Violence – includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

b. Dating Violence - means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

c. Stalking - To follow another person or repeatedly interact with a person so as to harass that person, or a course of conduct at a specific person that would cause a reasonable person to fear for her, his or others safety or to suffer substantial emotional stress.

4. This Policy is not intended to abridge academic freedom or the USF System's educational mission. Furthermore, this Policy is not violated by actions that amount to expression that is protected by state or federal constitutions.

\textsuperscript{2} In Title IX cases involving students the standard is whether the conduct is sufficiently serious that it interferes with or limits a student’s ability to participate in or benefit from the University’s program.
B. For purposes of this Policy only, individuals who may be victims or may have reporting responsibilities fall into the following general categories and definitions:

1. The term “employee” includes, but is not limited to: academic administrators; all faculty; Administration employees; Staff employees; Temporary employees; or any other employee classifications that may be developed by the Florida Board of Governors or University Board of Trustees.

2. The term “student” includes, but is not limited to, any individual who is enrolled in any program of study, or enrolled in any course offered or sponsored by the USF System, whether for credit or not, or engaged in any USF System student activity.

3. The term “USF System program invitee” includes, but is not limited to, applicants for admission, applicants for employment, event attendees, and recipients of USF System services.

IV. FILING COMPLAINTS OR REPORTS

Depending on the circumstances, the filing of a complaint or report of sexual harassment, including sexual violence, may be voluntary or compulsory. Any person MAY file (1) an internal USF complaint or report to the designated USF offices (DIEO or OSRR); (2) a complaint or report with the appropriate internal law enforcement office (determined by the campus/institution, such as the USF Tampa Police Department or USF St. Petersburg Police Department) hereafter, “UPD”; (3) a complaint or report with an external law enforcement office with jurisdiction; and/or (4) an external complaint with an agency listed in section [IV.C.] below. In addition, certain persons MUST file a report as provided below.

A. Internal USF complaints or reports to designated USF System offices

1. Persons who may file. Any student or employee or USF System program invitee may file a claim or complaint regarding sexual harassment (including
sexual violence) or retaliation. Details regarding the responsibility to report are detailed in subsection [3.] below.

2. **Entry point for filing.** A person may file external reports at any time. The university has internal offices designated as points of entry for filing. Where a complaint or report may/must/should be filed depends upon whether the alleged harasser is an employee, student, or USF System program invitee. If the status of the alleged harasser is unclear, an individual may file a complaint or report in either of the two designated internal university offices (Diversity Inclusion & Equal Opportunity Office or Office of Students Rights & Responsibilities, see contact information below) and the University will assist in identifying the best avenue of review. The following two offices are established as points of entry for the filing of complaints and reports at the internal university level:

a. **Complaints and reports against EMPLOYEES or other USF System program invitees.**

The complaint/allegations must be submitted to the Office of Diversity, Inclusion and Equal Opportunity. DIEO is responsible for investigating sexual harassment (including sexual violence) complaints/allegations against employees or other members of the USF Community based on this Policy. A full copy of the procedures used to conduct any investigation is available in DIEO, 4202 E. Fowler Ave., ALN 172, Tampa, FL 33620; 813-974-4373; or on the DIEO website at: [http://www.usf.edu/diversity/](http://www.usf.edu/diversity/). (These procedures may be changed without affecting any term of this Policy).

b. **Complaints and reports against STUDENTS.**

The complaint/allegation must be submitted to the Office of Student Rights and Responsibilities or the appropriate Student Affairs office at the campus or institution where the harassment occurred, for investigation of
sexual harassment (including sexual violence) complaints/allegations against students. Students who are referred to the OSRR under the Policy will be subject to review and may be subject to sanctions as provided by the **USF Student Conduct Code, USF Regulation 6.0021**. A full copy of the student conduct code including the process for referrals, review, investigation and sanctions are available on the USF Tampa OSRR website at: [http://www.sa.usf.edu/srr/page.asp?id=69](http://www.sa.usf.edu/srr/page.asp?id=69); or at the OSRR office at 4202 E. Fowler Ave, ALN 109, Tampa, FL 33620-7700; phone contact 813-974-9443; or the Student Affairs office at the System member’s campus.

c. **PLEASE NOTE:** Under Title IX, notice to a “supervisory employee” or “responsible employee” (as defined in this Policy, below) regarding an incident of sexual harassment (including sexual violence) constitutes notice to the University. Therefore, any supervisory or responsible employee who knows, or in the exercise of reasonable care should have known, about an incident of sexual harassment (including sexual violence) MUST report that incident to the DIEO office, to OSRR, or to the Title IX Coordinator, the Title IX Senior Deputy Coordinator or a Title IX Deputy Coordinator.

3. **Responsibility to Report**

   a. Who *Should* report to DIEO or OSRR under the USF System's Policy:

      (1) The person who believes he/she has been a victim of sexual harassment, including sexual violence (although there is no absolute duty to report and any victim may seek any additional or optional support services including advocacy or counseling outside of the DIEO or OSRR process); or
(2) Any student, faculty member, or staff member who has direct or indirect knowledge of the alleged sexual harassment, including sexual violence, with the exception of those persons or offices who offer confidential counseling or victim assistance if the complainant requests confidentiality, such as Victim’s Advocacy. Confidential resources are: (a) USF Center for Victim Advocacy & Prevention, SVC 0067, (813) 974-5757 (available 24/7); (b) USF Counseling Center, (813) 974-2831; (c) USF Student Health Services, (813) 974-2331; or (d) Crisis Center of Tampa Bay, (813) 234-1234;

b. Who **MUST** report to DIEO or OSRR under the USF System's Policy:

(1) **Supervisory employees** (with the exception of those persons or offices who offer confidential counseling or victim assistance if the complainant requests confidentiality, such as Victim’s Advocacy) are required to promptly report (either verbally or through written communications) allegations, reports, or instances of sexual harassment (including sexual violence) by or against any USF System employee(s), student(s), or group(s). Failure to do so may result in disciplinary action, up to and including termination of employment. Supervisory employees include any administrative personnel, or any employees who (i) supervise one or more individual employees and may include, but is not limited to: Deans, Directors, Department Chairs, Coordinators, Unit Heads, Managers, and Principal Investigators or (ii) supervise or oversee students, including but not limited to, all members of the faculty; coaches, athletic directors and athletic trainers; graduate students with instructional responsibilities when they are supervising or teaching the student(s) who is (are) complaining about possible sexual harassment (including sexual
violence); academic advisors; residential assistants; faculty advisors; program advisors and student activity coordinators.

(2) “Responsible Employees” under Title IX are required to promptly report allegations or instances of sexual harassment (including sexual violence) by or against any USF System employee(s), student(s), or group(s). For purposes of Title IX, the term “Responsible Employee” as determined by the USF System, includes individuals employed in the following positions*:

- All Faculty (including Adjunct Faculty) if the report is from a student or if the incident involves a student
- All Administration, Staff, and Temporary employees who regularly supervise one or more employees or students
- All employees in the following departments or organizational units:
  - Campus Police Departments
  - Office of Diversity, Inclusion, and Equal Opportunity, (including Equal Opportunity Liaisons
  - Office of the General Counsel
  - University Audit & Compliance
  - Office for Student Rights and Responsibilities
- USF System Title IX Coordinator; Senior Deputy Title IX Coordinator, Deputy Title IX Coordinators & Liaisons and Title IX Investigators
- All Athletic Directors, Athletic Coaches, Athletic trainers, and employees in Athletics Compliance
- Residential Life Resident Assistants and Resident Life Coordinators
- Graduate Assistants, Teaching Assistants, and Research Assistants when they are supervising or teaching the Complainant.
- Employees who are advisors to officially-recognized student organizations
* Questions about whether a particular individual or specific position qualifies as a “Responsible Employee” should be directed to the Title IX Coordinator or Title IX Senior Deputy Coordinator.

USF System employees in the above-identified Responsible Employee positions who know or reasonably should know of sexual harassment (including sexual violence) must report it to the Title IX Coordinator or the Title IX Senior Deputy Coordinator and must inform the Complainant of the following:

1) The reporting obligations of responsible employees;
2) Complainant’s option to request confidentiality and available confidential advocacy, counseling, or other support services; AND
3) Complainant’s right to file a Title IX complaint with the university and to report a crime to campus or local law enforcement.

The DIEO web site (http://www.usf.edu/diversity/) houses a one-page, two-sided Supporting Crime Victims flyer which contains the most up-to-date Title IX Coordinator information and resources for supporting crime victims, both confidential and non-confidential. This flyer contains institution-specific contacts and resources for reporting employees and complainants. USF System employees who are Responsible Employees must provide the flyer or the information contained on the flyer to the Complainant. Click the following link to access these institution-specific flyers:
http://www.usf.edu/diversity/title-ix/
NOTE REGARDING USF SYSTEM RESEARCH PROJECTS: If an individual who is participating as a subject in an Institutional Review Board–approved human subject research protocol (a “USF System Research Project”) discloses, as part of that research project, an incident of alleged Sexual Misconduct/Sexual Harassment, such disclosure will not be considered notice to the University of Sexual Misconduct/Sexual Harassment for purposes of triggering its obligation to investigate the incident at issue. This means that a Responsible Employee whose knowledge of a known or suspected incident of Sexual Misconduct/Sexual Harassment is gained as a result of conducting an Approved Research Protocol is not required to report the incident to the Title IX Coordinator. In appropriate cases researchers may be required to provide information to all subjects of a research project about Title IX rights and about available University and community resources and support services with regard to Sexual Misconduct/Sexual Harassment. Researchers who are unsure whether this provision applies to their USF System Research Project should contact Research Integrity and Compliance.

NOTE REGARDING EMPLOYEES WHO OFFER COUNSELING, VICTIM ASSISTANCE OR OTHER SUPPORT SERVICES TO VICTIMS: Employees whose regular duties include offering counseling or victim assistance and “other support services” are exempt from these “Responsible Employee” responsibilities under the USF System’s definition when acting in their primary role, including all employees in the following organizational units:

- Center for Victim Advocacy and Violence Prevention, including USFSP and USF-SM victim advocates
- Counseling Center for USF Tampa
- Student Health Services
- USFSP Wellness Center
- USF-SM Counseling & Wellness Center
- Financial Aid employees
- Office of the Registrar employees
- Students with Disabilities Services employees
- Workers’ Compensation Administrator in Human Resources
- FMLA benefits representative in Human Resources
- Ombudsman

(3) The University Police Department (UPD) is required to promptly report back to DIEO or OSRR, as appropriate, a complaint of sexual harassment, including sexual violence, at the time a person directly files a complaint with the UPD and at the conclusion of any UPD process.

c. General Information

(1) Time for filing complaints. A person who believes that he/she has been sexually harassed should report the incident as soon as possible. For those complaints directed to DIEO, a formal complaint must be filed within one hundred twenty (120) days of the incident(s), or as otherwise provided by law. For those complaints directed to OSRR, the complaints must be filed as set forth in the Student Conduct Code unless otherwise specified.

(2) Appeals from decisions. The decisions of the designated offices are final, except the Complainant or Respondent may file an appeal from a decision rendered by DIEO or OSRR. The appeal shall be filed in accordance with the designated offices’ procedures.

(3) Confidentiality. The confidentiality and privacy of all parties involved during the investigative process will be maintained to the fullest extent possible. Details regarding privileged and confidential
communications may be found on the DIEO website at (http://www.usf.edu/diversity/). University offices that may offer confidential counseling include the Center for Victim’s Advocacy (http://www.sa.usf.edu/advocacy/page.asp?id=72) or Student Health Services http://www.usf.edu/student-affairs/student-health-services/services/flushots.aspx. Information will be shared with only those who have a legitimate need to know. Allegations may be filed anonymously through EthicsPoint, the USF System’s website/hotline, to confidentially report activities that may involve certain improper conduct or violations of USF System policies.


The Title IX Coordinator or designee will be responsible for evaluating a complainant's request for confidentiality in the context of the University’s responsibility to provide a safe and nondiscriminatory environment for all members of the University community. Factors that may be considered in analyzing such request for confidentiality may include, but are not be limited to, the seriousness of the alleged harassment, whether there have been other complaints or reports of harassment involving the same alleged harasser, whether the reporting individual is a minor, and whether the incident represents an escalation of behavior.

B. Complaints or Reports to Law Enforcement Offices

1. If an individual believes that he/she has been a victim of a crime, such as sexual battery, the individual may file a complaint for possible criminal charges with an appropriate law enforcement office. This report may be to the UPD AND/OR to an external law enforcement office with jurisdiction over the crime. Individuals have a right to simultaneously pursue both a criminal complaint and a complaint with the University.
2. All persons must comply with mandatory reporting laws established by state, federal or local laws.

3. In addition, any individual MAY report any criminal activity to UPD or external law enforcement at any time.

4. If a campus has a University Police Department (UPD), the University Police are law enforcement officers of the State of Florida with authority to enforce criminal laws when violations thereof occur on any property or facilities that are under the guidance, supervision, regulation, or control of USF or a Direct Support Organization of USF. The UPD provide immediate assistance to the victim and initiate investigative processes to apprehend the perpetrator of the crime. The UPD promptly inform the appropriate State Attorney's Office of sexual battery complaints and may consult with the State Attorney during the investigation of the complaint.

C. Additional External Complaints

Filing an internal charge of sexual harassment (including sexual violence) with a USF System office, UPD or external Law Enforcement office does not preclude filing complaints with external agencies and does not affect any deadlines that may be imposed by any agency external to the USF System.

The following agencies are available to take such complaints:

   (813) 228-2310, TTY (813) 228-2003.

2. **U.S. Department of Education, Office for Civil Rights**, Atlanta, Georgia
   (404) 562-6358, TTY (404) 562-6454.

V. RECORDS AND STATISTICAL REPORTING

A. OSRR will report to DIEO (as the office of the Title IX coordinator) the final results of all Sexual Harassment (including sexual violence) complaints to enable accurate statistical reporting; review of the information to identify and address any patterns or systemic problems; and the development of ongoing training, educational and preventative programming.

B. All offices will report final outcomes and complaints to the UPD as required by federal law, specifically, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”). The UPD are required to annually report to the public statistics concerning crimes which are reported to have occurred on campus, or in Clery-designated geographic locations associated with the University or its activities. There are three general categories of crime statistics that must be reported:

1. Criminal Offenses, which includes murder, or non-negligent manslaughter, negligent manslaughter, forcible and non-forcible sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, and arson;

2. Hate Crimes, which includes any of the above-listed crimes, as well as larceny-theft, simple assault, intimidation, and destruction or damage or vandalism of property, when such crime is motivated, in whole or in part, by bias based on race, gender, religion, disability, ethnicity, national origin, sexual orientation, and gender identity.

3. Arrests and Referrals for Discipline for violation of weapons, drug, and liquor laws.
In addition, the University will comply with the new reporting obligations under the Violence Against Women Act of 2013 (VAWA) which require the university to compile additional statistics regarding domestic violence, dating violence, and stalking in annual security reports. The information may be used to make timely warnings to the community of the occurrence of the above crimes. Further information about University procedures for reporting crimes and incidents under the Clery Act may be found on the following website: http://www.usf.edu/administrative-services/university-police/your-safety/campus-security-authority.aspx

C. It is USF's Policy to provide to the public, upon request, the number of sexual battery cases that have been reported to UPD within a specified time period. Crime statistics are reported to Tallahassee in accordance with State law. Information concerning the incidence of crime is reported to the University community in a regular and timely manner through local and on-campus media. This information is also forwarded to the Federal Bureau of Investigation and included in the national crime report published by the United States Department of Justice

VI. VICTIM AND PREVENTION SERVICES

Each campus of the USF System provides victim and prevention services. Detailed information about these services is available on the USF System’s website at:

<table>
<thead>
<tr>
<th>Campus</th>
<th>Website</th>
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<tbody>
<tr>
<td>USF Tampa</td>
<td><a href="http://www.sa.usf.edu/advocacy/page.asp?id=88">http://www.sa.usf.edu/advocacy/page.asp?id=88</a></td>
</tr>
<tr>
<td>USF St. Petersburg</td>
<td><a href="http://www.usfsp.edu/wellness/crisis-services/">http://www.usfsp.edu/wellness/crisis-services/</a></td>
</tr>
<tr>
<td>USF Sarasota-Manatee</td>
<td><a href="http://www.ncf.edu/crisis-services">http://www.ncf.edu/crisis-services</a></td>
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Contact information for the appropriate campus law enforcement agency for reporting sexual battery and available assistance for victims of campus-related sexual batteries within the USF System are as follows:
USF Tampa

Emergency 9-1-1
Police, Non-Emergency 813-974-2628
Local Rape Crisis Center 813-964-1964
Counseling Center 813-974-2831
Victim Advocate 813-974-5757

USF St. Petersburg

Emergency 9-1-1
Police, Non-Emergency 727-873-4140
Local Rape Crisis Center 727-531-0482
Counseling Center 727-873-4422
Victim Advocate 727-612-2861

USF Sarasota-Manatee

Emergency 9-1-1
Police, Non-Emergency 941-487-4210
Local Rape Crisis Center – Manatee County 941-755-6805
Local Rape Crisis Center - Sarasota County 941-365-1976
Counseling Center 941-487-4254
Victim Advocate 941-252-5156
Current Responsible Office*: Diversity, Inclusion, & Equal Opportunity (DIEO)

*Refer to the appropriate Responsible Office website for a current name of the Vice President or other Responsible Officer.

History: New 12-22-11, Amended 9-7-12 (technical), 10-19-15 (technical).
SEXUAL BATTERY/RAPE LAWS
(In Florida, “rape” is called “sexual battery”)

ACCORDING TO FLORIDA LAW:

- Sexual Battery/Rape is the: “Oral, anal or vaginal penetration by, or union with a sexual organ of another or anal/vaginal penetration of another by any other object.”

- The sexual act(s) is/are performed without the victim’s consent.

- An individual who is mentally incapacitated, asleep, physically helpless or unconscious due to alcohol or other drug consumption is considered unable to give consent.

- The same definition applies regardless of whether the assailant is a stranger or a non-stranger.

- The type of force employed may involve physical violence, coercion or threat of harm to the victim. The victim is not required to physically fight back.

Florida Sexual Battery Statutes:

DEFINITIONS

- "Consent" means intelligent, knowing, and voluntary consent and does not include coerced submission or submission out of fear. "Consent" shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the offender.

- "Mentally incapacitated" means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance
• "Physically helpless" means unconscious, asleep, or for any other reason physically unable to communicate consent or lack of consent.

• "Physically incapacitated" means bodily impaired or handicapped and substantially limited in ability to resist or flee.

CONSENT, COERCION AND INCAPACITATION UNDER UNIVERSITY POLICY:

(1) “Consent” means an informed, knowing, and voluntary agreement to engage in sexual activity. 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 or an absence of resistance alone, without actions evidencing permission, does not imply consent.

(a) To give consent, a person must be of legal age.

(b) Someone who is incapacitated cannot consent.

(c) Assent does not constitute consent if obtained through coercion or from an individual whom the alleged offender knows or reasonably should know is incapacitated.

(d) The responsibility of obtaining consent rests with the person initiating sexual activity.

(e) Use of alcohol or drugs does not diminish one’s responsibility to obtain consent.

(f) Consent to engage in sexual activity may be withdrawn at any time. Once withdrawal of consent has been expressed, the sexual activity must cease.

(g) Consent is automatically withdrawn by a person who is no longer capable of giving consent.

(h) A current or previous consensual dating or sexual relationship between the parties does not, in and of itself, imply consent or preclude a finding of responsibility.
(i) Past consent to sexual activity does not imply ongoing future consent to sexual activity with that person.

(j) Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another person.

(k) There is no consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress is used.

(2) **Coercion.** Coercion is the use of express or implied threats, intimidation, physical force, or duress 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.

(3) **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. Someone who has consumed alcohol or intoxicants is not necessarily incapacitated. For instance, individuals who are asleep 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.