

JACKSONVILLE STATE UNIVERSITY

The friendliest campus in the South.

Title IX Gender-Based and Sexual Misconduct Policy*

Jacksonville State University

INTRODUCTION

Members of the Jacksonville State University (JSU) Community, guests and visitors have a right to be free from all forms of gender and sex-based discrimination, examples of which include, but are not limited to, acts of sexual violence, sexual harassment, domestic violence, dating violence, stalking, or discrimination based upon their sex, gender orientation or gender identity, or retaliation for reporting the same. All members of the University community are expected to conduct themselves in a manner that does not infringe on the rights of others. JSU has a zero tolerance policy for gender-based misconduct and will promptly investigate all allegations brought to the attention of University administrators. Where individuals are found to be in violation of this policy, appropriate sanctions will be imposed.

This policy has been developed to reaffirm the University's commitment to maintaining a safe campus community and to provide proper recourse for those individuals whose rights have been violated. The enforcement procedures utilized in implementing this policy balance the rights of victims, complainants, an accused and witnesses.

As the JSU administration is currently structured, the University's Title IX Coordinator, the Associated Vice President for Enrollment Management and Student Affairs, is responsible for implementation and application of this policy.

OVERVIEW REGARDING POLICY

Physical Sexual Misconduct: The expectations of the University regarding sexual misconduct can best be summarized as follows: In order for individuals to engage in sexual activity of any type with another, there must be a clear, knowing and voluntary mutual consent to and during the sexual activity. Consent means voluntary permission to engage in given conduct. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want to do or don't want to do sexually and may be misinterpreted. Consent to one form of sexual activity cannot automatically be taken as consent to other forms. Silence without actions that affirmatively demonstrate permission cannot be assumed to show consent.

Additionally, there is a difference between solicitation (asking), seduction (enticing), and coercion (intimidation, threats, compulsion). Coercing someone into sexual

activity violates this policy in the same way as physically forcing someone to engage in sexual activity. Pressuring one to engage in sexual activity may be considered as coercion when found to be unreasonable, depending on the circumstances and the parties involved.

Because alcohol or drugs can affect one's capacity to consent and places that issue in question, sober sexual activity is less likely to raise a question about capacity or effective consent. When alcohol or drugs are involved, even when voluntarily ingested, a person will be considered incapable to giving valid consent if they cannot fully understand the nature and extent and understand the details of the sexual interaction (who, what, when, where, how, why) because they lack capacity to understand the nature and extent of the situation. In other words, individuals who consent to sexual activity must be able to understand what they are doing. Anything less than a clear, unambiguous, knowing and voluntary consent to sexual activity should be considered a "No!"

Consensual Relationships:

The University community is comprised of more than just students. Those comprising the community include students, faculty, staff and administrators to name a few. Personal or romantic relationships between persons of unequal position, rank or power are inherently risky and are discouraged. A particular problem exists in these relationships because they may be less consensual than

perceived by the person whose position confers power over another. While personal relationships are not deemed unacceptable *per se*, it is not uncommon for such relationships to be viewed differently by each of the parties, particularly in retrospect. Further, situations may change so that what conduct was once consensual becomes unwelcome. Even when parties consent to a romantic or sexual involvement, such consent does not automatically remove the possibility of a charge of applicable provisions of faculty and staff handbooks.

The University does not wish to interfere with private choices regarding personal relationships so long as these relationships do not interfere with the goals and policies of the University. For the protection of all members of this community, relationships in which power differentials are inherent (staff-student, faculty-student, administrator-student, and even perhaps student-student where one has a superior position of power) are strongly discouraged.

Consensual romantic or sexual relationships in which one party has a direct supervisory or evaluative role over the other party are deemed, however, to be particularly damaging to the University mission and are considered unethical. Therefore, those persons with direct supervisory or evaluative responsibilities who are involved in such relationships must disclose those in a timely manner to their supervisor, which will likely result in removal of the person from supervisory or evaluative responsibilities, or may shift the student out of being supervised or evaluated by someone with whom they have established a consensual romantic or sexual relationship. This may also include RA's, GA's, lab assistants, etc., and students over whom they have supervisory or evaluative relationships. While there is no absolute prohibition against the relationships discussed, failure to self-report and disclose such a relationship to one's supervisor may result in disciplinary action for employee misconduct.

SEXUAL VIOLENCE RISK REDUCTION

Sexual violence risk reduction is an important part of the University's efforts to eliminate sex and gender-based misconduct. Often, however, attempts to educate students by discussing risk-reduction tips can be perceived as taking on a victim-blaming tone. With no intention to set such a tone, and with affirmative recognition that those who commit acts of sexual violence are and should be held responsible for their actions, these tips are offered in an effort to help students reduce their risk of experiencing non-consensual sexual contact or activity.

1. Make your limits known as early as possible.
2. If you find yourself in a position where another is exceeding your permissible limits by being sexually aggressive, tell the aggressor "NO" clearly and firmly.
3. Try to remove yourself from the physical presence of any sexual aggressor.
4. Call for help or find someone nearby and ask for help.
5. Take affirmative control of your alcohol intake or drug use. Drugs and alcohol lower your normal inhibitions and may make you vulnerable to one who views you as drunk or high and gives that person an opportunity to take advantage of the situation.
6. Friends take care of friends! Take care of your friends and ask that they take care of you. A friend will challenge you if you are about to make a mistake just as you should challenge them in a reverse situation. You should respect each other when they do.

If you are the initiator of sexual behavior, you owe respect to your potential partner. These suggestions may help reduce the risk of you being accused of sexual misconduct.

1. Clearly communicate your intentions to your prospective sexual partner and give them a chance to relate their intentions and expectations to you.
2. Understand and respect all personal boundaries
3. Do not make assumptions about consent, about one's sexual availability, about whether they are attracted to you, about how far you can go or about whether they are physically or mentally capable of giving consent. If there are questions, if you are uncertain, or if there is ambiguity, you do not have consent.
4. Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline or boundaries for sexual behaviors with which they are comfortable.

5. Don't take advantage of someone's drunkenness or drugged state, even if they did it to themselves. Intoxication, even if voluntary, can negate the effectiveness of consent and cause a sexual encounter to be without consent and potentially illegal.
6. Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size. Consent obtained through coercion is not deemed effective and may cause any contact to be considered non-consensual and potentially illegal. Don't abuse that power.
7. Understand that consent has limits and consent to some forms of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
8. Prior sexual relations with someone should not be assumed that the individual has or will consent to current or future sexual activity.
9. Silence and passivity cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

SEXUAL MISCONDUCT EXPLAINED

Sexual misconduct can occur in more than one form of conduct and does not have to be physical or physically aggressive. As the term is used in this policy, it includes, but is not limited to:

1. Sexual Harassment (Or Attempt to Commit the Same) - Unwelcome verbal, nonverbal, or physical conduct of a sexual nature that denies or limits, on the basis of sex, someone's ability to participate in or benefit from the University's educational program or activities. Sexual harassment can take two forms: quid pro quo harassment and hostile environment harassment. Quid pro quo harassment occurs if a teacher or other University employee conditions an educational decision or benefit on the student's submission to unwelcome sexual conduct. Hostile environment harassment is sexually-harassing conduct by a University employee, another student, or a third party that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the University's educational program or activities. Teachers and other University employees can engage in either type of harassment. Students and third parties generally can engage only in hostile environment harassment, unless they are given responsibility over other students.

Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence, stalking; gender-based verbal or physical abuse, intimidation or bullying.

2. Non-Consensual Sexual Contact (Or Attempt to Commit the Same) - Any intentional sexual touching, however slight, with any object, by a man or a woman upon a man or a woman, that is without consent and/or by force.

Examples include: 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/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

3. Non-Consensual Sexual Intercourse of Any Type (Or Attempts to Commit the Same) - Any sexual intercourse, however slight, with any object, by a man or woman upon a man or woman, that is without consent and/or by force, actual or constructive.

Examples include: 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.

4. Sexual Exploitation - Sexual exploitation is any actual or attempted abuse of a position of vulnerability, differential power, or trust for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another person. Sexual exploitation includes, but is not necessarily limited to:

Invasion of sexual privacy;

Prostituting another student;
Non-consensual video or audio-taping of sexual activity;
Going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);
Engaging in voyeurism;
Knowingly transmitting or exposing a STD or HIV to another student;
Exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals;
Sexually-based stalking, harassment or bullying;
Nonconsensual capturing, taking, depicting or publication of, with or without identification, intimate images of another student.

Additional Applicable Definitions and Examples

The following additional term explanations and examples are intended to help you understand and conform your conduct to the requirements of this policy.

Consent: As used in this policy, consent means clear, knowing and voluntary manifestation of permission. It is active and not passive in nature. It is preferable for consent to be unambiguous and given or indicated by words, but consent may also be given by actions as long as those actions demonstrate and create a mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity. Consent to one form of sexual activity does not automatically imply consent to any other form of activity. Consent must be to current activity and may not be inferred from any previous activity or relationship.

Coercion: Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive conduct. It is the practice of forcing another party to act in an involuntary manner by use of intimidation or threats or some other form of unreasonable pressure or threat of force.

Force: Force is the use of physical violence, the threat of using physical force coupled with the apparent ability to do so, or imposing on someone physically in order to gain access to them sexually or engage in sexual activity. Force can be actual or constructive imminently threatened or offered in order to gain consent or overcome resistance or the power to resist.

Resistance Not Necessary: It is not necessary that a party physically resist the sexual advances of another, but resistance is a clear manifestation of lack of consent. Resistance means "NO." It does not mean only "playing hard to get." Sexual activity or contact by force is by definition non-consensual, but lack of physical force does not mean that the activity was consensual.

Age: A person may be deemed by law to be incapable of consent due to age. Sexual contact or relations with one under age is criminal even where the under-age party is a willing participant.

Incapacitation: Sexual activity with someone who is mentally or physically incapacitated constitutes a clear violation of this policy and may be criminal. One may be incapacitated by alcohol or drugs voluntarily ingested. In such cases the resulting condition of the person is deemed to impair or totally void consent making sexual activity with such an individual to be deemed non-consensual, a violation of this policy and potentially criminal. In addition to mental condition, alcohol or drugs, a person may be incapacitated due to lack of sleep or medical condition. The simple answer is, "When in doubt as to a person's capacity to consent, assume they are incapable of giving consent."

OTHER MISCONDUCT OFFENSES ALSO FALLING UNDER TITLE IX WHEN SEX OR GENDER-BASED

Conduct in violation of this policy is not limited to sexual activity. Any abusive, harassing, or discriminatory conduct based upon a person's gender, sexual orientation, or sexual identity, real or perceived; any conduct intentionally done based upon a person's or persons' gender, sexual orientation, or sexual identity, real or perceived, or that results in depriving an individual or class of individuals of equal enjoyment of educational or employment opportunities or access violates this policy; and any action, conduct or

even inaction undertaken in retaliation for making a complaint of sex or gender-based discrimination, or having the same result regardless of intent, is also a violation of this policy.

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

1. Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of another;
2. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of sex, gender, gender orientation or gender identity;
3. Intimidation, defined as implied threats or acts that cause an reasonable fear of harm in another;
4. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the university community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);
5. Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally (that is not speech or conduct otherwise protected by the 1st Amendment).
6. Violence between those in an intimate relationship to each other.
Stalking, defined as repetitive and/or menacing pursuit, following, harassment and/or interference with the peace and/or safety of a member of the community; or the safety of any of the immediate family of members of the community.

SANCTION STATEMENT

The University has an affirmative duty to do what is reasonable and necessary to maintain a safe campus and proper educational environment. Imposing appropriate sanctions against those found in violation of this policy is in keeping with this effort. Depending on the nature and seriousness of any offense for which an individual may be found guilty, sanctions, or a combination of sanctions, can run anywhere from a verbal warning or reprimand to expulsion.

It should be noted that in campus hearings, legal terms like “guilt”, “innocence”, and “burdens of proof” are not applicable, but the University never assumes a student is in violation of this policy. Campus hearings are conducted to take into account the totality of all evidence available from all relevant sources.

The University reserves the right to take whatever measures it deems necessary in response to an allegation of sexual misconduct in order to protect students’ rights and personal safety. Such measures include, but are not limited to, modification of living arrangements, interim suspension from campus pending a hearing, and reporting the matter to University Police and/or the District Attorney. Not all forms of sexual misconduct will be deemed to be equally serious offenses, and the University reserves the right to impose different sanctions, ranging from verbal warning to expulsion, depending on the severity of the offense. The University will at all times consider the concerns and rights of the complainant, victim or victims and the person accused of sexual misconduct.

In keeping with the above, the following are guidelines in nature and do not reflect that any particular sanction would be imposed in any given case.

Any student found responsible for violating the policy on Non-Consensual or Forced Sexual Contact (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident, and taking into account any previous campus conduct code violations

Any student found responsible for violating the policy on Non-Consensual or Forced Sexual Intercourse will likely face a recommended sanction of suspension or expulsion.

Any student found responsible for violating the policy on sexual exploitation or sexual harassment will likely receive a recommended sanction ranging from warning to expulsion, depending on the severity of the incident, and taking into account any previous campus conduct code violations.

Sexual misconduct constituting a criminal act will be referred to an appropriate law enforcement agency for investigation and possible prosecution.

REPORTING OF GENDER-BASED OR SEXUAL MISCONDUCT

Reporting of Title IX violations is encouraged at all levels in the University community. Anyone with knowledge of an offense defined in the policy can, and is encouraged, to report it. University employees are considered mandatory reporters.

Reports can be made either confidentially or not. The following explains the process for each type of report.

Confidential and Non-Confidential Reports to Title IX Coordinator

JSU has designated Mr. Jai Ingraham, Director, University & Inclusion, as the University's Title IX Coordinator. He is also the person designated by the University to be responsible for evaluating requests for confidentiality (such as a request by the victim or complainant that his or her name not be disclosed to the alleged perpetrator or that no investigation or disciplinary action be pursued to address the sexual misconduct or gender-based discrimination). Both confidential and non-confidential reports should may be made to him the Title IX Coordinator.

The person reporting the Title IX violation may request confidentiality. The University takes each request for confidentiality seriously. The Title IX Coordinator will determine whether this request can be honored (confidentiality granted) while still meeting the University's Title IX obligations and providing a safe and non-discriminatory environment for all students.

The Title IX Coordinator will fully explain all viable options available to the victim or complainant. In rare instances, the University may be required to override the victim's or complainant's request for confidentiality in order to meet its Title IX obligations and to provide a safe and non-discriminatory environment for all students. To the extent confidentiality cannot be granted, information will only be shared on a strict need to know basis with those individuals who are responsible for handling the University's response to the sexual misconduct or gender-based discrimination. In these limited situations, the University will notify the victim or complainant of the specific information to be disclosed, the individuals to whom it will be disclosed, and the reasons for the disclosure.

To Report An Offense Confidentially to Others Than the Title IX Coordinator

If one desires that details of an incident be kept confidential and not shared with the Title IX Coordinator, they should speak with on-campus mental health counselors, campus health service providers, or off-campus rape crisis counselor, who can maintain confidentiality. Campus counselors are available to help you free of charge and can be seen on an emergency basis. In addition, you may speak with off-campus mental health counselors, medical professionals or members of the clergy, who will also keep reports made to them confidential to the extent allowed by law.

JSU Student Counseling Services

140 Daugette Hall
(256) 782-**5475**

RMC-JSU Student Health Clinic

Williams Student Health Center
(256) 782-**5310**

One may also call the University Police Department and request that an on-call counselor call them without reporting details of any matter.

2nd Chance

Anniston
(256) 236-7233
(800) 650-6522
Office: (256) 236-7381

Northeast Alabama Regional Medical Center

Emergency Rooms in Anniston (400 East 10th Street) and Jacksonville (1701 Pelham Road South) have trained staff available 24 hours / 7 days a week.

NOTE: You may call University Police at (256) 782-5050 and request that a crisis counselor return the call. You will only be asked for a contact number.

Non-Confidential Reporting Options

You are encouraged to speak to officials of the institution to make formal reports of incidents (i.e., President, Vice Presidents, Associate Vice Presidents, Deans, Judicial Coordinator, University Police, Athletic Director, Human Resources, Faculty and Staff). The university considers these people to be “responsible employees.” Notice to them is official notice to the institution. You have the right and can expect to have incidents of sexual misconduct or gender-based discrimination to be taken seriously by the institution when formally reported, and to have those incidents promptly investigated and properly resolved through administrative procedures. Formal reporting means that only people with a need to know will be told, and information will be shared only as necessary with investigators, witnesses, and the accused individual.

The University will not retaliate against you for reporting a Title IX violation or for participating in the Title IX grievance resolution process.

The official Title IX Coordinator for JSU is the Director, Diversity & Inclusion, 109 Bibb Graves Hall, 256.782.8565 or jingraham@jsu.edu.

* Adapted with permission from the National Center for Higher Education