

# **University of South Alabama**

## **Sexual Harassment and Sexual Violence Policy**

### **I. Statement of Policy**

The University of South Alabama is committed to establishing and maintaining an environment in which students, faculty, staff, and guests are free from sexual harassment, including sexual violence/sexual assault. *Sexual harassment is a form of sex discrimination prohibited under Title VII of the Civil Rights Act of 1964 and Title IX of the of the Educational Amendments of 1972, as well as the University's Nondiscrimination Policy. Sex discrimination, consequently, encompasses both sexual harassment and sexual violence*, which seriously undermine the atmosphere of trust and respect that is essential to a healthy work and academic environment and will not be tolerated by the University. All members of the University community (including faculty, staff, students, and visitors) must abide by this policy. University jurisdiction and discipline may attach to conduct which occurs on University premises, or at University related or sponsored activities, whether on or off of University premises, or which adversely effects the University community and the pursuit of the objectives of the University. Persons found to be in violation of this policy will be subject to disciplinary actions by the University – including, but not limited to – warning/reprimand, demotion, transfer, suspension, expulsion, dismissal, or termination. Under certain circumstances, moreover, acts of sexual harassment and sexual violence may result in criminal and/or civil sanctions. All members of the University community are expected, and in some cases required, to report incidents of sexual harassment or sexual violence.

### **II. Definitions**

#### **A. Sexual Harassment**

For the purposes of University policy, sexual harassment includes, but is not limited to, verbal or non-verbal conduct that is intimidating, demeaning, hostile, or offensive with an inappropriate focus on sex, sexual history, individual gender-based characteristics, or sexual orientation; unwelcomed verbal or physical advances; attempts to subject a person to unwanted sexual attention or to coerce a person into sexual relations; and/or retaliation for refusal to comply with sexual demands.

Sexual harassment is defined, further, as unwelcomed 1) sexual advances, or 2) requests for sexual favors, or 3) other behavior of a sexual nature where:

- Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, academic standing, or participation in a University-sponsored program or activity; and/or if such conduct has the purpose or effect of unreasonably interfering with an individual's work or educational performance or of creating an intimidating, hostile, or offensive environment for work or learning; or
- Submission to or rejection of such conduct by an individual is or may be used as the basis for an academic, employment, or other University decision affecting that individual; or
- Such conduct unreasonably interferes with an individual's academic and/or work performance, participation in University-sponsored programs or activities, or it creates an intimidating, hostile, or offensive working, educational, or residential environment provided by the University.

Examples of sexual harassment include, but are not limited to:

- Sexually degrading words or gestures used to describe an individual;
- Unnecessary touching, patting, pinching, or brushing of another's body or clothing;
- Repeated offensive sexual flirtation, leering, or ogling;
- Stalking, telephone (including texting), or computer harassment (including use of social media);
- Display of sexually demeaning objects, pictures, or cartoons in hallways, outdoor areas, offices, and rooms publicly accessible to members of the University community;
- Direct or implied threats or insinuations that an individual's refusal to submit to sexual advances will affect adversely the individual's status, evaluation, wages, advancement, duties, or career development.

#### Evaluative Factors for Sexual Harassment Allegations

Conduct alleged to be sexual harassment that does not involve violence will be evaluated by considering the totality of the circumstances including, but not limited to, the nature, frequency, intensity, and duration of the questioned behavior. Unwelcomed conduct of a sexual nature can form the basis of a sexual harassment claim if a reasonable person, similarly situated, would consider it so unreasonable, severe, or pervasive as to interfere with academic, educational, or employment performance or participation in a University program or activity or residential environment.

## **B. Sexual Violence**

Sexual violence means any physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. Lack of consent means that the person who has alleged the occurrence of sexual violence has not said "yes," or otherwise specifically and unambiguously indicated agreement to participate in the act, including instances in which she/he is unable to give informed consent because of the victim's youth, or because of temporary or permanent mental or physical incapacity, including but not limited to being under the influence of alcohol or drugs.

A number of acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, and sexual coercion. Sexual contact can include, but is not limited to: unwelcomed sexual behavior, including kissing, intentional touching of another person's intimate body parts or the clothing covering these intimate areas, and unwelcomed sexual penetration. Sexual penetration includes sexually intended intrusion, however slight, into any opening of a person's body, by parts of another person's body, or any other object.

### **III. Assurance Against Retaliation**

It is unlawful and against University policy to retaliate against or punish any individual for his or her undertaking the legal activity of making a good faith report of sexual harassment/violence, or participating in an investigation of such a complaint. Retaliation includes any action by an individual or group that would discourage a reasonable person or persons from engaging in such protected activity. Examples of retaliation include, but are not limited to adverse employment or educational actions such as suspension, termination, removal from class, as well as coercion and intimidation. Retaliation in violation of the law is against University policy and should be reported as soon as possible to the appropriate campus official and/or Title IX Coordinator. Violation of this policy will result in disciplinary action. The Title IX Coordinator and the Deputy Coordinators are authorized to take all necessary steps to ensure that individuals acting in good faith are not subject to retaliation. This policy, however, shall not be used to bring frivolous or malicious complaints against students, faculty, employees, or visitors. If the University determines a complaint of sexual harassment/violence has been made in bad faith, disciplinary action, up to and including termination/expulsion, may be taken against the person bringing the complaint.

### **IV. Confidentiality Provisions**

The University will do everything consistent with the enforcement of this policy to protect the privacy of the individuals involved and to ensure that the complainant and

the accused are treated fairly. To the extent possible, the confidentiality of all parties involved in a sexual harassment/violence complaint investigation and proceedings will be observed, provided it does not interfere with the University's ability to investigate the allegations, take corrective action, or comply with federal, state or local laws. Consequently, the University cannot ensure confidentiality but will evaluate any request for confidentiality in the context of its responsibility to provide a safe and nondiscriminatory environment for all members of the University community.

## **V. Academic Freedom, the First Amendment, and Sexual Harassment**

In cases of alleged sexual harassment, the protections of the First Amendment must be considered if issues of free speech or artistic expression are involved. Free speech rights apply in the classroom and in all other educational programs and activities of public institutions, and First Amendment rights apply to the speech of students and teachers. Speech or conduct of a sexual or hostile nature which occurs in the context of educational instruction may exceed the protections of academic freedom and constitute prohibited sexual harassment if it meets the definition of sexual harassment as noted above and (1) is reasonably regarded as non-professorial (i.e., advances a personal interest of the faculty member as opposed to furthering the learning process or legitimate objective of the course), or (2) lacks pedagogical purpose or is not germane to the academic subject matter.

## **VI. Responding to Sexual Harassment and Sexual Violence**

A. The University strongly encourages any victim of sexual harassment or sexual violence to report the event. Reporting is the only way that action can be taken against the alleged perpetrator or that the University community can be protected from future incidents of that nature.

If sexual harassment or sexual violence occurs, the complainant/victim should take the following actions, as applicable:

- a. Go to a safe place as soon as possible.
- b. Try to preserve all physical evidence of any incidence of sexual violence—avoid bathing, using the toilet, rinsing one's mouth or changing clothes. If it is necessary, put all clothing that was worn at the time of the incident in a paper bag, not a plastic one.
- c. Contact University police by calling (251) 460-6312 if the incident occurred on campus or the local police by calling 911 if the incident occurred off campus. University police will assist the victim in notifying appropriate local law enforcement authorities.

- d. Get medical attention - all medical injuries are not immediately apparent. This is also necessary to collect evidence in case the victim decides to press charges. USA Children's and Women's Hospital has the evidence collection kits necessary for criminal prosecution if that option is selected.
- e. Contact someone the victim trusts such as a friend, family member, or Resident Advisor for support.
- f. Call the USA Assault Hotline at (251) 460-7151 or (251) 341-9884, 24 hours a day, seven days a week. A certified Victim's Advocate will contact the victim to offer assistance to make recovery as smooth as possible. Victim's also may call Mobile Rape Crisis Center at (251) 473-7273.
- g. Talk with a counselor who will help explain options, give information, and provide emotional support.
- h. Contact the appropriate campus official and/or Title IX Coordinator ((251) 460-6452) to make a report.
- i. Explore legal avenues for either criminal or civil action as well as utilize University complaint/grievance procedures.

If a report of sexual harassment or sexual violence is received by anyone in the University Community, that individual should refer the complainant/victim to, as well as make personal contact with, the victim's Title IX Coordinator and, with a report of sexual violence, the University Police.

- B. Victims of sexual harassment or sexual violence will have their reports of such events taken seriously and will be treated non-judgmentally and with dignity and respect.
- C. University Complaint/grievance procedures will proceed pursuant to University policy, as applicable.
- D. In an effort to prevent recurrence of the sexual harassment or sexual violence and correct its effects, action may be taken in order to prevent unnecessary or unwanted contact or proximity of the complainant with the accused when reasonably possible. The University will comply with a student's request for a living and/or academic situation change if reasonably available following an allegation of sexual violence.

## **VII. COMPLAINANT'S/VICTIMS' RIGHTS**

The University of South Alabama has given the following rights to each complainant/victim of any sexual harassment or sexual violence committed against

them while on University premises, or at University related or sponsored activities, whether on or off University premises, or which adversely effects the University community and the pursuit of the objectives of the University:

- a. If a disciplinary hearing is held, the complainant/victim has the right:
  - i. to be present during the disciplinary hearing (However if the complainant/victim fails to appear at the hearing, the hearing may be held in his/her absence);
  - ii. to present evidence by witness, or by affidavit if a witness is unable to attend the hearing;
  - iii. to question all witnesses at the disciplinary hearing.
- b. The right to appeal equal to that given to the accused.
- c. The right to have sexual history excluded from consideration during the complaint/grievance process.
- d. The right to immunity from university discipline charges stemming from the victim's use of a narcotic or intoxicating substance administered with or without the victim's consent at the time of the perpetration of a sexually violent event against the victim.
- e. The right to be notified at the same time the accused is notified of the outcome of the hearing or investigation/disciplinary process. If a victim of physical violence, including sexual violence, or of a non-forcible sexual offense (which includes sexual activity where the victim is incapable of consenting due to being a minor or having a permanent or temporary mental or physical disability preventing consent, including those related to drugs or alcohol), the victim has the right to be informed of the outcome of the hearing or investigation/disciplinary process, including the sanction, upon request, regardless of whether or not the accused has been found responsible. Further, the University may disclose to anyone, not just the alleged victim, if the accused is found responsible for a crime of violence or a non-forcible sex offense, and the accused has committed a violation of the institution's rules or policies with respect to the allegations made. If a victim of sexual harassment not involving the above, the victim has the right to be informed of the outcome of the hearing or investigation/disciplinary process and be informed of the sanction to the extent the sanction is directly related to the victim. The information obtained during the process of an investigation or disciplinary proceeding as well as the outcome of all such proceedings other than those involving a finding of responsibility for violence or non-forcible sex offense, are considered confidential information (for students, the Family Educational Rights and Privacy Act of 1974 (FERPA) governs disclosures) and must not be shared outside the proceeding unless authorized.