

university employees AND to law enforcement authorities, when appropriate. Individuals may file a report directly with local law enforcement agencies by dialing 911. Individuals may also contact any of the following for assistance in filing a report with local law enforcement.

Henderson State University Police Department

Emergencies: 911
Office: 870-230-5098

The Simonson Biological Field Station is located in Hot Spring County.

Arkadelphia Police Department

Emergencies: 911
Office: 870-246-4545

Hot Spring County Sheriff's Office

Emergencies: 911
Office: 501-332-3671

Clark County Sheriff's Office

Emergencies: 911
Office: 870-246-2222

The Hot Springs Center is located in Garland County.

Hot Springs Police Department

Emergencies: 911
Office: 501-321-6789

Garland County Sheriff's Office

Emergencies: 911
Office: 501-622-3660

Preserving Evidence

It is important that evidence of sexual assault be preserved because it may be needed for prosecuting a criminal case. Complainants and others should not alter the scene of the attack. The complainant should not change clothes, bathe or shower, drink or eat anything, or brush his or her teeth before reporting the assault. Any items worn by the complainant during the assault, but are not currently being worn, and any materials encountered during the assault (i.e., bed sheets, blankets, etc.) should be placed in a plastic bag and brought along with the complainant to the local hospital emergency department that has kits to collect and preserve evidence of sexual assault.

Student and Visitor Responsibility to Report

Students and visitors to the university are strongly encouraged to report allegations of discrimination, harassment, retaliation, and sexual misconduct to the Title IX Coordinator. A report should be made as soon as possible after the incident in order to facilitate an effective response. The longer a report is delayed, the more difficult it will be for the university to investigate. Reports may be made by the person experiencing the misconduct or by a third party, such as a witness or someone who is told of the misconduct.

Mandatory Employee Reporting

In order to enable the university to respond effectively and to proactively stop instances of discrimination, harassment, retaliation, and sexual misconduct at the university, all employees, including

student employees, must, within 24 hours of receiving information regarding a potential violation of this policy, report information to the Title IX Coordinator. Only employees who are statutorily prohibited from reporting such information (e.g., licensed health-care professionals) are exempt from these reporting requirements.

Confidential Disclosure

The university encourages victims of sexual misconduct to talk to someone about what happened so that victims can get the support they need, even if they do not wish for the incident to be investigated. Different employees on campus have varying abilities to maintain a victim’s confidentiality. A few employees are required to maintain near complete confidentiality; talking to them is sometimes called a “privileged communication.” At Henderson State University, those employees are the nursing and counseling staff of the Student Health Center

(<http://www.hsu.edu/CurrentStudents/StudentHealth/Health/index.html>) located in Mooney Hall:

Renee Wall, Nurse	870-230-5102, Suite 101
Tami Arnold, Nurse	870-230-5102, Suite 101
Michelle Champagne, Nurse	870-230-5102, Suite 101
Deborah Collins, Director	870-230-5640, Suite 103
Willica Morgan, Counselor	870-230-5528, Suite 103
Christopher Golston, Counselor	870-230-5639, Suite 103

Disclosures made to the nursing and counseling staff at the Student Health Center will be held in strict confidence and will not serve as notice to the university to begin an investigation of the disclosed conduct. Please note that all other university employees, except for the nursing and counseling staff, serve as mandatory reporters who are required to share all reports of sexual misconduct that they receive with the Title IX Coordinator.

Also note that, if a nursing or counseling staff member determines that the alleged perpetrator(s) pose a serious and immediate threat to the university community, the Henderson State University Police Department may be called upon to issue a timely warning via the RAVE system. Any such warning will not include any information that identifies the victim.

Off-Campus Conduct

Conduct that occurs off campus can be the subject of a complaint or report and will be evaluated to determine whether it violates this policy. Allegations of off-campus sexual misconduct are of particular concern and should be brought to the university’s attention.

Confidentiality

Subject to the other provisions of this policy and the requirements of law, every possible effort will be made to ensure that all information received as part of the university’s complaint procedure is treated discreetly. All parties to the complaint are required to maintain the confidentiality of all information received during this process. However, it is not possible to guarantee that all complaints will remain confidential because of the university’s obligation to investigate allegations of misconduct. All requests

to maintain confidentiality shall be directed to the Title IX Coordinator who has the authority to make such determinations.

Except as compelled by law or in the interest of fairness, just resolution, or health and safety considerations, disclosure of information contained in complaints, their substance, procedures, and the results of investigations will be limited to the immediate parties, witnesses, and other appropriate officials who are determined by the Title IX Coordinator to have a legitimate interest in the information. Limited disclosure may also be necessary to conduct a full and impartial investigation.

Availability of Counseling and Advocacy

Counseling and other mental health services for victims of sexual assault are available on campus and in the community. Students may use the Student Counseling Center, Mooney Hall, Suite 103, 870-230-5102. Students are not charged for accessing the services of the Student Counseling Center.

The National Sexual Assault Hotline can be reached at 1-800-656-4673 and online at www.online.rainn.org.

The Arkansas Coalition Against Sexual Assault (ACASA) can be reached at 1-800-977-5776 and online at www.acasa.us. ACASA or other domestic violence and rape crisis programs may assist with making referrals for individual counseling and support groups and in identifying non-counseling campus and community resources that may be of additional help and serve as a complainant advocate upon request. The use of these or any other resources is at the discretion of the parties.

Education and Awareness Programs

The university's Title IX Coordinator, in conjunction with various departments and organizations at the university, is responsible for planning and coordinating campus education and awareness programs about all forms of sexual assault, including rape, acquaintance rape, domestic violence, dating violence, and other sex offenses. Programs are presented regularly throughout the academic year in residence halls, fraternities, sororities, and for other student organizations, academic classes, employee training and professional development, and in other settings that are likely to reach people throughout the campus community.

Limited Immunity Regarding Other Misconduct

The university considers the timely reporting and investigation of sex-based and gender-based misconduct cases on campus to be of paramount importance. The university does not condone illegal drug use, underage drinking, or other violations of the Student Code of Conduct. However, the university may extend limited immunity from punitive sanctioning in the case of illegal alcohol or drug use to complainants, witnesses, and those reporting incidents and/or assisting the alleged victims of sex-based and gender-based misconduct, provided that they are acting in good faith in such capacity. Stated another way, the university wishes to encourage all persons to report incidents of sex-based and gender-based misconduct, and therefore reserves the right to waive disciplinary charges against victims, witnesses and those reporting incidents and/or assisting the alleged victims of sex-based and gender-based misconduct, for certain circumstances surrounding the incident. For example, an underage student who reports a violation of this policy while she was voluntarily drinking alcohol would not

typically face charges for violating alcohol policies in the Code of Student Rights, Responsibilities, and Conduct.

Policy Expectations with Respect to Consensual Relationships

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, or supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of policy.

The university does not wish to interfere with private choices regarding personal relationships when those relationships do not interfere with the mission, core values and policies of the university. However, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student, or supervisor-employee) threaten to undermine the university's climate of academic, personal and professional integrity.

Due to the power differential between university employees and students and the potential these relationships pose for the disruption of the educational experience of our students, the university prohibits sexual or romantic relationships between a university employee and a student in which the employee is in a position of authority, real or perceived, over that student. In light of the inherent risks, employees are strongly discouraged from developing a sexual or romantic relationship with any student. In the event of a dispute as to whether or not a sexual or romantic relationship between an employee and a student was consensual, employees are advised that the university deems such relationships as inherently suspect. In the event a sexual or romantic relationship between an employee and a student develops or already exists, the employee must report the relationship to the Dean of their college (for faculty and staff in Academic Affairs), the Vice President of their area (for employees in Finance & Administration, Student Services & External Affairs, and University Advancement), the Athletic Director (for employees in Athletics) or the President (for employees who report directly to the President). This will likely result in the employee being relieved of teaching, supervisory or evaluative responsibilities in regard to the student with whom he or she has established a consensual relationship. The Dean of their college (for faculty and staff in Academic Affairs), the Vice President of their area (for employees in Finance & Administration, Student Services & External Affairs, and University Advancement), the Athletic Director (for employees in Athletics) or the President (for employees who report directly to the President) will determine the appropriate action in response. Failure of the employee to self-report such a relationship as required in this policy may result in disciplinary action for the employee, up to and including termination. Any concerns regarding the appropriateness of the response when a relationship is reported or the disciplinary action resulting from a failure to self-report may be addressed through existing processes set in the Faculty Handbook (for employees who are faculty) or Staff Handbook (for employees who are staff). Consensual romantic or sexual relationships between employees in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, employees with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the attention of the Dean of their college (for faculty and staff in Academic Affairs), the Vice President of their area (for employees in Finance & Administration, Student

Services & External Affairs, and University Advancement), the Athletic Director (for employees in Athletics) or the President (for employees who report directly to the President). This will likely result in the supervising employee being relieved of supervisory or evaluative responsibilities in regard to the subordinate employee, or will require shifting the subordinate employee out of being supervised or evaluated by the person with whom he or she has established a consensual relationship. The Dean of their college (for faculty and staff in Academic Affairs), the Vice President of their area (for employees in Finance & Administration, Student Services & External Affairs, and University Advancement), the Athletic Director (for employees in Athletics) or the President (for employees who report directly to the President) will determine the appropriate action in response. Failure of the supervising or evaluating employee to self-report such relationship as required in this policy may result in disciplinary action for the employee, up to and including termination. Any concerns regarding the appropriateness of the response when a relationship is reported or the disciplinary action resulting from a failure to self-report may be addressed through existing processes set in the Faculty Handbook (for employees who are faculty) or Staff Handbook (for employees who are staff). Policy Expectations with Respect to Physical Sexual Conduct

In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing and voluntary consent prior to and during sexual activity. Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want sexually and what you do not. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Silence without actions demonstrating permission cannot be assumed to show consent.

Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex activity. Coercion happens when someone is pressured unreasonably for sex activity.

Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they are mentally or physically impaired (physical manifestations of impairment include but are not limited to slurred speech, "blacking out", stumbling, inability to stand or walk independently, vomiting, seeing their surroundings "spin" or otherwise experiencing impaired vision) and/or they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing. Under this policy, "No" always means "No," and "Yes" may not always mean "Yes." Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a "No."

Complaint Procedure

These procedures are intended to apply to all sex-based and gender-based complaints involving discrimination, harassment, retaliation, and sexual misconduct as described in this policy, including but not limited to those brought by a student against an employee and/or fellow student, employee against fellow employee and/or student, and third party against employee and/or student. All other complaints by students, employees, or third parties shall be addressed through other conduct or grievance procedures. The university benefits from formal and informal procedures that encourage prompt resolution of complaints and concerns raised by members of the university community.

Informal Complaint Process

The university does not require a complainant to utilize the informal complaint process if doing so is impracticable or unsafe, or if the complainant believes that the conduct cannot be effectively addressed through informal means. For example, the informal complaint process should not be used to address allegations of sexual assault. However, in other circumstances where it is practical and safe to do so, every reasonable effort should be made to constructively resolve issues with students, faculty, staff, and administrators before pursuing the formal complaint process. Under the informal complaint process, a complainant may elect to resolve his or her complaint by discussing it with the offending party. If the offending party is an employee and satisfactory resolution cannot be reached after discussion, the complainant may also contact the individual's immediate supervisor to resolve the complaint. If these efforts are unsuccessful, the formal complaint process may be initiated.

Formal Complaint Process

Upon receiving a report of alleged or possible violation of this policy, the Title IX Coordinator will evaluate the information received and determine what further actions should be taken. The Title IX Coordinator will follow the procedures described in this policy. The Title IX Coordinator will take steps, either directly with the complainant or through a reporting employee, to provide information about the university's complaint procedure, as well as available health and advocacy resources and options for criminal reporting.

Investigation

The Title IX Coordinator will be responsible for overseeing the prompt, fair, and impartial investigation and resolution of complaints filed with the university. The Title IX Coordinator or his or her designee will investigate all complaints of discrimination, harassment, retaliation, and sexual misconduct and determine any accommodations or other remedial short-term actions necessary in light of the individual circumstances presented.

The Title IX Coordinator or his or her designee will apprise the Vice President of the area in which the employees works, or, if the complaint is against a student, the Provost and Dean of Students.

The Title IX Coordinator or his or her designee, who will have been properly trained, will:

- Identify the correct policies allegedly violated.
- Conduct an immediate initial investigation to determine if there is reasonable cause to charge the respondent(s).
- Meet with the complainant to finalize the complaint.
- Prepare the notice of charges on the basis of initial investigation.
- Develop a strategic investigation plan which may include a witness list, an evidence list, an intended timeframe, and an order of interviews for all witnesses, including the respondent.
- Conduct a thorough, reliable, and impartial investigation during which witnesses may or may not be given notice prior to the interview.
- Complete the investigation promptly, and without unreasonable deviation from the intended timeline.

- Make a written finding on the case, based on a preponderance of the evidence, which indicates that it is more likely than not that a policy violation has or has not occurred, and identifies appropriate remedies and/or sanctions, if any.
- Prepare a complete report on the investigation and findings.

As noted above, an investigation of the complaint will be conducted by the Title IX Coordinator or his or her designee unless it is clear from the face of the complaint or the Title IX Coordinator's initial meetings with the parties that no reasonable grounds exist for believing that the conduct at issue violates this policy.

In the event that the complaint was made by someone other than the complainant, the Title IX Coordinator will consider the following factors in determining whether it is reasonable to investigate the complaint:

- The source and nature of the information.
- The seriousness of the alleged incident.
- The specificity of the information.
- The objectivity and credibility of the source of the information.
- Whether the complainants can be identified.
- Whether those individuals wish to pursue the matter.

In the event that the Title IX Coordinator determines that an investigation of the complaint should not be conducted, he or she will determine and document (in consultation, as necessary, with the complainant, the respondent, and any other university administrators) the appropriate resolution of the complaint and inform the parties of the same.

With all complaints, if the Title IX Coordinator determines that an investigation should be conducted, the Title IX Coordinator or his or her designee will promptly investigate the matter. The existence of concurrent criminal investigations or proceedings shall not delay the investigation of any complaint filed under this policy.

If another individual is designated to investigate the matter, the Title IX Coordinator will share the investigator's name and contact information with the complainant and the respondent and will forward the complaint to the investigator. Within three (3) days of such appointment, the investigator, the complainant, or the respondent may identify to the Title IX Coordinator in writing any real or perceived conflicts of interest posed by assigning such investigator to the matter. The Title IX Coordinator will carefully consider such statements and will assign a different individual as investigator if it is determined that a material conflict of interest exists. Upon receipt of the complaint, the Title IX Coordinator will promptly begin the investigation, which shall include but is not limited to the following:

- Conducting interviews with the complainant, the reporting party (if not the complainant), the respondent, and third-party witnesses (including expert witnesses, where applicable), and summarizing such interviews in written form.
- Visiting, inspecting, and taking photographs at relevant sites.
- Where applicable, collecting and preserving relevant evidence (in cases of corresponding criminal reports, this step may be coordinated with law enforcement agencies).

Throughout the investigation, the Title IX Coordinator will remain neutral. The Title IX Coordinator should obtain, where applicable and where possible, the written consent of any third-party witnesses to the disclosure, as contemplated by this policy, of any information that is personally identifiable to the third-party contained in the complaint, the investigative report, and for any other documents the disclosure of which is contemplated by this policy in order to further the resolution of the complaints.

Initial Meeting with Complainant and/or Reporting Party

As soon as is practicable, the Title IX Coordinator will contact the complainant and the individual reporting party (if not the complainant) to schedule an initial meeting to, as applicable:

- Provide a copy of this policy.
- Provide instructions on how to file a complaint, if he or she agrees to disclose the information. Complaints should provide details regarding the allegation, including the name of the respondent and the date, location, and general nature of the alleged violation of policy. If the complaint is dictated to the Title IX Coordinator, the Title IX Coordinator will confirm the accuracy of his or her documentation with the complainant.
- Explain avenues for resolution.
- Explain the steps involved in an investigation under this policy.
- Discuss confidentiality standards and concerns.
- Determine whether the complainant wishes to pursue a resolution through the university or no resolution of any kind.
- Refer to law enforcement, counseling, medical, academic, or other resources, as appropriate.
- Discuss, as appropriate, possible interim measures that can be provided during the pendency of the investigative and resolution processes.

Interim Measures

Unless circumstances dictate otherwise, the Title IX Coordinator will promptly issue a “no contact” order to all parties upon notice of any sexual assault complaint. In all cases, the university may implement any necessary interim measures, deemed appropriate and reasonably available, regardless of whether a complaint has been filed (with either campus administrators or law enforcement agencies) or whether an investigation has commenced (by either campus administrators or law enforcement agencies).

Interim measures may include but are not limited to:

- Issuing no contact orders.
- Providing an escort to ensure that an individual can move safely between classes, work, and/or activities.
- Reassigning on-campus housing.
- Dissolving a campus housing contract and offering a prorated refund.
- Changing work arrangements or location.
- Rescheduling class work, assignments, and examinations.
- Arranging for the complainant to take an incomplete in a class.
- Reassigning class section.
- Permitting a temporary withdrawal from the university.
- Providing alternative course completion options.

- Providing counseling services.
- Providing academic support services.

Following the initial meeting with the complainant and the individual reporting the conduct (if not the complainant), the Title IX Coordinator will, if applicable, promptly determine the interim measures to be provided to the complainant. Such determination will be promptly communicated to the complainant, and no later than the point at which it is communicated to the respondent.

Initial Meeting with Respondent

If the complainant or individual reporting the conduct (if not the complainant) wishes to pursue resolution through the university, or if the university otherwise deems that a further investigation is warranted, as soon as is reasonably practicable after the Title IX Coordinator's initial meeting with the individual reporting the conduct (and, if applicable, the complainant), the Title IX Coordinator will schedule an initial meeting with the respondent. During the initial meeting with the respondent, the investigator will, as applicable:

- Provide sufficient written information, consistent with privacy laws and any request for confidentiality, to allow respondent to address the allegation (e.g., the name of the complainant/complainant, the date, location, nature of the alleged violation of policy, etc.).
- Provide a copy of this policy.
- Explain the university's procedures for resolution of the complaint.
- Explain the steps involved in an investigation under this policy.
- Discuss confidentiality standards and concerns.
- Discuss non-retaliation requirements.
- Inform of any interim measures already determined and being provided to the complainant and/or the complainant that would directly affect the respondent (e.g., changing class schedule, moving to an alternate residence hall, etc.).
- Refer to law enforcement, counseling, medical, academic, or other resources, as appropriate.
- Discuss, as appropriate, possible interim measures that can be provided to the respondent during the pendency of the investigative and resolution processes.

Failure to Respond

If any party was provided proper notice of the proceedings but fails to respond to requests to meet with the Title IX Coordinator or his or her designee, fails to provide requested information to the university or fails to otherwise cooperate with the investigation, absent extenuating circumstances, that party will be deemed to have waived his or her opportunity to participate in the investigation.

Any party may choose not to participate in the investigation or any appeal; however, his or her exercise of that option will not preclude the Title IX Coordinator, the Title IX Coordinator's designee or the administrator designated to consider the appeal from making a determination regarding the complaint filed against the respondent.

Support Persons

Both the complainant and the respondent may be accompanied by one support person to assist them during the investigation and the appeals process. This support person can be anyone, including an

attorney, but the support person may not take an active part in any interview. The support person may not speak on behalf of the party, present evidence, make objections or statements, ask questions or otherwise participate in any interview, beyond privately communicating with the party that he or she is supporting. The Title IX Coordinator may disallow the attendance of any support person if he or she is also a witness or if, in the discretion of the chair, such person's presence would be disruptive or obstructive to the interview, the investigative process or otherwise warrant removal. All support persons must agree to keep any and all information presented in the interview confidential in order to attend. Absent accommodation for disability, the parties may not be accompanied by any other individual during the investigative process except as set forth in this policy. University officials may seek advice from the university's Office of General Counsel on questions of law and procedure at any time during the process.

Prior Sexual Conduct

Evidence of the prior sexual conduct of the complainant and the respondent with others will not be considered during the investigation or appeal, with the following exceptions:

- Evidence is permitted to show that the complainant has in the past been formally disciplined by the university for falsely filing complaints alleging a violation of this policy.
- Evidence is permitted to show that the respondent has in the past been either convicted in a criminal proceeding or formally disciplined by the university for conduct which would violate this policy, if deemed relevant by the Title IX Coordinator (or the designated administrator, in the event of an appeal).
- Evidence regarding the past sexual activity of the respondent (regardless of whether the respondent was formally charged with a violation of the policy with respect to such conduct) may be permitted to show that the respondent has engaged in a pattern of behavior similar to the alleged violations of policy currently being investigated, provided that (1) the respondent has not been found "not responsible" by the university in a proceeding related to such conduct and (2) the Title IX Coordinator (or the designated administrator, in the event of an appeal) has made written findings both that the evidence is reliable and trustworthy and that the conduct is sufficiently and substantially similar to the conduct at issue in this investigation to suggest a pattern of behavior.

Investigative Report

The Title IX Coordinator shall complete a written investigative report ("investigative report") that shall include the following items:

- The name and sex of the complainant and, if different, the name and sex of the person reporting the allegation. (It should also include any other relevant protected class characteristics if the complaint involves a violation of this policy based on a protected status other than gender.)
- A statement of the allegation, a description of the incident(s), and the date(s) and time(s) (if known) of the alleged incident(s).
- The date that the complaint or other report was made.

- The date the complainant and the individual reporting the conduct (if not the complainant) were interviewed.
- The date the respondent was interviewed.
- The name and sex of all persons alleged to have committed the alleged violation of this policy. (It should also include any other relevant protected status characteristics if the complaint involves a violation of this policy based on a protected status other than gender.)
- The name and sex of all known witnesses to the alleged incident(s).
- The dates that any relevant documentary evidence (including cell phone and other records as appropriate) was obtained.
- Any written statements of the complainant (or the person reporting the conduct, if different from the complainant), the respondent and any witnesses.
- Summaries of all interviews conducted, photographs, and descriptions of relevant evidence, summaries of relevant electronic records, and a detailed report of the events in question.
- A written finding on the case, based on a preponderance of the evidence which indicates whether or not it is more likely than not that a policy violation has occurred.
- The policy or policies violated and, in consultation, as necessary, with the complainant, the person reporting the conduct (if different than the complainant), respondent, and other university officials, any remedial and/or disciplinary action deemed appropriate under the circumstances.
- The response of university personnel and, if applicable, university-level officials, including any interim measures and permanent steps taken with respect to the complainant, the person reporting the conduct (if different than the complainant) and the respondent.
- A narrative of all action taken to prevent recurrence of any harassing incident(s), including any written documentation.

If the Title IX Coordinator is unable to obtain the consent of third-party witnesses, he or she will redact the investigative report to the extent necessary to avoid inappropriate disclosure of such witness's personally identifiable information to the extent that such redaction does not prevent resolution of the complaint.

If the Title IX Coordinator determines and documents, based on the investigation, that reasonable grounds exist to believe that the conduct at issue constitutes a violation of this policy, the Title IX Coordinator will convene a Sanctions Panel of three Title IX Committee members who did not participate in the investigation and who do not have a material conflict of interest. The Sanctions Panel will determine the appropriate remedy and/or sanction to be imposed within three (3) working days. The Title IX Coordinator will include the appropriate remedy and/or sanction in the investigative report. Imposition of the appropriate remedy and/or sanction will be imposed only after all appeals have been exhausted.

In determining the appropriate remedy and/or sanction, the university will act to end the discrimination, harassment, retaliation or sexual misconduct, prevent its recurrence and remedy its effects on the complainant and/or university community. Sanctions will depend upon the nature and gravity of the misconduct, any record of prior discipline for a violation of this policy, or both. Sanctions may include, without limitation, withholding a promotion or pay increase, reassigning employment, terminating employment, temporary suspension without pay, compensation adjustments, expulsion or suspension

from the university, disciplinary probation, expulsion from campus housing, mandated counseling, and/or educational sanctions as deemed appropriate.

The Title IX Coordinator shall complete and distribute the investigative report, concurrently, to the complainant and respondent within forty-five (45) calendar days following receipt of a complaint. All parties to whom the investigative report is distributed pursuant to this policy should maintain it in confidence. The investigative report may only be disclosed as contemplated by this policy.

If the Title IX Coordinator finds no reasonable grounds to believe that the conduct at issue constitutes a violation of this policy, then the Title IX Coordinator will determine and document the appropriate resolution of the complaint in the investigative report and will promptly notify the parties of that determination.

Appeal

The Complainant or the Respondent may appeal, in writing, the decision of the Title IX Coordinator as to the findings, appropriate remedy and/or sanctions within 7 calendar days from the date of the receipt of the investigative report. The decision of the Title IX Coordinator and the sanctions imposed on the Respondent may, if desired, be appealed simultaneously. The only basis for appeal shall be:

- 1) Alleged failure of the Title IX Coordinator or his or her designee to follow the procedures set forth in the Policy Prohibiting Sex- and Gender-Based Discrimination, Harassment, and Misconduct Complaints, and Complaint Retaliation; or
- 2) Consideration of new evidence that was not reasonably available at the time the Title IX Coordinator or his or her designee was undertaking the investigation.

All appeals in which the respondent is a student shall be made to the Vice President for Student and External Affairs.

All appeals in which the respondent is a university faculty member who is not tenured shall be made to the Provost. All appeals in which the respondent is a tenured faculty member and the sanction imposed is termination of the respondent's employment, the matter shall proceed pursuant to the Faculty Handbook (III.Q.2. Termination of Employment of Tenured Faculty for Cause). All appeals in which the respondent is a tenured faculty member and the sanction imposed is anything other than termination shall be made to the Provost.

All appeals in which the respondent is a university staff member, other than employees in the Department of Athletics and employees who report directly to the President, shall be made to the Vice President of the area in which the employee works. All appeals in which the respondent is an employee in the Department of Athletics or an employee who reports directly to the President shall be made to the President.

The appeal should include a brief statement describing what is being appealed (the findings set out in the investigative report, remedy and/or sanctions imposed) and the basis for appeal. The appealing party must also provide a copy of the appeal to the Title IX Coordinator within the same time period.

Acceptable means of notification include email, facsimile, hand-delivery, or postal delivery to the specified individual. The Title IX Coordinator will promptly inform the other party of the appeal.

Within fifteen (15) calendar days of receipt of the appeal, the administrator who is designated to consider the appeal will make a final determination as to whether the complaint should be closed, whether a violation of policy has occurred, and/or whether any additional or different remedial action or sanctions are warranted. The designated administrator will concurrently notify the complainant and the respondent of his or her decision.

With regard to such faculty and staff, nothing in this policy shall be construed to prevent or delay the university from taking any disciplinary action deemed appropriate (including suspension and immediate termination of employment) for any violation of state law, federal law, or university policy.

There is no right to a hearing on appeal. The administrator who is designated to consider the appeal may, at his or her discretion, request a conference with one or both parties or any witnesses while he or she is considering the information presented in the appeal.

Standard of Proof

In considering the complaint, the Title IX Coordinator, the Title IX Coordinator's designee, or the designated administrator (in the event of an appeal that includes the proper presentation of new evidence as a ground for appeal) will determine if the information gathered and evidence presented during the investigation establishes that it is more likely than not that the respondent committed a violation of this policy. In other words, the standard of proof will be the preponderance of the evidence.

Factors to be Considered in Determining Sanctions

If the Title IX Coordinator, the Title IX Coordinator's designee, or the designated administrator (in the event of an appeal) determines that more likely than not the respondent committed a violation of this policy, the Sanctions Panel will recommend sanctions and give consideration to whether a given sanction will (a) bring an end to the violation in question, (b) reasonably prevent a recurrence of a similar violation, and (c) remedy the effects of the violation.

Sanctions for a finding of responsibility will depend upon the nature and gravity of the misconduct, any record of prior discipline for a violation of this policy, or both. Sanctions may include, without limitation, expulsion or suspension from the university, disciplinary probation, expulsion from campus housing, mandated counseling, and/or educational sanctions deemed appropriate by the Sanctions.

Ordinarily, sanctions will not be imposed until the resolution of any timely appeal under this policy. However, if it is deemed necessary to protect the welfare of the complainant or the university community, the Title IX Coordinator may recommend and the President or his or her designee may determine that any sanctions be imposed immediately and continue in effect until such time as the appeal process is exhausted.

At such time that the appeal process is exhausted, the Title IX Coordinator will determine the final accommodations to be provided to the complainant, if any, and the Title IX Coordinator will communicate such decision to the complainant and the respondent to the extent that it affects him or her.

The Title IX Coordinator will also take steps to prevent any harassment of or retaliation against the complainant, the individual reporting the alleged conduct (if not the complainant), or third parties, such as informing them about how to report subsequent problems, following up with them to ensure that there are no subsequent problems, providing training for the campus community, and providing counseling for the respondent. The Title IX Coordinator will also take steps to prevent the harassment of or retaliation against the respondent.

Furthermore, the Title IX Coordinator will take prompt corrective action if the complainant or the individual reporting the alleged conduct (if not the complainant) experiences retaliation or is subjected to further violation of this policy or if the original sanctions imposed on the respondent are ineffective to protect the safety and well-being of the complainant, the individual reporting the alleged conduct (if not the complainant), or other members of the university community. The Title IX Coordinator will also take reasonable steps to eliminate any hostile environment that has been created, such as conducting trainings and disseminating informational materials. In taking the above outlined steps, the Title IX Coordinator will make every reasonable effort to minimize the burden on the individual reporting the alleged conduct and/or complainant.

Final Outcome Letter

Within fifteen (15) calendar days of receipt of the appeal, the administrator who is designated to consider the appeal will issue a written decision letter (the “final outcome letter”) concurrently to the respondent and the individual reporting the conduct (if not the complainant). The final outcome letter will set forth (1) the name of the respondent, (2) the violation(s) of this policy for which the respondent was found responsible, if any, (3) the recommended sanctions imposed on the respondent, if any, and it may set forth names of other individuals, such as a complainant or witness, provided that such other individuals provide their written consent to such inclusion.

In order to comply with FERPA, the letter will not include information considered part of a party’s “education record” (as that term is defined by FERPA) that is not otherwise exempt from disclosure under the Act, or other information about sanctions that do not relate to the complainant.

Confidentiality and Disclosure

In order to comply with FERPA and Title IX and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, no part of the investigative process or the appeals process will be open to the general public. Accordingly, documents created, gathered or presented during the investigation or appeal process (including the complaint and the investigative report) may not be disclosed to any individual other than university officials with a legitimate interest in the matter, except as may be required or authorized by law.

Time Periods

The university will make every reasonable effort to ensure that the investigation and resolution of a complaint occurs in as timely and efficient a manner as possible. The university’s investigation and resolution of a complaint (including an appeal, if applicable) will generally be completed within 60 calendar days of the receipt of the complaint, absent extenuating circumstances.

Any party may request an extension of any deadline by providing the Title IX Coordinator or his or her designees with a written request for an extension that includes reference to the duration of the proposed extension and the basis for the request. Title IX Coordinator has the authority to grant or deny such request; that decision is final and not subject to appeal.

For purposes of calculating all time periods set forth in this complaint and grievance policy, a “calendar day” excludes recognized national holidays, recognized state holidays, and days that the university is closed (i.e., Christmas break, inclement weather closures).

Timelines may be modified in cases in which the university determines that the information is not clear, judged to be incomplete, relevant parties are not available for interview, and/or other related circumstances as may arise. The Title IX Coordinator may also modify any deadlines contained in this policy as necessary and for good cause.

Acknowledgement of Responsibility

At any time prior to the issuance of the investigative report or while an appeal is pending, the respondent may elect to acknowledge his or her actions and take responsibility for the alleged policy violation. In such situations, the Title IX Coordinator will convene a Sanctions Panel to determine the sanction(s). If either party objects to the proposed sanction(s), they may appeal the sanction pursuant to this policy.

No Retaliation

Retaliation against any person who files a complaint, participates in an investigation, or opposes a discriminatory employment or educational practice or policy is prohibited. A person who believes retaliation has occurred should notify the Title IX Coordinator as soon as possible.

False Reports

Willfully making a false report of sexual harassment is a violation of university policy and is a serious offense. Any person who willfully makes or participates in making a false or frivolous report of discrimination, harassment, retaliation or sexual misconduct will be subject to disciplinary action. False reporting may also violate state criminal statutes and civil defamation laws.

Office of Civil Rights Complaint

Although complainants are encouraged to resolve their grievances related to discrimination by utilizing this complaint procedure, they have the right to file a complaint directly with the U.S. Department of Education, Office for Civil Rights (OCR). Information regarding applicable timelines and procedures is available from OCR. You may call 1.800.421.3481 to obtain further information about filing a complaint with OCR.

Effective Date

The university reserves the right to make changes and amendments to this policy as needed, with appropriate notice to the campus community. However, the policy in force at the time that a complaint is filed will be the policy used throughout the investigation and any appeals that are heard.

Documentation

The university will retain documentation (including but not limited to the written complaint, notifications, the investigative report, any written findings of fact, petitions for appeal, and any written communication between the parties) for at least three (3) years. Documentation pertaining to terminations, expulsions, or educational sanctions may be retained indefinitely.

Definition of Terms

Complainant: Any party who makes a complaint against a student, employee, staff member, or campus visitor.

Consent: Consent is informed, freely and actively given and mutually understandable clear permission communicated by words or actions that indicate a willingness to engage in a mutually agreed-upon sexual activity. Consent is clear, knowing, active, and voluntary. Consent is not passive. Silence does not constitute consent. Consent cannot be inferred from passivity or lack of resistance alone. Consent can be withdrawn at any time. Coercion, intimidation, force, or threat of either invalidates consent. There is no consent when there is force, expressed or implied, or use of duress or deception upon the complainant. Past consent to sexual activities does not imply ongoing future consent. Previous relationships cannot imply consent to future sexual acts. Consent to any one form of sexual activity does not automatically imply consent to any other forms of sexual activity. If an individual has taken advantage of a position of influence over a complainant may be a factor in determining consent.

Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive. Consent cannot be gained by ignoring or acting in spite of the objections of another.

If a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact, nature, or extent of the sexual situation, there is no consent. This includes impairment or incapacitation due to voluntary alcohol or drug consumption, or being asleep or unconscious. Incapacitation is a state in which someone cannot make rational, reasonable decisions because he or she lacks the capacity to give knowing consent.

Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes overt threats, implied threats, intimidation, and coercion that overcome resistance or produce consent.

Under Arkansas law, the age of consent varies with the degrees of assault, the age of the actor, and the relationship of the actor to the other party. However, consent may never be given by a person in Arkansas under the age of 14. For specific information, please refer to Arkansas statutes (e.g., Arkansas Code Annotated §5-14-125, Sexual Assault in the Second Degree).

Sexual activity with someone known to be mentally, physically, or legally incapacitated, or based on the circumstances, someone who could reasonably be known to be mentally or physically incapacitated, constitutes a violation of this policy.

This policy also covers a person whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of substances commonly known as “rape drugs”. Possession, use,

and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc., is prohibited, and administering one of these drugs to another person is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org/>.

Use of alcohol or other drugs will never function as a defense to an allegation of violation of this policy.

Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. It includes any unwelcome physical violence such as hitting, pulling, shoving, kicking, biting, or throwing things; and sexual assault, sexual exploitation, and sexual harassment.

Discrimination (general definition): Conduct that is based upon an individual's race, color, ethnicity, religion, sexual orientation, gender identity, national origin, service in the uniformed services (as defined in state and federal law), veteran status, sex, age, physical disability or mental disability that excludes an individual from participation, denies the individual the benefits of, treats the individual differently, or otherwise adversely affects a term or condition of an individual's employment, education, living environment, or participation in a university program or activity. This includes failing to provide reasonable accommodation, consistent with state and federal law, to persons with disabilities.

Discriminatory Harassment: Detrimental action based on an individual's race, color, ethnicity, religion, sexual orientation, gender identity, national origin, service in the uniformed services (as defined in state and federal law), veteran status, sex, age, physical disability or mental disability. Harassing conduct may take various forms, including, name-calling, graphic or written statements (including the use of cell phones or the Internet), or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Gender-based harassment includes sexual harassment.

Domestic Violence: Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members; or any sexual conduct between family or household members, whether minors or adults, constitutes a crime under the laws of this state. Family or household members means spouses, former spouses, parents and children, persons related by blood within the fourth degree of consanguinity, any children residing in the household, persons who presently or in the past have resided or cohabited together, persons who have or have had a child in common, and persons who are presently or in the past have been in a dating relationship together. See also, Arkansas Code Annotated §9-15-103—"Domestic Abuse".

"Employee" Status: Full and part-time university employees who are not enrolled as students will be considered "employees" for the purposes of this policy. A full-time employee of the university who is enrolled as a student will also be considered an "employee" for the purposes of this policy.

Hostile Environment: A hostile environment exists when there is harassing conduct based on race, color, ethnicity, religion, sexual orientation, gender identity, national origin, service in the uniformed services (as defined in state and federal law), veteran status, sex, age, physical disability or mental disability that is sufficiently serious (i.e., severe, pervasive, or persistent) and objectively offensive to deny or limit a person's ability to participate in or benefit from the university's programs, services, opportunities, or activities; or when such conduct has the purpose or effect of unreasonably interfering

with an individual's employment. Harassment that creates a hostile environment ("hostile environment harassment") violates this policy.

Non-Consensual Sexual Contact: Non-consensual sexual contact is any intentional sexual touching, however slight, with any object by a male or female upon a male or a female that is without consent and/or by force. Sexual contact includes intentional contact with the breasts, buttock, groin, or genitals, or touching the body of another person 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/of/by breasts, buttocks, groin, genitals, mouth, or other orifice.

Non-Consensual Sexual Intercourse: Non-consensual sexual intercourse is any sexual intercourse, however slight, by a male or female upon a male or a female 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.

Respondent: The person(s) against whom a complaint has been made.

Retaliation: Action taken by an accused individual or by a third party against any person because that person has opposed any practices forbidden under this policy or because that person has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this policy. This includes action taken against a bystander who intervened to stop or attempt to stop discrimination, harassment, or sexual misconduct. Retaliation includes intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual's complaint or participation. Action is generally deemed retaliatory if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this policy.

Sexual Assault: An actual or attempted sexual contact with another person without that person's consent. Sexual assault includes but is not limited to involvement in any sexual contact when the complainant is unable to consent; intentional and unwelcome touching of, or coercing, forcing, or attempting to coerce or force another to touch a person's intimate parts (defined as genital area, groin, inner thigh, buttocks, or breast); and sexual intercourse without consent, including acts commonly referred to as "rape."

Sexual Exploitation: Occurs when a person takes non-consensual or abusive sexual advantage of another for his or her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of behavior that could rise to the level of sexual exploitation include but are not limited to:

- Invading sexual privacy.
- Prostituting another person.
- Non-consensual video or audio-taping of sexual activity.
- Going beyond the boundaries of consent (e.g., allowing others to watch consensual sex without that party's knowledge or consent);
- Engaging in voyeurism.

- Non-consensual distribution of photos, other images, or information of an individual's sexual activity, intimate body parts, or nakedness, with the intent to or having the effect of embarrassing an individual who is the subject of such images or information.
- Knowingly transmitting a sexually transmitted infection (STI), such as HIV, to another without disclosing one's STI status.
- Exposing one's genitals in non-consensual circumstances or inducing another to expose his or her genitals.
- Possessing, distributing, viewing, or forcing others to view illegal pornography.

Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

Sexual Harassment: Unwelcome, gender-based spoken, written, or symbolic action or physical conduct that is sufficiently severe, persistent, or pervasive that it has the effect of unreasonably interfering with, limiting, or denying someone the ability to participate in or benefit from the university's educational programs. The unwelcome behavior may be based on power differentials, the creation of a hostile environment, or retaliation.

For the purpose of this policy, sexual harassment includes stalking or repeatedly following, harassing, threatening, or intimidating another by telephone, mail, electronic communication, social media, or any other action, device, or method that purposely or knowingly causes substantial emotional distress or reasonable fear of bodily injury or death. Sexual harassment also includes quid pro quo sexual harassment which exists when there are unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature and submission to or rejection of such conduct results in adverse educational or employment action.

Not all workplace or educational conduct that may be described as "harassment" affects the terms, conditions, or privileges of employment or education. For example, a mere utterance of an ethnic, gender-based, or racial epithet which creates offensive feelings in an employee or student would not normally affect the terms and conditions of their employment or limit a student's ability to participate in or benefit from the university's educational programs or activities.

Sexual Misconduct: Includes sexual assault, inducing incapacitation for sexual purposes, sexual exploitation, and dating and domestic violence.

"Student" Status: Any student who is a part-time employee of the university will be considered a "student" for the purposes of this policy unless the incident under consideration occurred in connection with his or her employment. Students who are not employed by the university will be considered "students" for the purposes of this policy.