

NOTICE OF REGULATION REPEAL

December 7, 2015

DEPARTMENT OF EDUCATION

Division of Universities
University of North Florida

REGULATION TITLE:

Sexual Misconduct

REGULATION NO.:

1.0050R

SUMMARY:

The repeal is being undertaken in order to establish and implement a new regulation that is current with federal regulations and in accordance with present University practice and procedure.

FULL TEXT:

The full text of the regulation for repeal is attached.

AUTHORITY:

Board of Governors Regulation 1.001
Board of Governors Regulation Development Procedures March 23, 2006

UNIVERSITY OFFICIAL INITIATING THE REPEALED REGULATION:

Scott Bennett, Associate Vice President, Administration and Finance

INDIVIDUAL TO BE CONTACTED REGARDING THE REPEALED REGULATION:

Stephanie Howell, Paralegal, Office of the General Counsel, showell@unf.edu, phone (904)620-2828; fax (904)620-1044; Building 1, Room 2100, 1 UNF Drive, Jacksonville, FL 32224.

Any comments regarding the repeal of the regulation must be sent in writing to the contact person on or before December 22, 2015, to receive full consideration.



Regulation Number	Subject	Effective Date	Revised Date
1.0050R	Sexual Misconduct	10/27/06	10/16/12
Responsible Unit/Division:			
<input type="checkbox"/> New Regulation Proposal	<input checked="" type="checkbox"/> Major Revision of Existing Regulation	<input type="checkbox"/> Minor/Technical Revision of Existing Regulation	<input type="checkbox"/> Reaffirmation of Existing Regulation

I. OBJECTIVE & PURPOSE

~~The University of North Florida is committed to providing all students, faculty, staff, vendors, visitors or others, an environment where they can work, study and interact with each other in a safe and dignified learning community free from any form of sexual misconduct. This regulation provides guidance regarding conduct that constitutes sexual misconduct, reporting responsibilities regarding such conduct and information on complaint procedures to address alleged violations of this regulation.~~

II. STATEMENT OF REGULATION AND AFFIRMATION

~~For purposes of this regulation, "sexual misconduct" includes sexual exploitation, sexual harassment, non-consensual sexual contact, and non-consensual sexual intercourse, each as more fully defined below. Sexual misconduct violates university policy and federal civil rights law and may also be subject to criminal prosecution. The university is committed to fostering an environment that promotes prompt reporting of all types of sexual misconduct and timely and fair resolution of sexual misconduct complaints.~~

~~As a recipient of federal funds, the university is required to comply with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* ("Title IX")¹, which prohibits discrimination on the basis of sex in education programs or activities. Sexual misconduct, as defined in this regulation, is a form of sex discrimination prohibited by Title IX. The University of North Florida is committed to providing programs, activities and an~~

¹ Title IX requires that the university have a statement of policy and procedure for handling complaints of Sexual Misconduct. 20 U.S.C. 1092(1)(7) and 1681 (a). This Regulation constitutes that statement.

educational environment free from sex discrimination. Additionally, as an employer, the university is required to comply with Title VII of the Civil Rights Act of 1964 and other federal and state laws regarding sex-based harassment.

The university has designated the Director of the Office of the Equal Opportunity and Diversity (“EOD”) as its Title IX Administrator (See contact information in Section VI below).

The university is also required and committed to upholding the First Amendment of the United States Constitution as well as committed to protecting academic freedom. Nothing in this regulation is intended to abridge the rights guaranteed by the First Amendment or to infringe on Academic Freedom.

A. Definitions

1. "Sexual misconduct" is a broad term encompassing "sexual exploitation," "sexual harassment," "non-consensual sexual contact," and "non-consensual sexual intercourse," as defined in this regulation. Sexual misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual misconduct can be committed by men or by women, and it can occur between people of the same or different sex.
2. "Effective consent" means words or actions that show a knowing and voluntary agreement to engage in mutually agreed upon sexual activity. Effective consent cannot be gained by force, by ignoring or acting in spite of the objections of another, or by taking advantage of the incapacitation of another, where the accused student knows or reasonably should have known of such incapacitation. Effective consent is also absent when the activity in question exceeds the scope of effective consent previously given.
3. "Force" means physical force, violence, threat, intimidation or coercion.
4. "Incapacitation" means the physical and/or mental inability to make informed, rational judgments. States of incapacitation include, without limitation, sleep, blackouts, and flashbacks. Where alcohol [or other drug] is involved, one does not have to be intoxicated or drunk to be considered incapacitated. Rather, incapacitation is determined by how the alcohol consumed impacts a person's decision-making capacity, awareness of consequences, and ability to make informed judgments. The question is whether the accused knew, or a sober, reasonable person in the position of the accused should have known, that the complainant was incapacitated. Because incapacitation may be difficult to discern, individuals are strongly encouraged to err on the side of caution; i.e., when in doubt, assume that another person is incapacitated and therefore unable to give effective consent. Being intoxicated or drunk is never a defense to a complaint of sexual misconduct under this regulation.
5. "Non-consensual sexual contact" means sexual contact that occurs without effective consent.
6. "Non-consensual sexual intercourse" means sexual intercourse that occurs without effective consent.

7. ~~"Sexual contact" means the deliberate touching of a person's intimate parts (including genitalia, groin, breast or buttocks, or clothing covering any of those areas), or using Force to cause a person to touch his or her own or another person's intimate parts.~~
8. ~~"Sexual exploitation" means taking sexual advantage of another person without effective consent, and includes, without limitation, causing or attempting to cause the Incapacitation of another person in order to gain a sexual advantage over such other person; causing the prostitution of another person; recording, photographing or transmitting identifiable images of private sexual activity and/or the intimate parts (including genitalia, groin, breasts or buttocks) of another person; allowing third parties to observe private sexual acts; engaging in voyeurism; and/or knowingly or recklessly exposing another person to a significant risk of sexually transmitted infection, including HIV.~~
9. ~~"Sexual intercourse" means penetration (anal, oral or vaginal) by a penis, tongue, finger, or an inanimate object.~~
10. ~~"Sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal (including written and electronic communications) or physical conduct of a sexual nature from any person when:~~
- ~~• Submission to such conduct or request is made either explicitly or implicitly a term or condition of a student's status in a course, program, or activity; or of academic achievement; or~~
 - ~~• Submission to such conduct or request is made either explicitly or implicitly a term or condition of an individual's employment, salary increase, position advancement, or other employment-related benefits; or~~
 - ~~• Submission to or rejection of such conduct or request by an individual is used as the basis for an academic decision or employment decision affecting such individuals; or;~~
 - ~~• Such conduct is sufficiently serious (i.e., severe, persistent or pervasive) to deny or limit a student's ability to participate in or benefit from the University's educational programs or activities or such conduct is sufficiently severe or pervasive so as to alter the conditions of, or have the purpose and effect of substantially interfering with, a faculty or staff member's employment by creating an intimidating, hostile or offensive working environment.~~

B. ~~Examples of Sexual Misconduct~~

~~The following are common examples of unwelcome conduct when sex-based that may rise to the level of sexual harassment as defined in this regulation. Actions that are sufficiently *serious, severe, persistent or pervasive that may* be found to constitute Sexual Harassment include:~~

- ~~• Inappropriate touching or brushing against the body of another including, but not limited to patting, fondling, massaging, caressing, pinching, attempted or actual kissing.~~

- ~~Requesting sex or sexual acts in exchange for an occupational or educational benefit.~~
- ~~Repetitive propositions, invitations or pressure for sexual activity by a party when the other party finds the propositions and invitations to be unwelcome.~~
- ~~Suggestive or inappropriate sex-based communications, notes, letters, e-mail, text messages, contact through social media (i.e. Facebook, Instagram, Twitter, etc.) or other written materials.~~
- ~~Displaying, transmitting or sending sexually based suggestive or inappropriate photographs, videos, computer images, slides, calendars, cartoons or drawings through any medium.~~
- ~~Sexual innuendo, comments, or remarks about a person's clothing, body, or activities which places an individual in fear of imminent physical or psychological harm or injury.~~
- ~~Actual or implied sexual threats or intimidation which places an individual in fear of imminent physical or psychological harm or injury.~~

~~C. Actions that do not Constitute Sexual Misconduct~~

~~A postsecondary educational environment is unique in that there must be the freedom to express ideas and to foster communication on subjects that enhance the university's educational mission. Accordingly, while the university is committed to providing a learning environment that is free from sexual harassment, the purpose of this regulation is not intended to abridge academic freedom or to interfere with free speech as guaranteed by the First Amendment. As such, pursuant to this regulation sexual harassment does not include:~~

- ~~The expression of ideas in an academic context to provoke thought or discussion on topics germane to the course and advancement of the university's educational mission.~~
- ~~Engagement in debate or discourse over issues that society may find to be unpopular, offensive or disagreeable.~~
- ~~Discussing, using or displaying views, words, symbols or thoughts in an academic setting which are germane to the course and which some persons may find to be offensive.~~

~~Faculty must, however, be mindful that the courts have placed restraints on academic freedom at public institutions, such as UNF, and that conduct in the classroom cannot deny or limit a student's ability to participate in or benefit from the university's educational programs or activities. Further, while there is no "bright line" test regarding the appropriateness of the content of expression in an academic setting, all students, faculty and staff have an obligation pursuant to this regulation to conduct themselves in a "reasonable" manner in their interactions with other members of the university community.~~

~~III. VIOLATIONS~~

~~In determining whether alleged conduct constitutes sexual misconduct in violation of this regulation, the conduct will be evaluated from the perspective of a reasonable person in the alleged victim's position considering the totality of the circumstances, such as the nature of the alleged conduct and the context in which the alleged conduct occurred. In an academic~~

setting, consideration will be given to free speech and academic freedom. For example, expression that is intended to facilitate discourse or debate in a classroom setting or open debate forum may be considered appropriate, but similar expression in the workplace may be unwelcome and inappropriate in the context of communications between employees. Those found to have violated this regulation will be subject to disciplinary action up to and including termination.

IV. REGULATION REQUIREMENTS

A. Responsibility to Comply with the Sexual Misconduct Regulation.

All members of the university community are responsible for ensuring that their conduct does not violate this regulation. This same responsibility extends to, vendors, contractors (including the employees of third parties), visitors or others on the University's campus or at any University sponsored or University related function or activity. EOD will consult with the vendor or contract manager to determine how any investigation will be undertaken. The university shall take action against the vendor or contractor, when warranted, in accordance with the terms of the governing contract or agreement.

B. Required Responsibility to Report Perceived or Actual Violations of the Sexual Misconduct Regulation.

- 1. Responsibility of Supervisors and Managers:** All supervisors and managers (defined for purposes of this regulation as supervising 1 or more employees) are required to promptly report to the Office of Equal Opportunity and Diversity (EOD) (either verbally or through written communications) allegations, reports or instances of alleged sexual misconduct by or against any person covered by this Regulation.
- 2. Responsibility of Faculty:** All faculty are required to promptly report to the EOD or alternatively to their department chair, dean or applicable academic administrator allegations, reports or instances of alleged sexual misconduct by or against a student in violation of the University's Sexual Misconduct Regulation. Persons to whom alleged acts of sexual misconduct are reported must then promptly report the matter to the EOD (either verbally or through written communications).
- 3. Responsibility of Community members:** To maintain an environment free from sexual misconduct, the responsibility for reporting incidents of sexual misconduct rests with all members of the university community. Thus, any employee, staff or faculty member, student, applicant or other community member who believes another community member is being subjected to sexual misconduct in violation of this regulation is strongly encouraged to report the matter to their supervisor, manager, or directly to the EOD (As discussed above, all alleged incidents of conduct in violation of the University's Sexual Misconduct Regulation must be promptly reported to the EOD).
- 4. Responsibility of Victim:** An individual who deems another's conduct as sexually offensive is encouraged to advise the offending party that the conduct is unwelcome and to ask the offender(s) to cease same. An individual who feels uncomfortable

and/or harmed by offensive behavior should also try to remove themselves from the offending situation and seek help as quickly as possible by reporting the offending conduct to an individual designated in this regulation. However, failure for an individual to take affirmative steps to stop sexual misconduct in no way bars the individual from seeking relief through filing a claim under this regulation.

C. Amorous and Sexual Relationships

It is not uncommon for university community members who study, work or interact together to develop caring relationships. However, when persons in positions of unequal power engage in amorous or sexual relationships (e.g., between a supervisor and an employee, faculty member and student, or staff member and student) the person of greater power places themselves at risk of being accused of sexual harassment, either during the relationship or after the relationship ends. Accordingly, the university has adopted a policy prohibiting amorous or sexual relationships where one individual in the relationship is in a position to exercise authority such that it would impact the educational or work performance of the other individual. (*see Amorous or Sexual Relationships Policy 13.0060P*).

V. RETALIATION

Retaliation, or otherwise taking adverse employment or educational action, against a member of the university community because they in good faith reported sexual misconduct, or participated in an investigation or review regarding a complaint, is strictly prohibited. Those found to have violated this prohibition against retaliation will be subject to disciplinary action up to and including termination.

VI. REGULATION PROCEDURES

A. Seeking Guidance or Filing a Complaint under this Regulation.

Any member of the university community who believes that he or she has been subjected to sexual harassment; any member of the community who believes that he or she has been subjected to retaliation related to an allegation of sexual misconduct; or any member of the community who believes that others have been subjected to sexual harassment in violation of this regulation, may seek guidance, counseling or file a complaint in accordance with this regulation by contacting: **Director, Office of Equal Opportunity and Diversity**, University of North Florida, J. J. Daniel Hall, Room 1201, 1 UNF Drive, Jacksonville, Florida 32224-2645, (904) 620-2507 Voice & TDD and (904) 620-1004 Fax or via 711 Florida Relay for persons who are deaf or hard of hearing or those with speech impairments and/or limitations.

B. Complaint Procedure.

Allegations of violation of this regulation including the actual filing of a complaint of sexual misconduct will be addressed by the Director in accordance with the EOD

~~Complaint and Investigation Procedures which can be found on EOD's website at:
<http://www.unf.edu/eod/>.~~

~~VII. WHERE TO GET HELP~~

~~In addition to contacting the EOD office, any of the following offices at the University of North Florida may be contacted for information or assistance regarding matters involving sexual misconduct:~~

~~UNF Counseling Center~~

~~Founders Hall (Building 2)~~

~~Room 2300~~

~~(904) 620-2602~~

~~UNF Women's Center~~

~~Founders Hall (Building 2) Room 2100~~

~~(904) 620-2528~~

~~Office of Student Conduct~~

~~Founders Hall (Building 2)~~

~~Room 1011~~

~~(904) 620-3979~~

~~Office of the Student Ombuds~~

~~Founders Hall (Building 2)~~

~~Room 2104~~

~~(904) 620-1491~~

~~Office of Human Resources~~

~~J.J. Daniel Hall (Building 1)~~

~~Room 1000~~

~~(904) 620-2903~~

~~Office of Student Affairs~~

~~Student Union~~

~~Room 2091~~

~~(904) 620-2600~~

~~Office of Academic Affairs~~

~~J.J. Daniel Hall (Building 1)~~

~~Room 2500~~

~~(904) 620-2700~~

~~Office of the General Counsel~~

~~J.J. Daniel Hall (Building 1)~~

~~Room 2100 (904) 620-2828~~

If fear of physical safety, threats, or assault is involved contact:

University Police Department

Police Station (Building 41)

(904) 620-2801

or

University's Office of the Victim Advocate (located within the Women's Center)

Founders Hall (Building 2)

Room 2623

(904) 620-2528

Revisions approved by the Board of Trustees 10/16/12.