



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

2019 - 2020

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I. Introduction

Embry-Riddle Aeronautical University (ERAU) is compliant with Civil Rights Equity, as governed by the Department of Education through the Office for Civil Rights (OCR). This policy includes adopting guidance as published in the 2001 OCR Guidance on Sexual Harassment, the April 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 September 2017 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 Resolution Agreements, and the best practices emerging in the field.

Our terminology is intentional. Gender-based misconduct is the umbrella for a wide range of behaviors that fall under that descriptor. We use the term [sexual misconduct](#) when actions are gender-based, but manifest in sexual actions. We use these terms, as they are the most-neutral 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 may use the term “victim, survivor, or complainant.” This is intentional on our part. It is not for us to presume. 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 Davis¹ 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. Our policies need to address when conduct changes employment conditions or limits, denies, or interferes with educational access, benefits, or opportunities.

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.

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

² The 2017 ATIXA Whitepaper, 3 (2017).



II. 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/grievance relating to discrimination, harassment, or retaliation may do so by reporting the concern to their campus Title IX Coordinator.

Online reporting forms for Daytona, Prescott, and Worldwide campuses are also located online on the [ERAU website](#) and within [ERNIE](#), listed under Title IX for each respective campus. Please see section [VI. Reporting](#) for additional information.

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

Linda Dammer

Title IX Coordinator
Daytona Beach Campus & Worldwide
Building 610, Office 319
1 Aerospace Boulevard
Daytona Beach, FL 32114
386-226-7971
dammerl@erau.edu
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Dr. Elizabeth D. Frost

Title IX Coordinator
Prescott Campus
Building 49, Office 103
3700 Willow Creek Road
Prescott, AZ 86301
928-777-3747
froste@erau.edu
prtitle9@erau.edu

Federal Contact Information

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; Web: <http://www.ed.gov/ocr>

Equal Employment Opportunity Commission (EEOC)

Contact: <http://www.eeoc.gov/contact/>



III. Sexual Misconduct Section

Members of the Embry-Riddle Aeronautical University (ERAU) 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. This policy is intended to define community expectations and to establish a mechanism for determining when those expectations have been violated.²

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 academic related activities, athletics, student or professional conferences and meetings, clubs, and/or organizations events may also violate 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 limited.

Jurisdiction

This policy extends to all activities on University owned and/or operated property, including but not limited to:

- Labs
- Professional conferences
- Research associated activities and/or competitions
- University sponsored trips
- Meetings
- Athletic events
- Internal and External summer conferences and/or camps
- Private tutoring
- Private coaching
- Social functions off campus
- Online courses
- Online discussion boards
- Online group projects

The policy 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
- Other vehicles
- Campus parking lots
- Residence halls
- Military Bases – where ERAU courses are taught or have offices

² The policy and process 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.



Please note: 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.

Consent³

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.
- 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.

Incapacitated

An individual is incapacitated when they are 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 consumption⁴, 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 they demonstrate 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

³ The definition of "consent" may vary from state to state. Links: [All state definitions](#); [Arizona Definition of Consent](#); [Florida Definition of Consent](#).

⁴ Possession, use and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc., is prohibited. Administering one of these drugs to another student or employee is a violation of this policy. More information on these drugs can be found at: <https://www.womenshealth.gov/a-z-topics/date-rape-drugs>.



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 blackout⁵ 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 evaluated in determining whether consent could be considered as having been given.

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.”

Consent and Community Expectations

The expectations of our community regarding consent and sexual conduct can be summarized as follows:

1. 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.
2. Consent is sexual permission.
3. 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.
4. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity.
5. 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.
6. Consent, once given, can be withdrawn at any time. There must be a clear indication that consent is being withdrawn.
7. The individual initiating sexual activity is responsible for gaining clear knowing and voluntary consent from the intended partner.

⁵ 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 / 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)



Sexual Misconduct Violations

Sexual Misconduct offenses include, but are not limited to:

1. [Sexual Harassment](#)
2. [Sexual Exploitation](#)
3. [Force / Coercion](#) (for Sexual Gain)
4. [Non-Consensual Sexual Contact](#) (or attempts to commit same)
5. [Non-Consensual Sexual Intercourse](#) (or attempts to commit same)

The University's definitions of these terms are listed under section:

[VIII. Appendix: Policy Definitions.](#)

Examples of these violations are listed under section:

[VIII. Appendix: Examples of Sexual Misconduct Violations.](#)

The Equal Employment Opportunity Commission (EEOC) regards sexual harassment as a form of sex / gender discrimination and, therefore, as an unlawful discriminatory practice. 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.



IV. Consensual Relationships: Student / Employee / Supervisor⁶

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, coaches, program directors, and 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 in the relationship should be mindful of these potential costs to the student.

Any employee who engages in a consensual amorous relationship with a student must disclose the relationship to both their supervisor and to Human Resources immediately. If it is determined that a conflict of interest or apparent conflict of interest has occurred, the employee may be terminated. In any case appropriate and effective steps will be taken to eliminate any supervisory/evaluative role and any perceived conflict of interest. Nondisclosure of such relationship will lead to immediate disciplinary action up to and possibly including termination of employment.

⁶ As per the [Administrative Policies and Procedures \(APPM\) 8.3.12](#) – Consensual Amorous Relationships Policy. APPM 8.3.12 is managed by Human Resources. The [APPM online in ERNIE](#) always reflects the most up to date University policy regarding 8.3.12.



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 Chair/Director of the relevant department – in consultation with the Dean of Students and/or the Dean of 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 Dean of Students.

Supervisors and Employees

The University does not condone, and strongly discourages, consensual relations between a supervisor and an employee under his/her 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 preferential or adverse treatment is given or is perceived to be given to an employee engaged in a consensual relationship with his or her supervisor. When such a relationship develops, both employees are obligated to inform the supervisor's supervisor and 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 to their positions or continued employment. 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, in the exercise of its sole discretion, take any appropriate remedial, preventive, or corrective action to minimize the risks or effects of 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.



V. Civil Rights Equity Section

The University's Title IX Policy is 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.

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 process below.

Equal Opportunity, Harassment, and Discrimination

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 Title IX Coordinators 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/grievances surrounding discrimination, harassment and/or retaliation should be made to the Title IX Coordinator promptly, but there is no time limitation on the filing of reports/grievances, as long as the Responding Party remains subject to the University's jurisdiction. All reports/grievances are acted



upon promptly while every effort is made by the University to preserve the privacy of reports/grievances. Reports or incidents surrounding discrimination by a Title IX Coordinator should be reported to the other Title IX Coordinator, the Vice President and General Counsel, and Human Resources.

This policy applies to behaviors that take place on University owned and/or operated property, 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 an individual 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 University;
- 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, work-related capacity or when it creates a hostile work environment.

Sex/Gender Misconduct and Hazing

Civil Rights Equity offenses include, but are not limited to:

- 1. [Bullying](#)
- 2. [Discrimination](#)
- 3. [Harassment](#) (including Discriminatory Harassment and Bias-Related Harassment)
- 4. [Hazing](#)
- 5. [Hostile Environment](#)
- 6. [Intimate Partner Violence](#)
- 7. [Intimidation](#)
- 8. [Retaliation](#)
- 9. [Stalking](#) (including Cyber/Electronic Stalking)
- 10. [Verbal or Physical Abuse](#)

The ERAU policy definitions of these terms are listed under [VIII. Appendix: Policy Definitions](#).

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.



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. Sanctions for the listed “Civil Rights Equity” offenses range from reprimand up through and including expulsion (students) or termination of employment.

A report of conduct deemed to be offensive or harassing that does not rise to the level of discrimination may be referred to another University Office for review and resolution.

Accommodation of Disabilities

Embry-Riddle Aeronautical University is committed to full compliance with the Americans with Disabilities Act of 1990 (ADA) as amended effective January 1, 2009, 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 they have 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, working, learning, 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
Disability Support Services
Daytona Beach & Worldwide
Wellness Center, RM 131
1 Aerospace Boulevard
Daytona Beach, FL 32114
386-226-6098
lloydv@erau.edu

Becca Stein, Accessibility Specialist
Disability Support Services
Prescott Campus
Library, Building 43, RM 109
3700 Willow Creek RD
Prescott, AZ 86301
928-777-6749
steinb@erau.edu



Deborah Goldstein, Administrative Assistant

Worldwide Representative

Worldwide Student Affairs

1 Aerospace Boulevard

Daytona Beach, FL 32114

386-226-4911

goldsf38@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

1 Aerospace Boulevard

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Sara Heffelfinger

Prescott Campus

Executive Director of Human Resources

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3700 Willow Creek Road

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To file a report, grievance or complaint about ADA/504 Compliance, please refer to the Title IX Coordinators of your respective campus. You can also fill out the online form on the respective

Title IX websites below:

- Daytona Beach Campus: <http://daytonabeach.erau.edu/title-ix-compliance>
- Prescott Campus: <https://prescott.erau.edu/title-ix/>
- Worldwide Campus: <https://worldwide.erau.edu/administration/diversity/>



VI. Reporting, Confidentiality, Privacy, & Records

All University employees (faculty, staff, administrators), except designated confidential reporters, are expected to immediately report (the same day or next business day) 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, 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 (3) reporting options at the University:

1. [Confidential Reporting](#)
2. [University Formal Reporting](#)
3. [Law Enforcement Reporting](#)

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
- On-campus health/wellness service providers
- 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 are available during normal business hours for students and the Employee Assistance Program is available to help free of charge to employees. 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.

University Formal Reporting

All University employees have a duty to report, unless they fall under the “Confidential Reporting” section above. A Reporting Party may want to consider 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.

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 their duty to ensure the safety of the campus and comply with federal law. In such cases, The University may be limited on their response to addressing the behaviors of the Responding Party as not to identify the Reporting Party. 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 this process.

Formal reporting still affords privacy to the Reporting Party, 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, in person, or online.

[Daytona Reporting Website](#)

Linda Dammer, Title IX Coordinator, 386-226-7971, dbtitle9@erau.edu

[Prescott Reporting Website](#)

Dr. Elizabeth Frost, Title IX Coordinator, 928-777-3747, prttitle9@erau.edu

[Worldwide Reporting Website](#)

Linda Dammer, Title IX Coordinator, 386-226-7971, wwtitle9@erau.edu

Prescott Campus Only*: Anonymous Reporting Hotline: (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 process outlined for sexual misconduct are followed.

If the Reporting Party is under 18 years of age, the University has an obligation to contact law enforcement.

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.

False Reports

The 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.

Amnesty for Reporting Party and Witnesses

The University community encourages the reporting of misconduct and crimes by [Reporting Parties](#) and [witnesses](#). Sometimes Reporting Parties 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 Parties 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. 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.

Please note that flight students may be “grounded” not as punishment, but for safety reasons if they might have drugs or alcohol in their systems, making it unsafe to fly. The grounding would be implemented for the time it takes the substance to be cleared from their systems.

Parental Notification

The University reserves the right to notify parents/guardians of dependent students or non-dependent students (under the age of 21), regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. Unless the student is in imminent danger to



themselves or others, the student will be consulted prior to a decision of parental notification when possible.

Records

In implementing this policy, all Title IX case files and records will be retained by the Title IX Coordinator(s).



VII. Violations: Interim Measures, Violations, and Sanctions

Interim Measures

During an investigation, Embry-Riddle Aeronautical University (ERAU) may take interim measures. Students, student organizations, 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:

- a) an interim action until the investigation and/or adjudication process is complete;
- b) remedial, responsive, and/or protective actions to prevent the reoccurrence of the alleged action or alleged behavior and to remedy the effects on the Reporting Party and/or the community;
- c) 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.

Interim measures include, but are not limited to:

- no contact orders
- living arrangement adjustments
- academic support
- providing counseling and/or medical services
- providing a campus escort
- academic or work schedule and assignment accommodations
- safety planning
- referral to campus and/or community support resources
- 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

Further details can be found in the Title IX Process on the [Title IX website](#).

Violations of this Policy

Once an investigation is complete, ERAU may impose remedial, responsive, and/or disciplinary sanctions with respect to any member of the community 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 Process (also known as Title IX Process), which can be found on the [Title IX website](#).

Sanctions

The following sanctions may be imposed upon or recommended for 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 or recommending the appropriate sanctions.

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

- Written Warning
- Limit Educational Opportunities
- Organizational Sanctions
- Housing Suspension
- Withholding Diploma
- Probation
- Suspension
- Dismissal
- Other Actions

Employee Sanctions

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

Failure to Complete Sanctions/Comply with Responsive Actions

All responding parties are expected to comply with conduct sanctions, responsive, and corrective actions within the time frame specified by Human Resources and 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, and corrective actions by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanctions, responsive, and corrective actions and up to suspension, expulsion, 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.

Further details can be found in the Title IX Process on the [Title IX website](#).



VIII. Appendix

Policy Definitions

In compliance with the Violence Against Women Reauthorization Act of 2013 (“VAWA”), the Clery Act, and Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973, the University uses specific definitions of sexual assault and sexual abuse. The University incorporates the State and Federal definitions of several other important terms, including domestic violence, dating violence, and stalking. The University recognizes that sexual assault, domestic violence, dating violence, and stalking are not gender-specific crimes.

To aid searches, definitions are provided in alphabetical order below.

Advisor: A person selected by a [Reporting Party](#) or a [Responding Party](#) to provide support and/or advice. The Advisor may not serve as a witness. All parties have the same opportunities to have an Advisor present at any institutional meeting or proceeding, and to have the same opportunity to be accompanied by an Advisor of their choosing, including a lawyer.

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 1st Amendment on the basis of actual or perceived membership in a protected class.

Confidential Reporters: There are only three (3) classifications of employees at ERAU that are exceptions to being Mandatory Reporters, which are: Clergy, Health / Wellness Services, and Mental Health Services / Counselors. All other University officials and staff are [Mandatory Reporters](#).

Consent: 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 such a critical factor, that there is a [section](#) in this policy dedicated to discussing it.

Disability: Under the ADA and its amendments, a person has a disability if they have 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, working, learning, performing manual tasks, walking or caring for oneself.



Discrimination: 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.

- **Sex / Gender-Based Discrimination:** When a person is subjected to different or unequal treatment ("discrimination") in any number of situations and when that treatment is based on the person's gender. To clarify the terms: Sex discrimination refers to discrimination based on the biological differences between male and female, but gender discrimination refers to discrimination based on social behavior, such as nonconformance of gender roles, including sexual orientation and gender identity discrimination. In terms of University Policy, Sex or Gender-Based Discrimination are essentially the same thing and the terms can be used interchangeably.
- **Disability Discrimination:** When an employer or other entity covered by the Americans with Disabilities Act, as amended, or the Rehabilitation Act, as amended, treats a qualified individual with a disability who is an employee, applicant, or student unfavorably because they have a disability.

Employee: Any faculty, staff, administrator, board member, trustee, volunteer, contractor employed, or anyone on whom the University formally confers a title or is contracted with Embry-Riddle Aeronautical University to carry out University official business or act on the University's behalf.

Force / Manipulation: Force is the use of physical violence and/or imposing on someone physically or verbally to gain sexual access. It includes, but is not limited to coercion, intimidation, and physical violence.

- **Coercion:** Coercion is unreasonable pressure for sexual activity; pressure that continues after a person(s) has indicated the first time that they do not want to go further. Example: 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 engagement, but continued pressure to engage in sexual activity by person "B" continues, is considered coercion.
- **Intimidation:** 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.
- **Physical Violence:** "Physical violence is the intentional use of physical force with the potential for causing death, disability, injury, or harm. Physical violence includes, but is not limited to, scratching; pushing; shoving; throwing; grabbing; biting; choking; shaking; slapping; punching; burning; use of a weapon; and use of restraints or one's body, size, or strength against another person" (CDC, 2007).



Harassment: 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.

- **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.
- **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.
- **Quid Pro Quo Harassment:** A University employee or someone in an authoritative role explicitly or implicitly conditions a student's/employee's participation in an education program or activity or bases an educational decision on the student's/employee's submission to unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, 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.Quid pro quo harassment will not be tolerated whether the student/employee resists and suffers the threatened harm or submits and thus avoids the threatened harm.⁷
- **Sexual Harassment:** 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:
 - a. Unreasonably interfering with an individual's academic, social or professional performance; or

⁷ Definition from [Office for Civil Rights](#), Sexual Harassment Guidance 1997.



- b. Creating an intimidating, hostile, or demeaning employment or educational environment.

Hazing: 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 (refer to your Campus Student Handbook and/or the Fraternity & Sorority Life Guideline Manual) 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.

Hostile Environment: A hostile environment is created when the offense is: sufficiently severe, persistent, or pervasive. For example: actions that unreasonably interfere 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. A hostile environment may be created by oral, written, graphic, and physical conduct that is sufficiently severe, persistent, or pervasive 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.⁸

Incapacitation: 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, either voluntarily or involuntarily, or the individual is unconscious, asleep, involuntarily physically restrained, or otherwise unaware that the sexual activity is occurring.

Intimate Partner Violence (Dating / Domestic Violence)⁹: The relationship between two (2) parties defines the difference between Intimate Partner Violence, which may be known as dating violence, domestic violence, or relationship violence. 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.

Mandatory Reporters: All University employees (not limited to faculty, staff, coaches, and administrators) are Mandatory Reporters and **MUST** immediately [report](#) actual or suspected sexual misconduct, discrimination, and/or harassment to the Title IX Coordinator.

Non-Consensual Sexual Contact (NCSC): Non-Consensual Sexual Contact is defined as any intentional sexual touching, however slight, with any object, by a person upon another person, that is without consent and/or by force.

⁸ 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>

⁹ Definitions of Domestic Violence may be found at <https://www.childwelfare.gov/pubpdfs/defdomvio.pdf>



Non-Consensual Sexual Intercourse (NCSI): 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.

Protected Classes: 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.

Reporting Party (Reporter): The individual(s) who is the recipient of unwelcome sexual, gender related, discriminatory, and/or other harassment behaviors by another person(s). While a “Third Party Reporter” is a person that files a report on behalf of, or out of concern for another; where they believe another person(s) is the recipient of alleged policy violations.

Responding Party (Respondent): The individual(s) who has been alleged / accused of violating the Civil Rights Equity and Sex / Gender Based Harassment, Discrimination, and Sexual Misconduct Policy (also known as Title IX Policy).

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, violence, other harassment, slander, rumors, and libel. Retaliation against a Reporting Party, Responding Party, witnesses, or other individuals providing information, is a serious violation of University policy.

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:

- a. Creating 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;
- b. Sharing 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;
- c. Observing, or assisting others, with the observation of sexual behavior or a state of undress of another person without the knowledge and consent of that person;
- d. “Peeping Tom” or voyeuristic behaviors;
- e. 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;



- f. Engaging in or attempting to engage others in “escort services” or “dating services”, which include or encourage sexual behavior in exchange for money or other benefit or reward;
- g. Purposefully providing drugs or alcohol to a person for personal gain;
- h. Exposing another person to pornographic material without the person’s advance knowledge or consent.
- i. Intentionally or recklessly exposing one’s genitals in non-consensual circumstances;
- j. Sexually-based stalking and/or bullying.

Sexual Misconduct: The University uses the term “Sexual Misconduct” as an umbrella term, which encompasses, but is not limited to a range of behaviors, including sexual assault, gender-based harassment, domestic violence, dating violence, stalking, and any other conduct of a sexual nature that is nonconsensual, or has the effect of threatening, intimidating, or coercing a person at whom such conduct is directed.

Stalking: Stalking occurs when a person engages in a course of conduct or repeatedly commits acts toward another person, under circumstances that would:

- a) place the person in reasonable fear for safety, or of harm or bodily injury to self or others; or
- b) reasonably cause substantial emotional distress to the person.

A course of conduct refers to a pattern of behavior of two (2) or more acts over a period of time that can be reasonably regarded as likely to alarm, harass, or cause fear of harm or injury to that person or to a third party. The feared harm or injury may be physical, emotional, or psychological, or related to the personal safety, property, education, or employment of that individual. Stalking may involve individuals who are known to one another or have an intimate or sexual relationship, or may involve individuals who are unknown to one another.

Title IX Coordinator: The Title IX Coordinator collaborates across campus constituencies to foster a safe, welcoming, and respectful environment for all members of the ERAU community. The Title IX Coordinator provides institutional leadership on this policy, ensuring the University is in compliance with federal law and state statutes; oversees the centralized review, investigation and resolution of all complaints related to sexual misconduct, gender-based harassment, dating or domestic violence, and stalking; other civil rights equity complaints, and ensures a fair and equitable process for all involved.

Title IX Investigator: The Investigator communicates, takes statements, and collects information and evidence from all parties (Reporting Party, Responding Party, Witnesses, Third Party Reporters, and others) surrounding alleged violation(s) of this policy. The Investigator prepares a report of all details and submits the information to the Title IX Coordinator.

Verbal or Physical Abuse: Includes 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.



Witness: An individual who, personally sees, perceives, or has been confided in by the Reporting Party or Responding Party regarding an alleged policy violation.

Examples of Sexual Misconduct Violations

To aid searches, examples are provided in alphabetical order below.

Coercion, Force, and Manipulation Examples

- A guy blocks the door so that a girl cannot leave. He says to her: “kiss me and I will let you leave”.
- Samantha said to her boyfriend: “If you don’t have sex with me this way, I will leave you.”
- Seth said: “Have sex with me or I’ll hit you”. Jamie said: “Okay, don’t hit me, I’ll do what you want.”.
- There is a difference between seduction and coercion. The distinction is in whether the person who is the object of the pressure wants or does not want to be convinced.
 - In seduction, the sexual advances are ultimately welcome. Coercion is different because you want to convince someone, but they make it clear that they do not want to be convinced.¹⁰
 - 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 engagement, but continued pressure to engage in sexual activity by person “B” continues, 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.

Intimate Partner Violence (Domestic / Dating Violence) Examples

- 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.
- 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.
- 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.
- Married employees are witnessed in the parking garage, with one partner slapping and scratching the other in the midst of an argument.

Non-Consensual Sexual Contact Example

- 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

¹⁰ The 2017 ATIXA Whitepaper.



contact). Amanda would never have 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 coerced. Sexual contact without consent is sexual misconduct.**

Non-Consensual Sexual Intercourse Examples

- 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.**
- 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.

Sexual Exploitation Examples

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 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 consent¹¹;
- Sharing 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;
- Observing, or assisting others, with the observation 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 sexual behavior in exchange for money or other benefit or reward;
- Purposefully providing drugs or alcohol to a person for personal gain;
- Exposing another person to pornographic material without the person's advance knowledge or consent.
- Intentionally or recklessly exposing one's genitals in non-consensual circumstances;
- Sexually-based stalking and/or bullying.

Sexual Harassment Examples

- 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.

Quid Pro Quo Harassment Examples

- A professor insists that a student have sexual contact or intercourse with them in exchange for a

¹¹ This would include using a camera to take pictures or video under the skirt of a person.



good grade. This is harassment regardless of whether the student complies with the request.

Stalking Examples

- 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.
- 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."



Frequently Asked Questions (FAQ)

Here are some of the most commonly asked questions regarding the sexual misconduct section of the Title IX policy and process.

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 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. 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 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, if an individual has granted FERPA permissions, or if the student is under 18 years of age.

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 University's ability to respond comprehensively.

5. 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 Assistance Program (EAP). In Arizona, a Reporting Party may be eligible to receive state basic services free of charge.

6. What do I do if I am accused of sexual misconduct?

DO NOT contact the Reporting Party or who you think may have filed the report. You may immediately want to contact someone who can act as your Advisor; anyone may serve as your Advisor or support person. You may also contact the Dean of Students Office, Human Resources, or the Title IX Coordinator, which can explain the University's process 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.

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 during the campus' resolution process. Attorneys are subject to the same restrictions as other Advisors 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 and sexual misconduct to determine whether there is evidence to indicate a policy violation is "more likely than not" to have occurred. This standard, called the preponderance of the evidence, corresponds to an amount of evidence indicating a policy violation is more than 50% likely to have taken place.



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; Phone: (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

Phone: (877) 842-5432

Volusia County Rape Crisis Center

311 North Orange Street, New Smyrna Beach, FL 32168

Phone: (386) 236-3123 (Monday – Friday, 8 am – 5 pm)

24-Hour Sexual Assault Helpline: (800) 503-7621

A Sexual Assault Nurse Examiner (a specially trained nurse) are located in Florida's Volusia County Hospitals and in Arizona's Yavapai Family Advocacy Center (YFAC). 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/Volusia County Hospital 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; however, please understand that the support person may not be allowed in the room with you during the exam. This will be up to the provider. 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 they have 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 flight deck. 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 or Reporting Party's responsibility. On the other hand, alcohol and/or drug use is likely to affect the Reporting and Responding Party's memory and, therefore, may affect the resolution of the reported misconduct.

A Reporting 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 Reporting 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.



Federal Information & Authority

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/student engagement 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.

Responsible Authority

Embry-Riddle Aeronautical University's Vice President and General Counsel and Title IX Coordinators (Daytona Beach / Worldwide and Prescott).

This universal policy, resolution process, and investigation protocol should 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.

Previous Publications of Policy

The previous publications of this policy were on 11/6/2018, 8/9/2017, and 7/2016.

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