Number: 0-004
Title: Sexual Misconduct/Sexual Harassment (Including Sexual Violence)
Responsible Office: Title IX Office

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I. PURPOSE, AND 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, guests and students that is free of discrimination and sexual harassment, including sexual violence. As part of the effort to maintain a safe environment that is comfortable for all people, the USF System establishes this Policy.

Sexual

USF prohibits sexual harassment and or sexual misconduct, including sexual violence, is prohibited within the USF System, and Internal or external criminal complaints of such conduct are to may be filed with one of two USF has a designated offices within the USF System—specifically, the Office of Diversity, Inclusion Title IX office where voluntary and Equal Opportunity (DIEO) or the Office of Student Rights and Responsibilities (OSRR) complaints are to be filed. The designated USF Title IX office will review such complaints—the report or complaint and provide appropriate response including counseling, which may include referrals to services, interim measures, informal resolution, 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, on the Title IX website located at http://www.usf.edu/diversity/. The Title IX Coordinator is: https://www.usf.edu/diversity/title-ix/.

——— Cecil Howard, Chief Diversity Officer

The Title IX Coordinator is:

Araiña Muñíz
USF Title IX Office
4202 E. Fowler Avenue, ALN 172
Tampa, Florida 33620
(813) 974-0537; howarde@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:

Sexual harassment and sexual misconduct, including sexual violence, by or between any faculty
member, staff, vendor, visitor 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 is prohibited.

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.
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:

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

3.1 Inappropriate and unwelcome sexual attention or touching, including but not limited to leering, patting, fondling, pinching, and attempted or actual kissing.
4.1 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.

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

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

7.1 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 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. Complaint: The notice filed by the Victim with the Title IX office or one of the available forums, which initiates the process of review and possible investigation of alleged sexual harassment or sexual misconduct, including sexual violence.

B. Consent: 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.

1. To give consent, a person must be of legal age.
2. Someone who is incapacitated cannot consent.
3. Assent does not constitute consent if obtained through coercion or from an individual whom the alleged offender knows or reasonably should know is incapacitated.
4. The responsibility of obtaining consent rests with the person initiating sexual activity.
5. Use of alcohol or drugs does not diminish one’s responsibility to obtain consent.

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

7. Consent is automatically withdrawn by a person who is no longer capable of giving consent.

8. 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.

9. Past consent to sexual activity does not imply ongoing future consent to sexual activity with that person.

10. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another person.

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

C. 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.

D. 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.

E. 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.

F. Report: The notice anyone, including a Victim may elect to submit, or that Responsible Employees, Supervisory Employees or other persons are required to submit to the Title IX Office, upon disclosure by the Victim. There are mandatory reporting requirements set forth below in section IV for persons to file reports of allegations of sexual harassment or sexual misconduct including sexual violence.

G. Responsible Employees: Includes any employee who has the authority to take action to redress harassment, who has the duty to report sexual harassment or other misconduct by students or employees to appropriate school officials or an individual...
who a student would reasonably believe has this authority or responsibility. Each
campus must determine who will be considered a mandatory reporter. USF has
identified the following as Responsible Employees*:

1. All Faculty (including Adjunct Faculty) if the Report is from a student or if the
   incident involves a student
2. All Administration, Staff, and Temporary employees who regularly supervise
   one or more employees or students
3. 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
   - Student Rights and Responsibilities
4. USF Title IX Coordinator, Deputy Title IX Coordinators & Liaisons, and Title
   IX Investigators
5. All Athletic Directors, Athletic Coaches, Athletic trainers, and employees in
   Athletics Compliance
6. A. Residential Education Employees including the Director of Residential
   Education, Assistant or Associate Directors, Residence Life Coordinators,
   Assistant Resident Life Coordinators, and Resident Advisors.
7. Graduate Assistants, Teaching Assistants, and Research Assistants when they
   are supervising or teaching students,
8. 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 Assistant Director of Title IX/Title IX
Deputy Coordinator.

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.4 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.

4 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.
2. Unwelcome and includes but is not limited to: sexual advances, requests for sexual favors, and, or other verbal, nonverbal 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;

e-H. Such conduct is, including sexual violence, intimate partner violence, and stalking. Sexual harassment also includes unwelcome conduct directed at a person based on the person’s actual or perceived gender or sexual orientation or gender expression that is so sufficiently severe², persistent, 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. That it unreasonably interferes with, denies, or limits someone’s ability to participate in or benefit from the college’s educational program and/or activities and also may include or be defined as

1.3. Quid Pro Quo Harassment: Discriminatory harassment where submission to or rejection of unwelcome conduct is used, explicitly or implicitly, as the basis for decisions affecting an individual’s education (e.g., admission, academic standing, grades, assignment); employment (e.g., hiring, advancement, assignment); or participation in a university program or activity (e.g., campus housing) or is based on power differentials.

2. Hostile Environment Harassment: Discriminatory harassment that is so severe or pervasive that it unreasonably interferes with, limits, deprives, or alters the terms or conditions of education (e.g., admission, academic standing, grades, assignment); employment (e.g., hiring, advancement, assignment); or participation in a university program or activity (e.g., campus housing), when viewed from both a subjective and objective perspective. A hostile environment can be created by pervasive conduct or by a single or isolated incident, if sufficiently severe. The more severe the conduct, the less need there

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.
is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. An isolated incident, unless sufficiently serious, does not amount to Hostile Environment Harassment.

Evaluation of whether a hostile environment exists will include consideration of the totality of known circumstances, including, but not limited to:

- The frequency, nature and severity of the conduct;
- Whether the conduct was physically threatening;
- The effect on the complainant’s mental or emotional state;
- Whether the conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory or other misconduct;
- Whether the conduct unreasonably interfered with the complainant’s educational or work performance and/or university programs or activities; and
- Whether the conduct implicates concerns related to academic freedom or protected speech.

3. Sexual Exploitation: Attempting or purposely/knowingly taking non-consensual or abusive sexual advantage of another for a person’s own advantage or benefit, or to benefit or advantage of anyone other than the one being exploited. Examples of sexual exploitation, include but are not limited to:

a. Causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person’s ability to give affirmative consent to sexual activity;

b. Allowing third parties to observe private sexual activity form a hidden location (e.g., closet) or through electronic means (e.g., Skype or livestreaming of images);

c. Engaging in voyeurism (e.g., watching private sexual activity without the consent of the participants or viewing another person’s intimate parts (including genitalia, groin, breast or buttocks) in a place where that person would have a reasonable expectation of privacy);

d. Recording or photographing private sexual activity and/or a person’s intimate parts (including genitalia, groin, breasts or buttocks) without consent;

e. Disseminating or posting images of private sexual activity and/or a person’s intimate parts (including genitalia, groin, breasts or buttocks) without consent;

f. Prostituting another person;

g. Knowingly exposing another person to a sexually transmitted infection or virus without the other’s knowledge;

h. Exposing one’s genitals in non-consensual circumstances;
i. Inducing another to expose their genitals; or
j. Sexually-based stalking and/or bullying.

4. Non-Consensual Sexual Intercourse (Sexual Battery/Rape): Any sexual penetration however slight, with any object, by any individual upon another individual that is without consent and/or by force. 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 penetration or contact.

5. Non-Consensual Sexual Contact: Any intentional sexual touching, however slight, with any object, by an individual upon another individual that is without consent and/or by force. Sexual Contact includes intentional contact with the breasts, buttocks, groin, or genitals, or touching another with any of these body parts; or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/off by breasts, buttocks, groin, genitals, mouth, or other orifice. Non-Consensual Sexual Contact also includes touching of another’s body in a sexual manner without consent—such as but not limited to thighs, back, shoulders, exceeding the boundaries of consent such as the non-consensual removal of a condom or similar device during a sexual act (sometimes referred to as “stealthing”), etc.

6. Unwanted or Unwelcome Sexually Oriented Attention: Unwanted or unwelcome sexually-oriented remarks or behaviors, that are so sufficiently severe, persistent, or pervasive, on the part of a person who knows or ought reasonably to know that such remarks or behavior unreasonably interferes with, denies, or limits someone's ability to participate in or benefit from the University's educational program and/or activities.

7. Specific Acts of Violence defined by the Violence Against Women Act including:
   a. Domestic Violence—: Violence that includes asserted violent misdemeanor and felony offenses committed by the victim’s current or former spouse, current or former cohabitant, a person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.
   b. Dating Violence— means violence: 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: Repetitive or menacing pursuit, following, harassment or interference with the peace or safety of another person or repeatedly interact with a person so as to harass, or that person's immediate friends and family, or a course of conduct at or about a specific
person that would cause a reasonable person to fear for her, his, their 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.

c. 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: also include cyber stalking.

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 Supervisory Employees: 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/ (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; or at the OSRR office at 4202 E. Fowler Ave, ALN 100, 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:

I. (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 student assistants 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.

J. (2) “Responsible Employees” under Title IX are required to promptly report. Office: The central University office responsible for coordinating the University’s response and oversight of possible violations of Policy 0-004 and related state and federal laws. The Title IX Office, (Title IX website) is designated as the place for reports of sexual harassment or sexual misconduct including sexual violence.

K. USF Program Invitee: Includes, but is not limited to, applicants for admission, applicants for employment, event attendees, and recipients of USF services.

L. Victim: Persons who experience Sexual Harassment.
IV. FILING REPORTS OR COMPLAINTS

The Title IX Review Process begins when the University receives notice of an alleged incident by receipt of a Report or Complaint filed with the Title IX Office. The Report is distinct from the Complaint and listed below is an outline of the processes that are followed depending on the manner the process is initiated.

A. University REPORT

1. Who files a Title IX Report (Reporting Obligations and Options):

   a. Voluntary Reporting:

      Any person MAY voluntarily file a Report and in specific circumstances the filing of a Report of sexual harassment, including sexual violence, is MANDATORY as noted below in IV.A.2. Voluntary Reports may be made by a Victim, or any person, to:
      o The University Title IX Office.

   b. Mandatory Reporting:

      Supervisory and Responsible Employees unless specifically exempted as noted below are REQUIRED to promptly (within 24 hours) report allegations or instances of sexual harassment and sexual misconduct 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:
        o Campus Police Departments
        o Office of Diversity, Inclusion, and Equal Opportunity, including Equal Opportunity Liaisons
        o Office of the General Counsel
        o University Audit & Compliance
        o 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

1. 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 Office. The University Police Department (UPD) is required to promptly report to the Title IX Office, as appropriate, a Complaint of sexual harassment and sexual misconduct, including sexual violence, at the Title IX Senior Deputy Coordinator and must inform a person directly files a Complaint with UPD, UPD becomes aware of the following:

1) The reporting obligations of responsible employees;
2) Complainant’s option to request confidentiality and available alleged incident, and at the conclusion of any UPD process.

Failure to make the Report may result in disciplinary action, up to and including termination of employment. In addition to the mandatory reporting the Supervisory and Responsible Employees and the UPD must provide the victim...
or person reporting the options available for confidential advocacy, counseling, or other support services; AND

3) Complainant’s as well as the right to file a Title IX complaint with Complaint to the university and/or 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/

c. NOTE REGARDING USF SYSTEM RESEARCH PROJECTS: Exceptions from Reporting Responsibility:

1. Confidential or Victim Assistance Support: Employees whose regular duties include offering counseling or victim assistance and “other support services” are exempt from these “Responsible Employee” responsibilities under the USF'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
   - Workers’ Compensation Administrator in Human Resources
   - FMLA benefits representative in Human Resources
   - Ombudsman

2. USF 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 and/or sexual misconduct, 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 under this Policy. 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.

e. 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 (https://www.usf.edu/student-affairs/student-health-services/). 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.

2. Complaints or Reports When to File the Title IX Report: Title IX Reports may be filed at any time using the types of filings noted below. Protected Category discrimination and harassment is a separate mandate with different reporting requirements. For information regarding submission and deadlines for protected category discrimination and harassment reports, see Policy 0-007 Diversity and Equal Opportunity: Discrimination and Harassment. Please refer to USF Policy 0-007 for the deadlines for filing protected category discrimination and harassment complaints.

3. How to file a Title IX Report: Faculty, staff, students, and other individuals may choose from one or more of the following reporting avenues. Responsible Employees MUST Report by submitting the Title IX Report Form.

a. Online reporting is available using the Title IX Report Form.

1. Faculty and staff who are making a required Report – reporting information about an incident affecting someone else – MUST FILE THIS REPORT and do not have the option to submit this form anonymously. This Report must be submitted immediately and no later than 24 hours after receiving a disclosure.

2. Students, parents, or others may submit a Report either anonymously or with their identifying information included.
b. Contact the Title IX Office via email at titleixreports@usf.edu

c. Report in Person:
   USF Diversity Inclusion and Equal Opportunity (DIEO)
   ATTN: Title IX
   4202 E. Fowler Avenue, ALN 172
   Tampa, FL 33612

d. Paper Reporting – providing a written Report by mail:
   USF Diversity Inclusion and Equal Opportunity (DIEO)
   ATTN: Title IX
   4202 E. Fowler Avenue, ALN 172
   Tampa, FL 33612

e. Anonymous Reporting (not available for Responsible Employee or Mandatory Reporting):
   Anonymous Reports may be made via Ethics Point. USF has engaged EthicsPoint—a third party hosted hotline—to enable the safe, secure, and anonymous reporting of activities which may involve misconduct, fraud, abuse, and other violations of USF policies. You may file a Report by clicking here then following directions, or by calling toll-free 1-866-974-U411.

4. Report Process, Review and Outcome: After receiving a Report, the Title IX Office will conduct an initial assessment to determine jurisdiction and initiate contact with alleged Victim(s). The Title IX Office may implement interim measures if appropriate. The Victim, and in specific circumstances the University, may file a Complaint after the Report Process, or at any time, as noted below. In the event a formal Complaint is filed, the Title IX Office may conduct an investigation with specific outcomes (for cases involving an employee respondent) and possible referrals for student or employee review/sanctions as noted in the Student Code of Conduct (https://www.usf.edu/student-affairs/student-rights-responsibilities/), Human Resources (https://www.usf.edu/HR/) or Faculty Guidelines (https://www.usf.edu/provost/faculty-info/faculty-policiesandguidelines.aspx).

B. University COMPLAINT

1. Who files a University Title IX Complaint: If an individual believes that they have been a victim of sexual harassment (including sexual violence, intimate partner violence or stalking) in violation of University Policy, individual may file a Complaint for an internal Title IX review with the Title IX Office. The Complaint may be made independently of any Report or the Complaint can follow the filing of a Report. The University may choose to move forward with a formal investigation and disciplinary proceedings without a formal complainant in certain circumstances.
2. **When to file a Title IX Complaint:** Title IX Complaints may be filed at any time. Individuals may elect to file additional Complaints to law enforcement or external agencies as outlined in C and D below.

3. **How to file a Title IX Complaint:** The Victim, and in specific circumstances the University, may file a Complaint with the Title IX Office. The Title IX Office may conduct an investigation with specific outcomes (for cases involving an employee respondent) and possible referrals for student or employee review/sanctions as noted in the Student Code of Conduct (https://www.usf.edu/student-affairs/student-rights-responsibilities/) Human Resources (https://www.usf.edu/HR/) or Faculty Guidelines (https://www.usf.edu/provost/faculty-info/faculty-policiesandguidelines.aspx). The Title IX Office may implement interim measures if appropriate.

4. **Title IX Complaint Review and Outcome:**
   a. **Student Respondent:** When the Title IX office completes its investigation of a Complaint, the Title IX Office makes a conduct referral to Student Rights and Responsibilities (SRR) will apply the processes detailed in the Student Code of Conduct and will determine whether to formally charge a student. See student Code of Conduct 6.0021 for the student conduct process, which includes the grounds for Appeals:
      http://regulationspolicies.usf.edu/regulations/pdfs/regulation-usf6.0021.pdf which provides that Student appeals are submitted to the Dean of Students Office (or as otherwise designated) within five (5) days of the date on the Hearing Outcome Letter. The Dean’s Office will notify the Title IX Coordinator that the appeal has been filed and the parties of the outcome as per the student code of conduct.
   b. **Employee Respondent:** When the Title IX office completes its investigation, the Title IX Office prepares a Final Investigative Report with outcomes which is sent to the Respondent* and appropriate office(s), most commonly to Human Resource Office (for employees) or the Provost Office (for faculty) or other supervisor. In cases where there is a finding of responsibility, the appropriate offices will review and impose disciplinary action. See DIEO process: http://regulationspolicies.usf.edu/policies-and-procedures/pdfs/policy-0-007.pdf, which provides that a *Respondent may appeal the finding in the Final Investigative Report to the Title IX Coordinator (or as otherwise designated) within thirty (30) days of the date of the Title IX Final Investigative Report. The Title IX Coordinator will forward the appeal to the President’s Office for Final Determination and will notify the Complainant and
Respondent that the appeal has been filed and the outcome of that appeal.

c. Alternate Resolutions or Outcomes: Other possible non-disciplinary/sanctioning outcomes include but are not limited to an alternative or informal resolution, additional training and/or University policy modifications.

**B.C. Complaint to Law Enforcement Officers**

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.

4.1. **If a campus has a USF Police Department:** The University Police Department (UPD), the University Police (UPD) officers 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. **Individuals have a right to simultaneously pursue both a criminal Complaint and a Title IX Complaint with the University. To file a Complaint to the University Police, an individual may contact them directly to request a criminal investigation. University Police Officers are also mandatory reporters and must report all disclosures of potential violations of Policy 0-004 to the Title IX Office immediately.**

**C. Additional External Criminal Complaints**
2. Reporting to External Offices: Filing an internal charge Complaint of sexual harassment (including sexual violence) with a USF System office, UPD or external Law Enforcement office—the Title IX Office or the UPD does not preclude filing Complaints at any time with external agencies and does not affect any requirements for filing or deadlines that may be imposed by any agency external to the USF System—University. Law Enforcement Complaint and Criminal Prosecution Reporting are available and sexual assault and other forms of sexual misconduct are crimes and may be reported directly to law enforcement for investigation at any time and before or after internal University reporting. In addition to or independent of the Internal Title IX Process, an individual may file a criminal complaint to the UPD AND/OR to an external law enforcement office with jurisdiction over the crime by contacting that agency directly.

The following agencies are available to take such complaints:

Criminal Complaints:

- Local Law Enforcement Agencies
- Tampa Police Department
- Hillsborough County
- Sarasota
- St. Petersburg

D. Related Complaints to External Agencies: Offices available as a resource or for possible external complaints include but are not limited to:


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


4. Florida Commission on Human Relations, Tallahassee, Florida

   1-800-342-8170

   TDD ASCII 1-800-955-1339; TDD BAUDOT 1-800-955-8771.

V. RECORDS AND STATISTICAL REPORTING
E. OSRR Privacy: Privacy of parties involved during the investigative process will be maintained to the fullest extent possible. Information will be shared with only those who have a legitimate need to know. Details regarding privileged and confidential communications may be found on the Title IX website. University offices that may offer confidential resources include the Center for Victim Advocacy & Violence Prevention, the Ombuds Office, the Employee Assistance Program, Student Health Services and the Student Counseling Center.

With the exception of Responsible Employees who are required to file a Report using the designated form, allegations may be filed anonymously through the EthicsPoint hotline. Ethics Point allows confidential reporting of activities that may involve certain improper conduct or violations of USF 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 or identifies violations of state or federal law or University policy.

F. Records and Statistical Reporting:

A.1. SRR will provide the Title IX Office with the final results of all conduct referrals from the Title IX Office regarding 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.2. All offices will report final outcomes 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 is 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:

a. Criminal Offenses, which includes murder, 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.

c. 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 UPD website.

d. The University’s Clery Coordinator located in the USF Police Department may accept anonymous reports of sexual assault, stalking and groping which may be included in the University’s crime statistics if appropriate under the Clery Act (757-221-4596). Reports of sexual assault, stalking, groping or intimate partner violence will be shared as a Title IX Report or directly with the Title IX Coordinator.

g. 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 National Crime Report published by the United States Department of Justice.
VI. VICTIM AND PREVENTION SERVICES

G. Related Information:

1. Related Regulations and Policies for addition reference include:
   a. Policies
      1. Policy # 0-020, Retaliation, Retribution, Or Reprisals
         Prohibited
      2. Policy #1-022, Consensual Relationships
      3. Policy #0-007, Diversity and Equal Opportunity:
         Discrimination and Harassment
      4. Policy #6-032, Child Abuse Reporting
   b. Regulations
      1. Regulation USF6.0021, Student Code of Conduct

2. 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 USF’s website at:

   - USF Tampa: http://www.ca.usf.edu/advocacy/page.asp?id=88
   - USF Tampa: https://www.usf.edu/student-affairs/victim-advocacy/
   - USF St. Petersburg: http://www.usfsp.edu/wellness/crisis-services/
   - USF Sarasota-Manatee: http://www.ncf.edu/crisis-services

   Contact information for the appropriate campus law enforcement agency for reporting sexual battery, intimate partner violence or stalking, and available assistance for victims of campus-related sexual batteriescrimes within the USF System are as follows:

   **USF Tampa**

<table>
<thead>
<tr>
<th>Service</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Emergency</td>
<td>9-1-1</td>
</tr>
<tr>
<td>Police, Non-Emergency</td>
<td>813-974-2628</td>
</tr>
<tr>
<td>Local Rape Crisis Center</td>
<td>813-964-1964</td>
</tr>
<tr>
<td>Counseling Center</td>
<td>813-974-2831</td>
</tr>
<tr>
<td>Victim Advocate</td>
<td>813-974-5757 or 5756</td>
</tr>
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### USF St. Petersburg

<table>
<thead>
<tr>
<th>Service</th>
<th>Phone Number</th>
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</thead>
<tbody>
<tr>
<td>Emergency</td>
<td>9-1-1</td>
</tr>
<tr>
<td>Police, Non-Emergency</td>
<td>727-873-4140</td>
</tr>
<tr>
<td><a href="#">Local Locate</a> Rape Crisis Center</td>
<td>727-531-0482</td>
</tr>
<tr>
<td>Counseling Center</td>
<td>727-873-4422</td>
</tr>
<tr>
<td>Victim Advocate</td>
<td>727-612-2861</td>
</tr>
</tbody>
</table>

### USF Sarasota-Manatee

<table>
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<tr>
<th>Service</th>
<th>Phone Number</th>
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</thead>
<tbody>
<tr>
<td>Emergency</td>
<td>9-1-1</td>
</tr>
<tr>
<td>Police, Non-Emergency</td>
<td>941-487-4210</td>
</tr>
<tr>
<td>Local Rape Crisis Center – Manatee County</td>
<td>941-755-6805</td>
</tr>
<tr>
<td>Local Rape Crisis Center – Sarasota County</td>
<td>941-365-1976</td>
</tr>
<tr>
<td>Counseling Center</td>
<td>941-487-4254</td>
</tr>
<tr>
<td>Victim Advocate</td>
<td>941-252-5156</td>
</tr>
</tbody>
</table>

3. Index of Information (see attached)

Current Responsible Office*: Diversity, Inclusion, & Equal Opportunity (DIEO) Title IX Coordinator, Title IX Office

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

History: New 12-22-11, Amended 9-7-12 (technical), 10-19-15 (technical), 1-3-18 (technical), 8-22-19 (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 FROM FLORIDA STATUTES:

- “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.

(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.

1. (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.

2. 1. (i) Past consent to sexual activity does not imply ongoing future consent to sexual activity with that person.

3. 1. (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.

B.A. (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.