

**EMBRY-RIDDLE**  
Aeronautical University™  
FLORIDA | ARIZONA | WORLDWIDE

***Civil Rights Equity & Sex/Gender-Based  
Harassment, Discrimination and  
Sexual Misconduct Policy***

*Editor's Note: This publication will help our University to be compliant with Civil Rights Equity as governed by the Department of Education through the Office of Civil Rights. This includes adopting guidance as published in the 2001 OCR Guidance on Sexual Harassment, 2011 Dear Colleague Letter, the SUNY and Montana OCR resolution templates, the 2014 OCR Q&A on Title IX, the April 2015 Dear Colleague Letter, the Violence Against Women Act Section 304 (March 2014), its implementing regulations finalized in October 2014, other relevant OCR Dear Colleague Letters, and the best practices emerging in the field.*

*There are a number of essential concepts that undergird this model, the foremost of which is the notion that we all have sexual sovereignty, the right not to be acted upon sexually by someone else unless and until we give clear permission. The law calls this autonomy. The field of student conduct uses the term equal dignity. Discrimination law calls it equity, but these are all lenses on the same fundamental concept, which we embrace fully and meaningfully.*

*Additionally, we use some terms intentionally. Gender-based misconduct is the umbrella for a wide range of behaviors that fall under that descriptor. We use the term sexual misconduct, too, when actions are gender-based, but manifest in sexual actions. We use these terms, as they are the most-neutral and least fraught policy titles, when it comes to the need to avoid crime-laden language, terms that have their own connotations, such as abuse, and terms that could tend to minimize the severity of the actions they describe. We also use the term "reporting party" throughout this model, whereas other institutions prefer the term "victim, survivor, or complainant". This is intentional on our part. Rather than assuming a Reporting party is a survivor, we believe each reporting party needs to decide at their own pace, whether and how they will become survivors. It is not for us to presume it. It also denotes the difference between policy language and advocacy language. Reports brought by individuals other than the recipient of the unwelcome behavior are referred to as "third-party reports" and those bringing them are deemed "third-party reporters". The person facing an accusation is referred to throughout as the "responding party".*

*There are many ways to define a hostile environment. OCR uses the standard "severe, persistent or pervasive." The Davis<sup>1</sup> court predicated monetary damages on the basis of conduct that was "severe, pervasive and objectively offensive." The key here is not in these terms, but in the notion that our policies need to prohibit a discriminatory effect. When conduct changes employment conditions or limits, denies or interferes with educational access, benefits or opportunities, our policies need to address it.*

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<sup>1</sup> *Davis v. Monroe County Bd. of Education*, 526 U.S. 629 (1999).

# Policy and Resolution Process

## Equal Opportunity, Harassment and Nondiscrimination

Embry-Riddle Aeronautical University affirms its commitment to promote the goals of fairness and equity in all aspects of the educational enterprise. All policies below are subject to resolution using the University's Resolution Process. The Resolution Process is applicable regardless of the status of the parties involved, who may be members or non-members of the campus community, students, student organizations, faculty, administrators and/or staff. The University reserves the right to act on incidents occurring on-campus or off-campus when the off-campus conduct could have an on-campus impact or impact on the educational mission of the University.

The Director of Title IX Compliance, Linda Dammer, serves as the Title IX Coordinator for Daytona Beach and Worldwide; the Associate Dean of Students Liz Higgins Frost, serves as the Title IX Coordinator for Prescott. These individuals oversee the implementation of each campus' Civil Rights Equity and Title IX efforts including the University's policy on equal opportunity, harassment and nondiscrimination. Reports of discrimination, harassment and/or retaliation should be made to the Title IX Coordinator promptly, but there is no time limitation on the filing of grievances, as long as the responding party remains subject to the University's jurisdiction. All reports are acted upon promptly while every effort is made by the University to preserve the privacy of reports. Reports of discrimination by a Title IX Coordinator should be reported to another Title IX Coordinator.

This policy applies to behaviors that take place on the campus, at University-sponsored events and may also apply off-campus and to actions online when the Title IX Coordinator determines that the off-campus conduct affects a substantial University interest. A substantial University interest includes but is not limited to:

- A. Any action that constitutes a criminal offense as defined by federal or state law.
- B. Any situation where it appears that the responding party may present a danger or threat to the health or safety of self or others;
- C. Any situation that significantly impinges upon the rights of others or significantly interferes with the operations of the institution;
- D. Any situation that is detrimental to the educational interests of the University.

*Off-campus discriminatory or harassing speech by employees may be regulated by the University only when such speech is made in an employee's official or work-related capacity.*

## **Title IX Coordinators**

The University's Title IX Coordinators oversee compliance with all aspects of this policy and questions should be directed to them. Anyone wishing to make a report relating to discrimination or harassment may do so by reporting the concern to their campus Title IX Coordinator:

Inquiries about this policy and resolution procedure may be made internally to:

**Linda Dammer**  
**Interim Title IX Coordinator (Daytona Beach Campus)**  
**Henderson Welcome Center**  
**386-226-6396**  
[dammerl@erau.edu](mailto:dammerl@erau.edu)  
[dbtitle9@erau.edu](mailto:dbtitle9@erau.edu)

**Liz Higgins Frost**  
**Title IX Coordinator (Prescott Campus)**  
**Building 49, Office 103**  
**928-777-3747**  
[froste@erau.edu](mailto:froste@erau.edu)  
[prtitle9@erau.edu](mailto:prtitle9@erau.edu)

**Linda Dammer**  
**Title IX Coordinator (Worldwide)**  
**Building 2, office 222**  
**386-226-6396**  
[dammerl@erau.edu](mailto:dammerl@erau.edu) or  
[wwtitle9@erau.edu](mailto:wwtitle9@erau.edu)

*Individuals experiencing harassment or discrimination always have the right to file a formal grievance with government authorities.*

### **Inquiries may be made externally to:**

Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-1100 Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012 TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

Equal Employment Opportunity Commission (EEOC)  
Contact: <http://www.eeoc.gov/contact/>

## **University Policy on Nondiscrimination**

Embry-Riddle Aeronautical University continually strives to recognize, respect, and celebrate the differences and cultural identities among individuals as we recruit, support, and embrace our diverse community. We work to provide a safe environment where self-expression is welcome. We strive to create a campus climate free of discrimination, so that networks, partnerships, and cultural competency continue to be fostered through leadership, integrity, care and respect. In doing so, Embry-Riddle does not permit discrimination or harassment in its programs and activities on the basis of race, color, national origin, sex, gender identity, gender expression, sexual orientation, disability, veteran status, predisposing genetic characteristic, age, religion, pregnancy status or any other characteristic protected by University policy or state, local, or federal law.

This policy covers nondiscrimination in employment and in access to educational opportunities. Therefore, any member of the campus community, guest or visitor who acts to deny, deprive or limit the educational, employment, and/or social access, benefits and/or opportunities of any member of the campus community on the basis of their actual or perceived membership in the protected classes listed above is in violation of the University policy on nondiscrimination. When brought to the attention of the University, any such discrimination will be appropriately remedied by the University according to the procedures below.

## **University Policy on Accommodation of Disabilities**

Embry-Riddle Aeronautical University is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws pertaining to individuals with disabilities. Under the ADA and its amendments, a person has a disability if he or she has a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the institution whether qualified or not. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking or caring for oneself.

### **Students with Disabilities**

Embry-Riddle Aeronautical University is committed to providing qualified students with disabilities with academic adjustments and auxiliary aids and support needed to ensure equal access to the academic programs and activities of the University.

All accommodations are made on a case-by-case basis. A student requesting any accommodation should first contact the Director of Disability Services on their campus, who coordinates services for students with disabilities. The director reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate to the student's particular needs and academic programs.

**Vanessa Lloyd**  
**Director of Disability Support Services (Daytona Beach & Worldwide)**  
**Wellness Center, RM 131 (Daytona Beach campus)**  
**386-226-6098**  
[lloydv@erau.edu](mailto:lloydv@erau.edu)

**Marcee Keller**  
**Director of Disability Support Services (Prescott Campus)**  
**Library, Building 43, RM 109**  
[kellerm3@erau.edu](mailto:kellerm3@erau.edu)

**Linda Dammer**  
**Disability Liaison (Worldwide Campus)**  
**Building 2, office 222 (Worldwide Headquarters)**  
**386-226-6396**  
[wwdss@erau.edu](mailto:wwdss@erau.edu)

## **Employees with Disabilities**

Pursuant to the ADA, Embry-Riddle Aeronautical University will provide reasonable accommodation(s) to all qualified employees with known disabilities, where their disability affects the performance of their essential job functions, except where doing so would result in undue hardship.

An employee with a disability is responsible for requesting an accommodation in writing to the Human Resources office on their campus and will need to provide appropriate documentation. The Human Resources Office on the employee's respective campus will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties.

**Andrea Hooper (Daytona Beach and Worldwide)**  
**Director of Employment and Engagement**  
**Corsair Hall # 104C**  
**386-226-7269**  
[hoopera1@erau.edu](mailto:hoopera1@erau.edu)

**Sara Heffelfinger (Prescott Campus)**  
**Executive Director of Human Resources**  
**Building 41**  
**928.777.3710**  
[heffels@erau.edu](mailto:heffels@erau.edu)

## University Policy on Discriminatory Harassment

Students, staff, administrators, and faculty are entitled to a working environment and educational environment free of discriminatory harassment. Embry-Riddle Aeronautical University's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive subject matters protected by academic freedom. The sections below describe the specific forms of legally prohibited harassment that are also prohibited under University policy.

### Discriminatory and Bias-Related Harassment

Harassment constitutes a form of discrimination that is prohibited by law. Embry-Riddle Aeronautical University will remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a hostile environment. When harassment rises to the level of creating a hostile environment, Embry-Riddle may also impose sanctions on the harasser. The University's harassment policy explicitly prohibits any form of harassment, defined as unwelcome conduct on the basis of actual or perceived membership in a protected class, by any member or group of the community.

A hostile environment may be created by oral, written, graphic, and physical conduct that is sufficiently severe, or persistent, or pervasive, and objectively offensive that it interferes with limits or denies the ability of an individual to participate in or benefit from educational programs or activities or employment access, benefits or opportunities.<sup>2</sup>

Offensive conduct and/or harassment that does not rise to the level of discrimination or that is of a generic nature not on the basis of a protected status may not result in the imposition of discipline under University policy, but will be addressed through civil confrontation, remedial actions, education, and/or effective conflict resolution mechanisms. For assistance with conflict resolution techniques, employees should contact Human Resources on their respective campus, and students should contact the Title IX Coordinator on their campus.

*Embry-Riddle Aeronautical University condemns and will not tolerate discriminatory harassment against any employee, student, visitor or guest on the basis of any status protected by University policy or law.*

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<sup>2</sup> This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994: Department Of Education Office For Civil Rights, Racial Incidents and Harassment against Students at Educational Institutions Investigative Guidance. The document is available at <http://www.ed.gov/about/offices/list/ocr/docs/race394.html>

# **University Policy Expectations With Respect to Consensual Relationships**

## **Purpose and Scope**

It is a goal of the University to minimize or eliminate actual or perceived bias, favoritism, and conflicts of interest. When two employees or an employee and a student engage in a consensual sexual or romantic relationship that coexists with supervisory or academic authority, opportunity exists for actual or apparent conflict of interest, exploitation, favoritism, or bias. Such consensual amorous relationships can undermine respect and trust among members of the University community, and damage the integrity of the institution itself.

## **Employees and Students**

The University does not condone and strongly discourages consensual amorous relations between an employee and any student. Consensual amorous relationships include those of a sexual nature, as well as those of a romantic nature that may exist without physical intimacy. For the purposes of this section, "employee" means any member of the faculty or staff in a position to control or confer an educational, economic or co-curricular benefit or advantage on students. The term includes, but is not limited to, faculty, administrators, and coaches, program directors, teaching assistants, student employees/assistants, advisors or counselors.

The actual or apparent conflict of interest to which the policy refers includes, for example, decisions on grades, discipline, the award of financial aid or an assistantship, career opportunities, letters of recommendation, and playing time on the athletic field. A consensual relationship creates an appearance destructive of the impartiality and objectivity upon which the educational experience and the university experience rest.

The apparent or actual conflict of interest remains whether a faculty member is or is not currently the student's instructor. The potential for a conflict of interest not only arises because the faculty member may instruct and grade the student in the future, but also because the faculty member's colleagues in the department may be aware of the relationship and act non-objectively. Should they become aware of the relationship, other students may perceive the student involved is receiving preferential or special treatment. Conversely, when a consensual relationship ends, the student involved may feel as though the faculty member's colleagues will retaliate against him or her. Both parties to the relationship should be mindful of these potential costs to the student.

When an employee is in such a relationship, the employee(s) should (a) immediately terminate the relationship or the supervisory/evaluative aspects of the relationship, or (b) immediately inform their supervisor so that appropriate and effective steps can be taken to eliminate the supervisory/evaluative role.



It is the obligation of the employee to inform their supervisor of a situation in which the student may be deprived of educational services, advising services, or career opportunities. If necessary, the supervisor of the relevant department -- in consultation with the Human Resources and/or the Dean of the student's college -- will evaluate the student's situation and address a possible deprivation of such services and opportunities. A written record of the resolution of a situation covered by this policy shall be maintained in the files of Human Resources and the Title IX Coordinator at the respective campus.

## **Supervisors and Employees**

The University does not condone and strongly discourages consensual relations between a supervisor and an employee within their supervision. Consensual amorous relationships include those of a sexual nature, as well as those of a romantic nature that may exist without physical intimacy.

For the purposes of the policy, a "supervisor" is any person in a position to hire, retain, make employment or compensation decisions for, or control the work of another employee. Within this policy, faculty members may be considered "supervisors" in those instances in which a consensual amorous relationship develops between senior and junior faculty members, or with a staff member over whose work the faculty member has sole or shared control.

A conflict of interest will occur if adverse treatment is given or is perceived to be given to an employee engaged in a consensual relationship with their supervisor. When such a relationship develops, both employees are obligated to inform the supervisor's supervisor and/or Human Resources so that the conflict of interest can be eliminated. In consultation with Human Resources, the supervisor's supervisor will determine the appropriate course of action to remove the possible or potential favorable treatment. Therefore, in entering the relationship, both employees deem to consent to possible changes in their positions. A written record of the disposition shall be kept in the files of Human Resources.

It is possible that employees began a consensual amorous relationship before the promulgation of this policy. The disclosure requirements above apply to any relationship, even those that began before the promulgation of the policy. Human Resources will work with the supervisor and employee to eliminate the conflict of interest in a timely manner.

The University may take any appropriate remedial, preventive, or corrective action to minimize the risks or effects or apparent impropriety, bias, favoritism, or conflict of interests.

This policy does not impose upon the University the obligation to police the behavior of members of this community. While no relationships are prohibited by this policy, failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee.<sup>3</sup>

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<sup>3</sup> When a consensual relationship gives rise to *quid pro quo* harassment allegations, those allegations are to be resolved in accord with the University's policies on Title IX. When an employee fails to timely notify their supervisor under this policy, but no allegations of harassment are present, the resolution falls under the policy on "Failure to comply" in the employee/faculty handbook, and should be resolved as such.

## **Retaliation**

Retaliation is defined as attempts or acts to seek retribution including, but not limited to, any form of intimidation, reprisal, harassment, depriving participation in activities, or intent to prevent participation in University proceedings under this Policy. Retaliation may include continued abuse or violence, other harassment, and slander and libel. Retaliation against a reporting party, responding party, witnesses or other individuals providing information is a serious violation of university policy.

## **Remedial Action**

Embry-Riddle Aeronautical University will implement initial remedial and responsive and/or protective actions upon notice of alleged harassment, retaliation and/or discrimination. Such actions may include but are not limited to: no contact orders, providing counseling and/or medical services, academic support, living arrangement adjustments, providing a campus escort, academic or work schedule and assignment accommodations, safety planning, referral to campus and community support resources.

Embry-Riddle Aeronautical University will take additional prompt remedial and/or disciplinary action with respect to any member of the community, guest or visitor who has been found to engage in harassing or discriminatory behavior or retaliation. Procedures for handling reported incidents are fully described in the University's Civil Rights Equity, Sex/Gender-Based Harassment, Discrimination and Sexual Misconduct Resolution Procedures. Deliberately false and/or malicious accusations of harassment, as opposed to grievances which, even if erroneous, are made in good faith, are just as serious an offense as harassment and will be subject to appropriate disciplinary action.

## **Civil Rights Equity, Sex/Gender-Based Harassment, Discrimination and Sexual Misconduct Policy**

Members of the Embry-Riddle Aeronautical University community, faculty, staff, students, guests and visitors have the right to be free from all forms of sex/gender-based harassment, discrimination and misconduct. Examples include acts of sexual violence, sexual harassment, domestic violence, dating violence, and stalking. All members of the campus community including contracted employees are expected to conduct themselves in a manner that does not infringe upon the rights of others. The University believes in zero tolerance for discrimination. Zero tolerance means that when an allegation of misconduct is brought to an appropriate administrator's attention, protective and other remedial measures will be used to reasonably ensure that such conduct ends, is not repeated, and the effects on the reporting party and community are remedied. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define community expectations and to establish a mechanism for determining when those expectations have been violated.<sup>4</sup>

The University's civil rights equity and sex/gender-based harassment, discrimination and sexual misconduct policies are not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include controversial or sensitive subject matters protected by academic freedom. Academic freedom extends to topics that are pedagogically appropriate and germane to the subject matter of courses or that touch on academic exploration of matters of public concern.

Sexual misconduct against or by Embry-Riddle faculty, staff and students in other environments or settings associated with authorized academic or extracurricular activities, such as off-campus lab work, athletics, student or professional conferences and meetings, or club events, is also a violation of this policy. However, the University's ability to remedy cases of misconduct by persons who are not students or employees of the University may be more limited.

All students, faculty, staff, affiliates and others participating in university programs, academic coursework, university activities and operations are subject to this policy. This policy extends to all activities on university owned and/or operated property (e.g. labs, professional conferences, research associated activities and/or competitions) and University sponsored trips, meetings, athletic events, summer conferences or camps, private tutoring and coaching and social functions off campus. It also includes the use of university phones, computers, internet and any other technology provided by the University. University property includes but is not limited to buildings, rented/leased facilities, grounds, athletic fields, stadiums, labs, aircraft and other vehicles.

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<sup>4</sup> The policy and procedure models offered by ATIXA have been, in part or in full, promulgated by the White House Task Force to Protect Students from Sexual Assault and/or accepted by OCR in resolutions of its investigations of campuses accused of Title IX violations.

The University uses the preponderance of the evidence (also known as “more likely than not”) as a standard for proof of whether a violation occurred. In campus resolution proceedings, legal terms like “guilt, “innocence” and “burdens of proof” are not applicable, but the University never assumes a responding party is in violation of University policy. Campus resolution proceedings are conducted to take into account the totality of all evidence available, from all relevant sources.

## **Overview of Policy Expectations with Respect to Physical Sexual Misconduct**

The expectations of our community regarding sexual misconduct can be summarized as follows: 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 don't. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Previous consent does not imply consent to sexual activity in the future. Silence or passivity -- without actions demonstrating permission -- cannot be assumed to show consent. Consent, once given, can be withdrawn at any time. There must be a clear indication that consent is being withdrawn. The individual initiating sexual activity is responsible for gaining clear knowing and voluntary consent from the intended partner.

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. Coercion happens when someone is pressured for sex.

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 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.”

### **Sexual Violence -- *Risk Reduction tips***

Risk reduction tips can often take a victim-blaming tone, even unintentionally. Only those who commit sexual violence are responsible for those actions. We offer the tips below with no intention to victim-blame, with recognition that these suggestions may nevertheless help you to reduce your risk of experiencing a non-consensual sexual act. Suggestions to avoid committing a non-consensual sexual act are also offered:

- If you have limits, make them known as early as possible.
- Tell a sexual aggressor “NO” clearly and firmly.

- Try to remove yourself from the physical presence of a sexual aggressor.
- Find someone nearby and ask for help.
- Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- Give thought to sharing your intimate content, pictures, images and videos with others, even those you may trust. If you do choose to share, clarify your expectations as to how or if those images may be used, shared or disseminated.
- Take care of your friends and ask that they take care of you. A real friend will step in and say something if you are about to make a mistake. **Respect them when they do.**
- Download the *Circle of 6* app on your phone and pre-program numbers to call in an emergency.
- Register for Safe Ride through the Student Government Association.

If you are the initiator of sexual behavior, it becomes your responsibility to ask for consent. Suggestions to reduce the risk of being accused of sexual misconduct:

- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- Understand and respect personal boundaries.
- **DON'T MAKE ASSUMPTIONS** about consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go; about whether they are physically, and/or mentally able to consent. Your partner's consent should be affirmative and continuous. If there are any questions or ambiguity then you **DO NOT** have consent.
- 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 for sexual behaviors with which they are comfortable.
- Don't take advantage of someone's drunkenness or altered state, even if they willingly consumed alcohol or substances.
- Realize that your potential partner could feel intimidated or coerced by you. You may have a power advantage simply because of your gender or physical presence. Don't abuse that power.
- Do not share intimate content, pictures, images and videos that are shared with you.
- Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
- Silence, passivity, or non-responsiveness 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 Offenses include, but are not limited to:**

1. Sexual Harassment
2. Non-Consensual Sexual Contact (or attempts to commit same)
3. Non-Consensual Sexual Intercourse (or attempts to commit same)

#### 4. Sexual Exploitation

*Equal Employment Opportunity Commission regard sexual harassment as a form of sex/gender discrimination and, therefore, as an unlawful discriminatory practice. Embry-Riddle Aeronautical University has adopted the following definition of sexual harassment, in order to address the special environment of an academic community, which consists not only of employer and employees, but of students as well.*

### **Sexual Harassment**

Sexual harassment is:

- Unwelcome sexual advances, requests for sexual favors, and other sex-based and/or gender-based physical, written, visual, or verbal conduct of a sexual nature where:
  - Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or education; or
  - Submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting the individual; or
  - Such conduct has the purpose or effect of:
    - Unreasonably interfering with an individual's academic, social or professional performance; or
    - Creating an intimidating, hostile, or demeaning employment or educational environment.

Anyone experiencing sexual harassment in any University program is encouraged to report it immediately to the Title IX Coordinator. Remedies, education, and/or training will be provided in response.

A hostile environment is created when sexual harassment is:

- sufficiently severe, or
- persistent or pervasive, and
- objectively offensive that it:
  - unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the university's educational [and/or employment], social and/or residential program.

Quid Pro Quo Harassment is:

- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.
- A person with power or authority over another constitutes harassment when:

- Submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational [or employment] progress, development, or performance.
- This includes when submission to such conduct would be a condition for access to receiving the benefits of any educational [or employment] program.

**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 bullying<sup>5</sup>

Examples of Sexual Harassment include:

- A professor insists that a student have sexual contact or intercourse with them in exchange for a good grade. This is harassment regardless of whether the student complies to the request.
- A student repeatedly sends sexually oriented jokes to an email list they created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.
- Explicit sexual pictures are displayed in a professor's office or on the exterior of a residence hall door.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus.

### **Non-Consensual Sexual Contact**

Non-Consensual Sexual Contact is defined as any intentional sexual touching, however slight, with any object, by a person upon another person, this is without consent and/or by force<sup>6</sup>.

### **Non-Consensual Sexual Intercourse**

Non-Consensual Sexual Intercourse is defined as any sexual penetration or intercourse, however slight, with any object, by a person upon another person that is without consent and/or by force.

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<sup>5</sup> These offenses are referenced and incorporated within sexual harassment, but also broken-out as stand-alone offenses, below. They are both, so be sure to charge accordingly.

<sup>6</sup> The use of force is not "worse" than the subjective experience of violation of someone who has sex without consent. However, the use of physical force constitutes a stand-alone non-sexual offense as well, as it is our expectation that those who use physical force (restrict, battery, etc.) would face not just the sexual misconduct charge, but charges under the code for the additional assaultive behavior.

## Sexual Exploitation

Sexual exploitation is an act that involves taking non-consensual, unjust, humiliating, or abusive sexual advantage of another, for their own advantage or to benefit anyone other than the Reporting party. Examples of sexual exploitation include, but are not limited to:

- Creating a picture(s), movie(s), webcam, tape recording(s), graphic written narrative(s), or other means of memorializing sexual behavior or a state of undress of another person without the other's knowledge and consent<sup>7</sup>;
- Sharing items described above without consent. For example, showing a picture to friends where consent to view it was given for oneself only or in retaliation for a relationship ending, the material is posted in a public area online or otherwise;
- Observing or facilitating observation by others of sexual behavior or a state of undress of another person without the knowledge and consent of that person;
- "Peeping Tom" or voyeuristic behaviors;
- Engaging in sexual behavior with knowledge of an illness or disease (HIV, STD, or STI) that could be transmitted by the behavior without full and appropriate disclosure to the partner(s) of all health and safety concerns;
- Engaging in or attempting to engage others in "escort services" or "dating services" which include or encourage in any way sexual behavior in exchange for money or other benefit or reward;
- Intentionally, knowingly, or surreptitiously providing drugs or alcohol to a person for the purpose of sexual exploitation; or
- Exposing another person to pornographic material without the person's advance knowledge or consent. Going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you having consensual sex);
- Intentionally or recklessly exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals;
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

### Additional Applicable Definitions

#### **Consent:**<sup>8</sup>

- Consent is an explicitly communicated, reversible mutual agreement in which all parties are capable of making a decision. Consent is informed, voluntary, and actively given. Consent exists when all parties exchange mutually understandable affirmative words or behavior indicating their agreement to participate voluntarily in sexual activity.
- Consent is active, not passive.
- Silence, in and of itself, cannot be interpreted as consent.

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<sup>7</sup> This would include using a camera to take pictures or video under the skirt of a person.

<sup>8</sup> The definition of "consent" may vary from state to state.

[All state definitions](#)

[Arizona Definition of Consent](#)

[Florida Definition of Consent](#)



- Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding willingness to engage in (and the conditions of) sexual activity.
- Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- Previous relationships or prior consent cannot imply consent to future sexual acts.
- Consent can be withdrawn once given, as long as that withdrawal is clearly communicated.
- In order to give consent, one must be of legal age.
- Sexual activity with someone you know to be or should know to be incapacitated constitutes a violation of this policy.
  - An individual is incapacitated when s/he is not able to make rational, reasonable judgments and therefore is incapable of giving consent. Incapacitation is the inability, temporarily or permanently, to give consent, because the individual is mentally and/or physically impaired, from developmental disability, by alcohol or other drug consumption,<sup>9</sup> either voluntarily or involuntarily, or the individual is unconscious, asleep, involuntarily physically restrained, or otherwise unaware that the sexual activity is occurring.
  - In addition, an individual is incapacitated if s/he demonstrates that they are unaware of where they are, how they got there, or why or how they became engaged in a sexual activity. Where alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. Some indicators of incapacitation may include, but are not limited to, lack of control over physical movements (such as walking without assistance), being unaware of circumstances or surroundings, or being unable to communicate for any reason.
  - An individual in a blackout<sup>10</sup> state may or may not meet the definition of incapacitation. Such an individual may appear to act normally, but later may not have recall of the events in question. The extent to which a person in this state affirmatively gives words or actions indicating a willingness to engage in sexual activity and the other person is unaware – or reasonably could not have known – of the alcohol consumption or blackout, must be

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<sup>9</sup> 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 student is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org/>.

<sup>10</sup> Blackout, as it is used in scholarly literature, refers to a period where memory formation is blocked. A period of consistent memory loss is termed a blackout, whereas periods where memory is both lost and formed intermittently can be referred to in the literature as a brownout. Neither state of blackout nor brownout automatically indicates incapacitation, but factual context can establish that a blackout or a brownout is occurring in an individual who is incapacitated (where incapacity is defined as an inability to make rational, reasonable decisions or judgments). It is a mistake to automatically associate memory loss with incapacitation; they are often coupled, but not always. (see e.g.: Mundt & Wetherill – 2012; NIH 2004)

evaluated in determining whether consent could be considered as having been given.

- Force: Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcomes free will or resistance or that produces consent (“Have sex with me or I’ll hit you. Okay, don’t hit me, I’ll do what you want.”).
  - Coercion is unreasonable pressure for sexual activity, continued pressure beyond that point can be coercive. When person “A” makes it clear they do not want to engage in sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure by person “B” is considered coercion.
  - NOTE: There is no requirement for a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.
- Use of alcohol or other drugs will never function to excuse any behavior that violates this policy.
- This policy is applicable regardless of the sexual orientation and/or gender identity of individuals engaging in sexual activity.

### **Examples:**

1. Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00pm until 3:00am, Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. He keeps at her, and begins to question her religious convictions, and accuses her of being “a prude.” Finally, it seems to Bill that her resolve is weakening, and he convinces her to give him a “hand job” (hand to genital contact). Amanda would never had done it but for Bill’s incessant advances. He feels that he successfully seduced her, and that she wanted to do it all along, but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn’t want it, she could have left. **Bill is responsible for violating the university Non-Consensual Sexual Contact policy. It is likely that campus decision-makers would find that the degree and duration of the pressure Bill applied to Amanda are unreasonable. Bill coerced Amanda into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. Consent is not valid when forced. Sexual contact without consent is sexual misconduct.**
2. Jiang is a junior at the University. Beth is a sophomore. Jiang comes to Beth’s residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves,

and Jiang and Beth are alone. They hit it off, and are soon becoming more intimate. They start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a baby-sitter when she was five, and has not had any sexual relations since, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with her, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop, but cannot. Beth is stiff and unresponsive during the intercourse. Is this a policy violation? **Jiang would be held responsible in this scenario for Non Consensual Sexual Intercourse. It is the duty of the sexual initiator, Jiang, to make sure that he has mutually understandable consent to engage in sex. Though consent need not be verbal, it is the clearest form of consent. Here, Jiang had no verbal or non-verbal mutually understandable indication from Beth that she consented to sexual intercourse. Of course, wherever possible, it is important to be as clear as possible as to whether or not sexual contact is desired, and to be aware that for psychological reasons, or because of alcohol or drug use, one's partner may not be in a position to provide as clear an indication as the policy requires. As the policy makes clear, consent must be actively, not passively, given.**

3. Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it's a lot. After the party, he walks John to his room, and John comes on to Kevin, initiating sexual activity. Kevin asks him if he is really up to this, and John says yes. Clothes go flying, and they end up in John's bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that John seems pretty groggy and passive, and he thinks John may have even passed out briefly during the sex, but he does not let that stop him. When Kevin runs into John the next day, he thanks him for the wild night. John remembers nothing, and decides to make a report to the Dean. **This is a violation of the Non-Consensual Sexual Intercourse Policy. Kevin should have known that John was incapable of making a rational, reasonable decision about sex. Even if John seemed to consent, Kevin was well aware that John had consumed a large amount of alcohol, and Kevin thought John was physically ill, and that he passed out during sex. Kevin should be held accountable for taking advantage of John in his condition. This is not the level of respectful conduct the university expects.**

## **Other Misconduct Offenses (Will Fall Under Title IX When Sex or Gender-Based<sup>11</sup>)**

1. Verbal or physical abuse, including fighting, threats, harassment, coercion, and/or other conduct or action that threatens the health and safety of any person based on their actual or perceived membership in a protected class.
2. Discrimination is defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of their actual or perceived membership in a protected class.
3. Intimidation is defined as implied threats or acts that cause an unreasonable fear of harm in another on the basis of actual or perceived membership in a protected class.
4. Hazing is 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) on the basis of actual or perceived membership in a protected class; hazing is also illegal under Arizona and Florida State law and prohibited by University policy.
5. Bullying (including cyber bullying) is 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 1<sup>st</sup> Amendment on the basis of actual or perceived membership in a protected class.
6. Intimate Partner Violence is also sometimes known as dating violence, domestic violence, or relationship violence.<sup>12</sup> In general, intimate partner violence includes physically, sexually, economically and/or psychologically abusive behavior that arises in the form of a direct violent act, or indirectly as acts that expressly or implicitly threatens violence. Intimate partner violence also occurs when one partner attempts to maintain power and control over the other through one or more forms of abuse, including sexual, physical, verbal, or emotional abuse.
  - a. A boyfriend shoves his girlfriend into a wall upon seeing her talking to a male friend. This physical assault based in jealousy is intimate partner violence.
  - b. An ex-girlfriend shames her female partner, threatening to out her as a lesbian if she doesn't give the ex another chance. Psychological abuse is a form of Intimate Partner Violence.
  - c. A graduate student refuses to wear a condom and forces his girlfriend to take hormonal birth control though it makes her ill, in order to prevent pregnancy.
  - d. Married employees are witnessed in the parking garage, with one partner

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<sup>11</sup> These offenses appear here, rather than along with the other offense definitions because we do not encourage their inclusion as stand-alone violations in this policy.

<sup>12</sup> Definitions of Domestic Violence may be found at <https://www.childwelfare.gov/pubpdfs/defdomvio.pdf>

slapping and scratching the other in the midst of an argument.

7. Stalking (including cyber/electronic stalking)

- a. Stalking 1:
  - i. A course of conduct
  - ii. Directed at a specific person
  - iii. On the basis of actual or perceived membership in a protected class
  - iv. That is unwelcome, AND
  - v. Would cause a reasonable person to feel fear
- b. Stalking 2:
  - i. Repetitive and Menacing
  - ii. Pursuit, following, harassing and/or interfering with the peace and/or safety of another

***Examples of Stalking:***

I. *Stalking 1*

- A student repeatedly shows up at another student's on-campus residence, always notifying the front desk attendant that they are there to see the resident. Upon a call to the resident, the student informs residence hall staff that this visitor is uninvited and continuously attempts to see them, even so far as waiting for them outside of classes and showing up to their on-campus place of employment requesting that they go out on a date together.

II. *Stalking 2*

- A graduate student working as an on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student and stated that it was not necessary and would appreciate the gift deliveries to stop. The student then started leaving notes of love and gratitude on the graduate assistant's car, both on-campus and at home. Asked again to stop, the student stated by email: "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything necessary to make you have the feelings for me that I have for you." When the tutor did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. We are meant to be together."

*Any other University policies, when a violation is motivated by the actual or perceived membership of the reporting party on the basis of sex or gender or in a protected class, may be pursued using this policy and process. Sanctions for the above-listed "Other Civil Rights Behaviors" range from reprimand up through and including expulsion (students) or termination of employment.*

## **Administrative Intermediate Actions**

Students, faculty or staff who are being investigated for possible violations of the Civil Rights Equity & Sex/Gender-based Harassment, Discrimination and Sexual Misconduct Policy may be issued an intermediate action until the investigation and/or adjudication process is complete. Some of the intermediate action may include, but is not limited to: interim suspension (students), employee leave with/without pay, restriction on participation of University sponsored activities, modifications to class/work schedules, reassignment of employment duties, reassignment of residence hall, trespass from particular locations on campus and no contact orders.

## **Sanctions**

The following sanctions may be imposed upon any member of the community found to have violated the Civil Rights Equity & Sex/Gender-based Harassment, Discrimination and Sexual Misconduct Policy. The Title IX Coordinator will consider the impact upon the reporting party, other individual witnesses, the campus community and any prior misconduct in determining the appropriate sanctions. Additional factors considered when determining a sanction/responsive action may include:

- The nature, severity of, and circumstances surrounding the violation
- An individual's disciplinary history
- Previous grievances or allegations involving similar conduct
- Any other information deemed relevant by the Title IX Coordinator or the Title IX Investigator
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment and/or retaliation
- The need to remedy the effects of the discrimination, harassment and/or retaliation on the victim and the community

The following are the typical sanctions that may be imposed upon students or organizations singly or in combination with any intermediate actions already administered:

### ***Student Sanctions***

- Warning
- Probation
- Housing Suspension
- Suspension
- Dismissal
- Withholding Diploma
- Organizational Sanctions

- Educational Opportunities
- Other Actions

### ***Employee Sanctions***

- Written Warning
- Performance Improvement Plan
- Referral to the Employee Assistance Program
- Required Training or Education
- Removal from roles of supervision or advising
- Demotion
- Loss of Annual Pay Increase
- Suspension without Pay
- Suspension with Pay
- Revocation of Tenure
- Termination

### **Other Responsive Actions**

The University reserves the right to issue other responsive actions that are designed to prevent the reoccurrence of the action or behavior and to remedy the effects on the reporting party and the community. Examples may include but are not limited to:

- Monitoring or evaluations completed out of cycle for employees
- Completion of additional training
- University issued No Contact Orders
- Alterations to work/school schedules
- Academic accommodations (taking courses on line or other institutions to transfer in)

### **Withdrawal/Stop-out/Drop**

***Students:*** The University does not permit a student to withdraw/stop-out/drop if that student has a pending violation of the Civil Rights Equity & Sex/Gender-Based Harassment, Discrimination, and Sexual Misconduct Policy. Should a student decide to leave and not participate, the process will proceed in the student's absence to a reasonable resolution. The student will not be permitted to return to the University unless all sanctions (if applicable) have been satisfied.

### **Resignation While Charges Pending**

***Employees:*** Should an employee resign while a pending violation of the Civil Rights Equity & Sex/Gender-Based Harassment, Discrimination, and Sexual Misconduct Policy is in process, the records of the Title IX Coordinator and the Human Resources will reflect that status. University responses to any future inquiries regarding employment references for that

individual will reflect a pending violation. The Title IX Coordinator will act promptly and effectively to remedy the effects of the conduct upon the reporting party and the community.

### **Failure to Complete Sanctions/Comply with Responsive Actions**

All responding parties are expected to comply with conduct sanctions/responsive/corrective actions within the time frame specified by Human Resources and/or supervisor in conjunction with the Title IX Coordinator (for employees) and by the Title IX Coordinator (for students). Failure to follow through on conduct sanctions/responsive/corrective actions by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanctions/responsive/corrective actions and/or suspension, expulsion and/or termination from the University. A suspension will only be lifted when compliance is achieved to the satisfaction of the University Official issuing the suspension in conjunction with the Title IX Coordinator.

### **Records**

In implementing this policy, records of all grievances and resolutions, will be kept by the Title IX Coordinator and indefinitely in the Title IX Coordinator database.

### **Sanctioning for Sexual Misconduct**

- Any person found responsible for violating the Non-Consensual Sexual Contact policy (where no intercourse has occurred) will likely receive a sanction ranging from probation to dismissal (student) or probation to termination (employee), depending on the severity of the incident, and taking into account any previous disciplinary violations.
- Any person found responsible for violating the Non-Consensual Sexual Intercourse policy will likely face a recommended sanction of suspension or dismissal (student) or suspension or termination (employee).
- Any person found responsible for violating the Sexual Exploitation or Sexual Harassment policies will likely receive a recommended sanction ranging from warning to dismissal (student) or termination (employee), depending on the severity of the incident, and taking into account any previous disciplinary violations.

### **Confidentiality, Privacy, and Reporting Policy**

All University employees (faculty, staff, administrators), except designated confidential reporters, are expected to immediately report actual or suspected discrimination or harassment to the Title IX Coordinator. In order to make informed choices, it is important to be aware of confidentiality, private, and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality – meaning they are not required to report actual or suspected discrimination or harassment to appropriate university officials - thereby offering options and advice without any obligation to inform an outside



agency or individual unless a reporting party has requested information to be shared. Other resources exist for a reporting party to report crimes and policy violations and these resources will take action when an incident is reported to them. The following describes the three reporting options at the University:

### ***Confidential Reporting***

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with:

- On-campus licensed professional mental health counselors and staff
- On-campus health service providers and staff
- On-campus Chaplain (Daytona Beach only)
- Off-campus:
  - Licensed professional counselors
  - Local rape crisis counselors
  - Domestic violence resources
  - Local or state assistance agencies
  - Clergy/Chaplains

All of the above employees will maintain confidentiality except in extreme cases of immediate threat or danger, or abuse of a minor. Campus counselors and/or the Employee Assistance Program (available 24/7) are available to help free of charge and can be seen on an emergency basis during normal business hours. These employees will submit semesterly anonymous, aggregate statistical information for Clery Act purposes unless they believe it would be harmful to a specific client, patient or parishioner.

### ***Private Reporting Option***

If a reporting party would like the details of the incident to be reported, but does not want personally identifiable information shared, they may speak to Director of Women's and Diversity Center (Prescott Campus Only).

A private reporter will report details of the incident to the Title IX Coordinator, but will not share personally identifiable information without the reporting party's consent except in extreme cases of immediate threat or danger, or abuse of a minor. Please be aware that in some cases, the above employee may ask for additional information after reporting the incident to the Title IX Coordinator. The purpose of the request for additional information is to ensure the safety of the reporting party and the campus community.

### ***Formal Reporting Options***

All University employees have a duty to report, unless they fall under the "Confidential Reporting" section above. A reporting party may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared

by the employee (who is considered a third party reporter) with the Title IX Coordinator. Employees must share all details of the reports they receive. General statements gathered in climate surveys, classroom writing assignments, human subjects research, or events such as *Take Back the Night* marches or speak-outs do not provide notice that must be reported to the Title IX Coordinator by employees. Remedial actions may result without formal university action.

If a reporting party does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the reporting party may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. In cases indicating pattern, predation, threat, weapons and/or violence, the University will likely be unable to honor a request for confidentiality. In cases where the reporting party requests confidentiality and the circumstances allow the University to honor that request, the University will offer interim supports and remedies to the reporting party and the community, but will not otherwise pursue formal action. Both the reporting party and third party reporters have the right, and can expect, to have reports taken seriously by the University when formally reported, and to have those incidents investigated and properly resolved through these procedures.

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told, including but not limited to: Human Resources, Division of Student Affairs, Campus Safety and Security, Counseling Center, and the Chancellor. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve the rights and privacy of both the reporting party and responding party.

Reports can be made directly to the Title IX Coordinator via e-mail, phone or in person. Please refer to contact information located on page 4.

*Prescott Campus Only:*

Additionally, anonymous reports can be made by the reporting party and/or third party reporters using the online reporting forms found on the [Nondiscrimination webpage](#)

Or the reporting hotline:

- Prescott Campus - 928-777-4688 (HOTT)

\* Note that these anonymous reports may prompt a need for the institution to investigate.

***Law Enforcement Reporting***

Many incidents of sexual misconduct are also violations of the law. Individuals who wish to report a crime to law enforcement officials can contact the local agencies directly. They can also request assistance contacting the proper agency through the Title IX Coordinator, Campus Safety and Security or any confidential reporter. The involvement of law enforcement

does not replace actions the University will take to ensure that the procedures outlined for sexual misconduct are followed.

*Failure of a non-confidential employee, as described in this section, to report an incident or incidents of sex or gender harassment discrimination, or sexual misconduct of which they become aware, is a violation of University policy and can be subject to disciplinary action for failure to comply with University policies.*

## **Federal Statistical Reporting Obligations**

Certain campus officials – those deemed Campus Security Authorities (please contact Campus Safety and Security for more information) - have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the Annual Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student/conduct affairs, campus law enforcement, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the reporting party and may be done anonymously.

## **Federal Timely Warning Reporting Obligations**

Reporting parties of sexual misconduct should also be aware that University administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The University will ensure that a reporting party's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger.

## **Additional Policy Provisions**

### **A. False Reports**

University will not tolerate intentional false reporting of incidents. It is a violation of *University Policy* to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws. If a false report is determined, the individual who made the report may be faced with charges. It should be noted that a finding of not responsible in a case does not mean that the report filed was a false report.

### **B. Amnesty for Reporting Party and Witnesses**

The University community encourages the reporting of misconduct and crimes by reporting parties and witnesses. Sometimes, reporting party's or witnesses are hesitant to report to University officials or participate in resolution processes because they fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident. It is in the best interests of this community that as many reporting party's as possible choose to report to university officials, and that witnesses come forward to share what they know. To encourage reporting, the University pursues a policy of offering reporting parties of misconduct and witnesses amnesty from minor policy violations related to the incident.

Sometimes, students are hesitant to offer assistance to others for fear that they may get themselves in trouble (for example, a student who has been drinking underage might hesitate to help take a sexual misconduct reporting party to the Campus Safety and Security). The University pursues a policy of amnesty for students who offer help to others in need. While policy violations cannot be overlooked, the University will provide educational options, rather than punishment, to those who offer their assistance to others in need.

#### C. Parental Notification

The University reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. The University may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is non-dependent, the University may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk. The University also reserves the right to designate which University officials have a need to know about individual conduct reports pursuant to the Family Educational Rights and Privacy Act (FERPA).

## QUESTIONS AND ANSWERS

Here are some of the most commonly asked questions regarding the University's sexual misconduct policy and procedures.

1. *Does information about a report remain private?*

The privacy of all parties to a report of sexual misconduct must be respected, except insofar as it interferes with the University's obligation to fully investigate allegations of sexual misconduct. Where privacy is not strictly kept, it will still be tightly controlled on a need-to-know basis. The University will not disseminate information and/or written materials to persons not involved in the resolution process without the consent of both parties. Witnesses are also required to maintain the privacy of information shared with them during interviews and/or hearings. Violations of the privacy of the reporting party or the responding party may lead to conduct action by the University, though both parties are allowed to share their perspectives and experiences. All parties, including witnesses, involved in an allegation are strongly encouraged to maintain the privacy of information and/or written materials.

In all resolutions of sexual misconduct, the reporting and responding parties will be informed of the outcome. In some instances, the administration also may choose to make a brief public announcement of the nature of the violation and the action taken, without using the name or identifiable information of either party. Certain University administrators are informed of the outcome within the bounds of student privacy (e.g., the President of the University, Dean of Students, Director of Campus Safety and Security). The institution also must statistically report the occurrence on campus of major violent crimes, including certain sex offenses, in an "Annual Security Report" of campus crime statistics. This statistical report does not include personally identifiable information.

2. *Will my parents be told?*

No, not unless you tell them. Whether you are the reporting party or the responding party, the University's primary relationship is to the student and not to the parent. However, in the event of major medical, disciplinary, or academic jeopardy, students are strongly encouraged to inform their parents. University officials will directly inform parents when requested to do so by a student, in a life-threatening situation, or if an individual has granted FERPA permissions.

3. *Will the responding party know my identity?*

Yes, if the University determines there is reasonable cause to believe a violation has occurred and investigates the matter. The responding party has the right to know the identity of the reporting party.

4. *Do I have to name the responding party?*

Yes, if you want formal disciplinary action to be taken against the responding party. You can report the incident without the identity of the responding party, but doing so may limit the institution's ability to respond comprehensively.

5. *What do I do if I am accused of sexual misconduct?*

DO NOT contact the reporting party. You may immediately want to contact someone who can act as your advisor; anyone may serve as your advisor. You may also contact the Dean of Students Office, Human Resources, or the Title IX Coordinator, which can explain the University's procedures for addressing sexual misconduct reports. You may also want to talk to a confidential counselor at the counseling center or seek other community assistance. See below regarding legal representation.

6. *Will I (as a reporting party) have to pay for counseling/or medical care?*

There is no charge for Daytona Beach and Prescott Residential Campus students seeking care through Embry-Riddle Aeronautical University. If the reporting party is a Worldwide Campus student or a residential campus student that is accessing community and non-institutional service, payment for these will be subject to state/local laws, insurance requirements, etc. If the reporting party or responding party is an employee, counseling services are available free of charge through accessing the Employee EAP program. In Arizona, a reporting party may be eligible to receive state basic services free of charge.

7. *What about legal advice?*

Reporting parties of criminal sexual assault need not retain a private attorney to pursue criminal prosecution because representation will be handled by the District Attorney's [Prosecutor's] office. This option exists when the reporting party chooses to file a report with local law enforcement. You may want to retain an attorney if you are considering filing a civil action or are the responding party. The responding party may retain counsel at their own expense if they determine that they need legal advice about criminal prosecution and/or the campus conduct proceeding. Both the responding party and the reporting party may also use an attorney as their advisor [or advocate] during the campus' resolution process. Attorneys are subject to the same restrictions as other advisors [or advocates] in the process as described in the student conduct process.

8. *How is a report of sexual misconduct decided?*

The University investigates allegations of sex/gender based harassment, discrimination or misconduct to determine whether there is evidence to indicate a

policy violation is “more likely than not.” This standard, called the preponderance of the evidence, corresponds to an amount of evidence indicating a policy violation is more than 50% likely.

#### *9. What about changing residence hall rooms?*

You may request a room change if you want to move. Room changes under these circumstances are considered emergencies. It is typically institutional policy that in emergency room changes, the student is moved to the first available suitable room. If you prefer that the responding party be moved to another residence hall, that request will be evaluated by the Title IX Coordinator to determine if it can be honored. Other assistance and modifications available to you might include:

- Assistance from University support staff in completing a room relocation;
- Arranging to dissolve a housing contract and pro-rating a refund;
- Assistance with or rescheduling an academic assignment (paper, exams, etc.) or otherwise implementing academic assistance;
- Taking an incomplete in a class;
- Assistance with transferring class sections or changing to a special topics seminar;
- Temporary withdrawal;
- Assistance with alternative course completion options;
- Escorts on campus;
- On or off-campus counseling assistance; or
- Other accommodations for safety as necessary.

#### *10. What about changing offices?*

An employee may request an office change or classroom teaching assignment change through the Title IX Coordinator. The Title IX Coordinator will evaluate the request and options with Human Resources and appropriate supervisors. In cases where the safety of a reporting party is at issue, the university will take measures to eliminate the risk associated with an office or classroom. Other assistance and modifications available might include:

- Changing work schedules
- Providing a substitute instructor
- Telecommuting (if reasonable for the job responsibilities)
- Temporary paid leave
- Change of parking assignment
- Escorts on campus

#### *11. What should I do about preserving evidence of a sexual assault?*

Police are in the best position to secure evidence of a crime. Physical evidence of a criminal sexual assault must be collected from the reporting party's person

within 120 hours, though evidence can often be obtained from towels, sheets, clothes, etc. for much longer periods of time. If you believe you have been a victim of a criminal sexual assault, you should go to the Hospital Emergency Room, before washing yourself or your clothing. While it may be uncomfortable, it is best to also avoid eating or drinking anything, brushing teeth, removing tampons or sanitary pads, until the exam is complete.

### ***Prescott Campus***

\*Yavapai Family Advocacy Center (YFAC)  
Prescott Valley, AZ 86312  
(928) 775-0669

*\*Because YFAC is a safe place for victims, the physical address is not published*

### ***Daytona Beach Campus***

Halifax Health Medical Center (Halifax)  
303 N. Clyde Morris Blvd.  
Daytona Beach, FL  
877-842-5432

The Sexual Assault Nurse Examiner (a specially trained nurse) at the YFAC/Halifax is usually on call 24 hours a day, 7 days a week (call the Emergency Room if you first want to speak to the nurse; ER will refer you). If a reporting party goes to the hospital, local police will be called, but s/he is not obligated to talk to the police or to pursue prosecution. Having the evidence collected in this manner will help to keep all options available to a reporting party, but will not obligate him or her to any course of action. Collecting evidence can assist the authorities in pursuing criminal charges, should the reporting party decide later to exercise it.

***For the Reporting Party:*** YFAC/Halifax staff will collect evidence, check for injuries, address pregnancy concerns, and address the possibility of exposure to sexually transmitted diseases and infections. If you have changed clothing since the assault, bring the clothing you had on at the time of the assault with you to YFAC/hospital in a clean, sanitary container such as a clean paper grocery bag or wrapped in a clean sheet (plastic containers do not breathe, and may render evidence useless). If you have not changed clothes, bring a change of clothes with you to YFAC/hospital, if possible, as they will likely keep the clothes you are wearing as evidence. You can take a support person with you to YFAC/hospital, and they can accompany you through the exam, if you want. Do not disturb the crime scene—leave all sheets, towels, etc. that may bear evidence for the police to collect.



*12. Will a reporting party be sanctioned when reporting a sexual misconduct policy violation if he/she has illegally used drugs or alcohol?*

No. The seriousness of sexual misconduct is a major concern and the University does not want any of the circumstances (e.g., drug or alcohol use) to inhibit the reporting of sexual misconduct. The University provides amnesty from any consequences through the student conduct process for minor policy violations that occur during or come to light as the result of a reporting party's report of sexual misconduct. However, in the interest of safety, flight students may be grounded from flight activity until they are emotionally and physically prepared to return to the flightdeck. The Wellness Center/Health Center and Counseling Services will assist students with this process and evaluation. It is not necessary for the reporting party to reveal to the flight department the details or circumstances of an assault.

*13. Will the use of drugs or alcohol affect the outcome of a sexual misconduct conduct resolution?*

The use of alcohol and/or drugs by either party will not diminish the responding party's responsibility. On the other hand, alcohol and/or drug use is likely to affect the responding party's memory and, therefore, may affect the resolution of the reported misconduct. A responding party must either remember the alleged incident or have sufficient circumstantial evidence, physical evidence and/or witnesses to prove that policy was violated. If the responding party does not remember the circumstances of the alleged incident, it may not be possible to impose sanctions on the responding party without further corroborating information. Use of alcohol and/or other drugs will never excuse a violation by a responding party.

*14. Will either party's prior use of drugs and/or alcohol be a factor when reporting sexual misconduct?*

Not unless there is a compelling reason to believe that prior use or abuse is relevant to the present matter.

*15. What should I do if I am uncertain about what happened?*

If you believe that you have experienced sexual misconduct, but are unsure of whether it was a violation of the University's sexual misconduct policy, you should contact the Title IX Coordinator (not confidential) or Counseling Center (confidential). If you believe you have experienced non-consensual sexual intercourse, you should contact The Wellness Center/Health Center or the hospital emergency room to address all possible physical injuries.

**Responsible Authority: Vice President and Chief Human Resources Officer & Title IX Coordinators (Daytona Beach, Prescott, and WorldWide)**

*This universal policy, resolution process and investigation protocol may be applied to all reports of civil rights violations and discrimination reports, especially those governed by Title IX, including sexual violence, sexual harassment, intimate partner violence, stalking, and/or gender-based bullying or hazing.*

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