

# Sexual Harassment/Interpersonal Violence Policy

Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in educational programs and activities that receive federal financial assistance. Bryan College of Health Sciences is committed to creating a respectful, safe, and non-threatening environment that is free from sexual harassment/assault and takes preventative measures to ensure to the extent possible that students, faculty and staff are appropriately protected from such actions. This commitment includes all on-campus locations and off-campus College related activities and sites, and electronic communication.

Bryan College of Health Sciences prohibits sexual misconduct in any form and no form of sexual misconduct, no matter how minor, will be excused or tolerated. While grounded in state and federal non-discrimination laws, this policy may cover those activities which, although not severe, pervasive and objectively offensive enough to meet the legal definition of sexual harassment established in May 2020 Title IX regulations, are unacceptable and not tolerated in an educational or work environment. The college will take steps to prevent recurrence of any harassment and correct its discriminatory effects on the complainant and, if applicable, the campus community at large.

This policy sets forth the resources available to students, describes Prohibited Conduct for purposes of this Sexual Harassment/Interpersonal Violence Policy, and establishes procedures for responding to incidents that involve Prohibited Conduct as explained below.

## Definitions of Key Terms

**Prohibited Conduct** includes Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, Stalking, Title IX Sexual Harassment, Sexual Exploitation, and Retaliation as defined below. All of these forms of conduct are prohibited by College policy.

**Consent** – For purposes of this policy, consent means words or actions demonstrating a knowing and voluntary agreement to engage in mutually agreed upon sexual activity. Consent cannot be coerced, obtained by force, by ignoring or acting in spite of the objections of another, or by taking advantage of the incapacitation of another. In the case of drugs, alcohol, or other impairing substances, incapacitation is determined by how the person's decision-making ability is affected and the ability of the person to make informed judgments. The relevant standard for review is whether the person alleged to have engaged in sexual misconduct knew, or a sober, reasonable person in the same position should have known, that the complainant was incapacitated. Consent to one form of activity is not consent to another. Consent can be withdrawn at any time. Incident specific consent is required even if the two parties are in a relationship.

**Sexual Harassment** – Unwelcome conduct by an individual(s) against another individual that is sufficiently severe or pervasive that it alters the conditions of education or employment and creates an environment that a reasonable person in the alleged victim's position considering all the circumstances would find intimidating, hostile, or offensive, but that does not meet the definition of **Title IX Sexual Harassment** stated below.

The determination of whether an environment is hostile must be based on all of the circumstances. These circumstances could include the severity of the conduct, the frequency of the conduct, and whether it is threatening or offensive. An isolated incident unless extremely severe will usually not amount to hostile environment harassment. Sexual harassment may include unwelcome conduct of a sexual nature and can include sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature when:

- Submission to such conduct is made, explicitly or implicitly, a term or condition of an individual's education, employment, or participation in a College activity; or
  - Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working or academic environment
- Actions that constitute sexual harassment may also include but are not limited to:
- Engaging in conduct of a sexual nature which creates an intimidating, hostile, or offensive academic or work environment; this can include offensive physical contact, telling unwanted sexual jokes, sending sexually explicit text messages or emails, using sexually explicit profanity, staring at a person's breasts or groin, etc.

**Sexual Assault** – Sexual harassment also includes sexual assault. Sexual assault refers to physical sexual acts perpetrated against a person without their consent or where a person is incapable of giving consent due to the individual's incapacity to

give consent because of his/her temporary or permanent mental or physical incapacity (e.g., due to his/her minor status, influence of drugs, alcohol and/or other impairing substances, or because an intellectual or other disability prevents the person from having the capacity to give consent). Sexual assault includes, but is not limited to, rape, fondling without consent, incest, and statutory rape, which are defined in May 2020 Title IX regulations and for purposes of this policy as follows:

- *Rape:*
  - The carnal knowledge of a person (i.e., penile-vaginal penetration), without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity (it should be noted that either females or males could be complainants under this definition);
  - Oral or anal sexual intercourse (i.e., penile penetration) with another person, without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
  - To use an object or instrument (e.g., an inanimate object or body part other than a penis) to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
- *Fondling:* The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity; (for purposes of this definition, "private body parts" includes breasts, buttocks, or genitals, whether clothed or unclothed);.
- *Incest:* Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- *Statutory Rape:* Sexual intercourse with a person who is under the statutory age of consent.
  - Under Nebraska's laws, a person commits the crime of first degree sexual assault of child (the most serious type of statutory rape) by:
  - subjecting a child under the age of 12 to sexual penetration when the defendant is over the age of 19, or
  - subjecting a child over the age of 12 but under the age of 16 to sexual penetration when the defendant is over the age of 25.

*Dating Violence* - Violence committed against a person a) who is or has been in a social relationship of a romantic or intimate nature with the victim; and b) where the existence of such relationship shall be determined based on the reporting party's statement and a consideration of (i) the length of the relationship, (ii) the type of relationship, and (iii) the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

*Domestic Violence* - Includes felony or misdemeanor crimes of violence committed by current or former spouse of the victim, by a person with whom the victim shared a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other persons against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Nebraska.

*Stalking* - Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for his or her safety or the safety of others or (b) suffer substantial emotional distress.

Stalking behaviors and activities may include, but are not limited to the following:

- Non-consensual communication, including face-to-face communication, telephone calls, voice messages, e-mails, written letters, gifts, or any other communications that are undesired and place another person in fear.
- Use of online, electronic, or digital technologies, including:

- Posting of pictures or information in chat rooms or on Web sites
- Sending unwanted/unsolicited email or talk requests
- Posting private or public messages on Internet sites, social networking sites, and/or school bulletin boards
- Installing spyware on a victim's computer
- Using Global Positioning Systems (GPS) to monitor a victim
- Pursuing, following, waiting, or showing up uninvited at or near a residence, workplace, classroom, or other places frequented by the victim
- Surveillance or other types of observation, including staring or "peeping"
- Trespassing
- Vandalism
- Non-consensual touching
- Direct verbal or physical threats
- Gathering information about an individual from friends, family, and/or co-workers
- Threats to harm self or others
- Defamation - lying to others about the victim

For purposes of this definition—

- Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

*Title IX Sexual Harassment* – "Title IX Sexual Harassment" is a specific form of sexual harassment as defined by regulations issued by the U.S. Department of Education in May 2020, as follows:

- Title IX Quid Pro Quo Sexual Harassment for purposes of the Title IX Sexual Harassment definition is conduct on the basis of sex committed in an education program or activity of the College in the United States by which an employee of the college conditions the provision of an aid, benefit, or service of the College on a student's or employee's participation in unwelcome sexual conduct.
- Title IX Severe, Pervasive and Objectively Offensive Sexual Harassment for purposes of the Title IX Sexual Harassment definition is conduct on the basis of sex committed in an education program or activity of the College in the United States that constitutes unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a student or employee equal access to a College education program or activity.
- Title IX Sexual Assault, Dating Violence and Domestic Violence for purposes of the Title IX Sexual Harassment definition are the same as the definitions of Sexual Assault, Dating Violence and Domestic Violence stated above in this policy, if the conduct is committed in an education program or activity of the College in the United States.
- Title IX Stalking for purposes of the Title IX Sexual Harassment definition is the same as the definition of Stalking stated above in this policy, except that the stalking must be on the basis of the complainant's sex, and it must be committed in an education program or activity of the College in the United States.

Further, to fall within the definition of Title IX Sexual Harassment, the Complainant must be participating or attempting to participate in a Bryan College of Health Sciences education program or activity at the time the conduct is reported.

Conduct takes place within the College's "programs and activities" for purposes of this definition when that conduct occurs: (1) in a location, at an event, or in a circumstance where the College exercises substantial control over both the respondent

and the context in which the conduct occurs; or (2) in any building owned or controlled by a student organization recognized by the College. Conduct that occurs off campus in locations or at events with no connection to the College is unlikely to have occurred in a program or activity of the College.

Conduct that does not meet this strict definition for Title IX Sexual Harassment is still prohibited by this policy if it otherwise constitutes Prohibited Conduct as defined in this policy.

*Sexual Exploitation* – Sexual exploitation occurs when a person takes sexual advantage of another person for the benefit of anyone other than that other person without that other person's consent. Examples of behavior that could constitute sexual exploitation include but are not limited to the following:

- Recording or capturing through any means images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nudity without that person's consent;
- Distributing images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nudity, if the individual distributing the images or audio knows or should have known that the person(s) depicted in the images or audio did not consent to such disclosure and object(s) or would object to such disclosure; or
- Surreptitiously viewing another person's sexual activity, intimate body parts, or nudity in a place where that person would have a reasonable expectation of privacy, without that person's consent, if the individual viewing the other person's or persons' sexual activity, intimate body parts, or nudity in such a place knows or should have known that the person(s) being viewed would object to that.

Exception: The college's prohibition of sexual exploitation is not intended to prohibit the use of sexually explicit materials that are reasonably related to the college's academic mission. Specifically, this section is not intended to proscribe or inhibit the use of sexually explicit materials, in or out of the classroom, when in the judgment of a reasonable person they arise appropriately to promote genuine discourse, free inquiry, and learning.

*Retaliation* – Retaliation means intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations or this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing regarding Prohibited Conduct. Retaliation is strictly prohibited. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations, constitute retaliation, as do any adverse action taken against a person because they have made a good faith report of Prohibited Conduct or participated in any proceeding under this policy. Retaliation may include intimidation, threats, coercion, harassment, or adverse employment or educational actions that would discourage a reasonable person from engaging in activity protected under this policy. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance process under this policy does not constitute prohibited retaliation, provided, however, that a determination regarding responsibility is not alone sufficient to establish that any party made a materially false statement in bad faith.

The college will not engage in, and will investigate and address, reports of retaliatory conduct. Retaliation under this policy may be found whether or not the underlying complaint is ultimately found to have merit.

*Complainant* – A student or employee of the college who is reported to have experienced conduct that could constitute Prohibited Conduct as defined in this policy, regardless of whether the student or employee makes a report or seeks disciplinary action. When deemed appropriate at the college's discretion, a complainant may also be a third party involved in some way in an academic, extracurricular, or residential program of the college ("covered third party") who has allegedly been subjected to conduct in violation of this policy by a student or employee. For ease of reference and consistency, the term "complainant" is used in this policy to refer to a person who believes that he or she has been subjected to Prohibited Conduct, or who is believed by another to have been subjected to such conduct.

*Respondent* – A student, employee or covered third party who has been reported to be the perpetrator of conduct that could constitute Prohibited Conduct as defined in this policy. A covered third party is a person who is not a student or employee of the college, but who is someone over whom the college has some measure of control that would allow the college to take some form of action against them if it is determined that they engaged in Prohibited Conduct (e.g., a vendor or volunteer).

*Responsible Employee*- A college employee who has the authority to redress sexual violence or who has the duty to report incidents of sexual violence or other student misconduct.. A responsible employee must report to the Title IX Coordinator all relevant details about Prohibited Conduct of which they become aware.

*Informal Resolution* – a non-judicial approach to a complaint designed to address Prohibited Conduct through means that do not involve a formal investigation and resolution process.

*Formal Resolution* – a judicial approach to a complaint which is heard by a panel of College employees which may result in disciplinary action/sanctions against the respondent if a policy violation is established by a preponderance of evidence (i.e., it is more likely than not that the violation occurred).