



UNIVERSITY OF CENTRAL FLORIDA

Office of the President

SUBJECT: Nondiscrimination Policy	Effective Date: 9/16/2022	Policy Number 2-004.3	
	Supersedes: 2-004.2	Page 1	Of 12
	Responsible Authority: Director, Institutional Equity		

APPLICABILITY/ACCOUNTABILITY

This policy applies to the university community and acts committed by or against students, university and DSO employees and volunteers, registered student organizations, and third parties when:

- the conduct occurs on campus or other property owned by, controlled by, or affiliated with the university;
- the conduct occurs in the context of a university employment or education program or activity, including, but not limited to, university-sponsored study abroad, research, on-line, or internship programs; or
- the conduct occurs outside the context of a university employment or education program or activity, but has continuing adverse effects on or creates a hostile environment for the university community while on campus or other property owned by, controlled by or affiliated with the university or in any university employment or education program or activity.

POLICY STATEMENT

The University of Central Florida is committed to maintaining a safe and non-discriminatory learning, living and working environment for all members of the university community. Academic and professional excellence can exist only when each member of our community is assured an atmosphere of safety and mutual respect. All members of the university community are responsible for the maintenance of an environment in which people are free to learn and work without fear of unlawful discrimination, harassment, or interpersonal violence. The University can take corrective action only when it becomes

aware of problems. Many university employees have the duty to report under the *Reporting Requirements Related to Nondiscrimination Policy* (No.2-015). Those who believe that they have experienced or witnessed Prohibited Conduct are encouraged to come forward promptly with their inquiries, reports, or complaints and to seek assistance within the University.

The Office of Institutional Equity (www.oie.ucf.edu) is responsible for ensuring and monitoring the university's compliance with federal and state nondiscrimination laws. The university adopts this policy with a commitment to: (1) eliminating, preventing, and addressing the effects of Prohibited Conduct; (2) fostering a safe and respectful university community; (3) cultivating a climate where all individuals are well-informed and supported in reporting Prohibited Conduct; (4) providing a fair and impartial process for all parties in the investigation and resolution of such reports; and (5) identifying the standards by which violations of this policy will be evaluated and disciplinary action may be imposed. In addition, the university conducts ongoing prevention, awareness, and training programs for employees and students to facilitate the goals of this policy. See the university's *Remedial Measures, Prevention, & Education Related to Nondiscrimination policy* (No. 2-016).

The university prohibits unlawful discrimination and harassment on the basis of an individual's Protected Classes in any of its education or employment programs and activities, as well as retaliation against a person for reporting, in good faith, any of these forms of conduct or participating in or being a party to any investigation or proceeding under this policy (collectively, "Prohibited Conduct"). *See also* the university's *Reporting Misconduct and Protection from Retaliation Policy* (No. 2-700). This includes the prohibition of sexual assault, sexual exploitation, relationship violence, stalking, sexual, gender-based, or Title IX sexual harassment, and aiding and abetting in the commission of any act prohibited by this policy, as well as failing to reasonably accommodate based on religion, disability, and/or pregnancy where the accommodation does not impose an undue hardship or fundamentally alter a course or academic program. These forms of Prohibited Conduct are unlawful and undermine the mission and values of our academic community.

At the same time, the university is equally committed to protecting freedom of speech and academic freedom and in preserving the widest possible dialogue within its instructional and research settings. The principles of freedom of speech and freedom of expression in the United States and Florida Constitutions, in addition to being legal rights, are an integral part of our three-part university mission to deliver a high quality academic experience for our students, engage in meaningful and productive research, and provide valuable public service for the benefit of our local communities and the state. A fundamental purpose of an institution of higher education is to provide a learning environment where divergent ideas, opinions, and philosophies can be rigorously debated and critically evaluated. Accordingly, nothing in this policy shall abridge an individual's rights to free speech and expression under the First Amendment of the U.S. Constitution.

DEFINITIONS

Coercion. An unreasonable pressure for sexual activity. Coercion is more than an effort to persuade, entice, or attract another person to have sex. Conduct does not constitute coercion unless it impairs an individual's freedom of will to choose whether to participate in the sexual activity.

Complainant. An individual who discloses having been subjected to any prohibited conduct under this policy or the *Title IX Grievance Policy* (No. 2-012), regardless of whether that person makes a report or seeks action under these policies. The university recognizes that an individual may choose to self-identify as a victim or a survivor. For consistency in these policies, the university uses the term complainant to maintain the neutrality of the policies and procedures.

Consent. An understandable exchange of affirmative words or actions, which indicate a willingness to participate in mutually agreed upon sexual activity. Consent must be informed, freely and actively given. Consent cannot be obtained by force, threat, coercion, manipulation, reasonable fear of injury, intimidation, use of position of influence, or through one's mental or physical helplessness or incapacity. Consent to one form of sexual activity does not imply consent to other forms of sexual activity. The lack of a negative response, lack of resistance or protest, and silence are not consent. An individual who is incapacitated (such as by alcohol and/or other drugs both voluntarily or involuntarily consumed) may not give consent. Consent to sexual activity on a prior occasion does not, by itself, constitute consent to future sexual activity. In cases of prior relationships, the manner and nature of prior communications between the parties and the context of the relationship may have a bearing on the presence of consent. Once consent has been given to a particular sexual activity, it may be withdrawn at any time. An individual who seeks to withdraw consent must communicate, through clear words or actions, a decision to cease the sexual activity. Once consent is withdrawn, the sexual activity must cease immediately.

Responsibility: It is the responsibility of the initiator of the sexual activity to obtain clear and affirmative words or actions of a willingness to participate at each stage of sexual involvement.

Incapacitation: A state where an individual cannot make rational, reasonable decisions because of age, mental or physical helplessness, sleep, unconsciousness, or lack of awareness that sexual activity is taking place. A person may be incapacitated due to the consumption of alcohol or other drugs, or due to a temporary or permanent physical or mental health condition. A person who is incapacitated lacks the capacity to give consent because they cannot understand the facts, nature, or extent of the sexual interaction. A person seeking to initiate sexual activity is not expected to be a medical expert in assessing incapacitation. The potential initiator must look for the common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation.

Being impaired by alcohol or other drugs is no defense to any violation of this policy.

Standard: A determination of whether consent exists will be based on the information the initiator of the sexual act knew or should have known as a sober, reasonable person. Being impaired by alcohol or other drugs does not relieve an initiator of a sexual act from obtaining consent.

Course of conduct. Two or more acts, including but not limited to acts in which a person directly, indirectly, or through third-parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's property.

Direct Support Organization. An organization that is a subsidiary corporation of the university and is certified by the University of Central Florida Board of Trustees per Florida Statute §1004.28 to support the mission and goals of the university and the best interest of the state of Florida.

Employee. Any individual employed by the University of Central Florida, including all full-time and part-time faculty, employees classified as Administrative and Professional (A&P), employees classified as University Support Personnel System (USPS), post-doctoral employees, professional research assistants, and OPS non-student employees.

Force. The use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and/or coercion that overcome resistance.

Hostile Environment Harassment: Unwelcome behavior based on Protected Class(es) identified in this policy, where the frequency and severity of the alleged harassing conduct effectively denies the individual's ability to participate in or benefit from the education, employment, or university program or activity, when viewed from both a subjective and an objective perspective. For a hostile environment harassment claim, the record must establish that the Complainant(s) subjectively perceived the environment to be hostile, and that the environment was one that a reasonable person would find objectively hostile.

Prohibited Conduct. For purposes of this policy, Prohibited Conduct refers to unlawful discrimination, unlawful harassment, sexual assault, sexual exploitation, relationship violence, stalking, sexual, gender-based, or Title IX sexual harassment, aiding and abetting in the commission of any act prohibited by this policy, and retaliation against a person for reporting, in good faith, any of these forms of conduct or participating in or being a party to any investigation or proceeding under this policy.

Protected Class(es): Race, color, ethnicity, national origin, religion, non-religion, age, genetic information, sex (including pregnancy, parental status, gender identity or expression, and sexual orientation), marital status, physical or mental disability (including learning disabilities, intellectual disabilities, and past or present history of mental illness),

veteran's status (as protected under the Vietnam Era Veterans' Readjustment Assistant Act), or membership in any other protected classes as set forth in state or federal law.

Quid Pro Quo Harassment: Unlawful harassment where submission to or rejection of unwelcome conduct is used, explicitly or implicitly, as the basis for decisions affecting an individual's education (e.g., admission, academic standing, grades, assignment); employment (e.g., hiring, advancement, assignment); or participation in a university program or activity (e.g., campus housing).

Respondent. Any individual or group who has been accused of violating this policy or the *Title IX Grievance Policy* (No. 2-012).

Sexual Contact. Sexual contact includes but is not limited to the following behaviors: (1) touching, kissing, fondling (whether over or under clothing) of an individual for the purpose of sexual gratification; (2) contact, however slight, between the mouth, anus, or sex organ of one individual with either the anus or sex organ of another individual; and/or (3) contact, however slight, between the anus or sex organ of one individual and any other object.

Student. Any individual defined as a student in the University of Central Florida's Regulation UCF-5.006(3) and *The Golden Rule Student Handbook*.

Substantial Emotional Distress. Significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Third-Party. Any contractor, vendor, visitor, applicant or other non-student or non-employee/volunteer affiliated with the university.

PROHIBITED CONDUCT UNDER THIS POLICY

The requirements and protections of this policy apply equally regardless of an individual's Protected Classes. Also, all requirements and protections are equitably provided to individuals regardless of their status as a Complainant, Respondent, or Witness. The following prohibited behaviors may overlap with Florida criminal statutes in some cases and provide greater protection in other instances.

A. DISCRIMINATION

Unlawful discrimination is any unlawful distinction, preference, or detriment to an individual that is based upon an individual's Protected Class(es) and that: (1) excludes an individual from participation in; (2) denies the individual the benefits of; (3) treats the individual differently with regard to; or (4) otherwise adversely affects a term or condition of an individual's employment, education, living environment or participation in a university program or activity.

Religious discrimination includes failing to reasonably accommodate an employee's or student's religious practices where the accommodation does not impose an undue hardship nor fundamentally alter a course or academic program. Disability discrimination includes failing to reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability where the accommodation does not impose an undue hardship nor fundamentally alter a course or academic program. Pregnancy discrimination includes failing to reasonably accommodate an employee's or student's pregnancy or pregnancy-related condition where the accommodation does not impose an undue hardship and does not fundamentally alter a course or academic program. For more information regarding discrimination or to seek assistance in obtaining a reasonable accommodation, please visit www.oie.ucf.edu. For students with disabilities seeking an accommodation, please visit www.sas.ucf.edu.

B. UNLAWFUL HARASSMENT

Unlawful harassment consists of conduct based upon an individual's Protected Class(es) meeting the description of either *Hostile Environment Harassment* or *Quid Pro Quo Harassment*, as defined above.

C. SEXUAL, GENDER-BASED, OR TITLE IX SEXUAL HARASSMENT

Sexual harassment is any unwelcome sexual advance, request for sexual favors, or other unwanted verbal, graphic or physical conduct of a sexual nature when the conditions for *Hostile Environment Harassment* or *Quid Pro Quo Harassment* are present.

Gender-based harassment includes unlawful harassment based on gender, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal, graphic, or physical, even if the acts do not involve conduct of a sexual nature, when the conditions for *Hostile Environment Harassment* or *Quid Pro Quo Harassment* are present.

Title IX Sexual Harassment is any conduct which occurs within the university's education program or activity against a person located in the United States on or after August 14, 2020, that satisfies one or more of the following: (1) An employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct (i.e., *Quid Pro Quo*); (2) Unwelcome conduct of a sexual nature determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an education program or activity (i.e., hostile environment); or (3) Sexual assault, dating violence, domestic violence, or stalking (as defined by the Jeanne Clery Act). University investigations of incidents that meet the Title IX Sexual Harassment

definition will be investigated pursuant to the *Title IX Grievance Policy* (No. 2-012).

D. SEXUAL ASSAULT

Sexual assault consists of sexual contact that occurs without consent. Consent is an understandable exchange of affirmative words or actions, which indicate a willingness to participate in mutually agreed upon sexual activity. Consent must be informed, freely and actively given. Consent cannot be obtained by force, threat, coercion, reasonable fear of injury, intimidation, use of position of influence, or through one's mental or physical helplessness or incapacity. See Definitions section above for more information regarding consent.

E. SEXUAL EXPLOITATION

Sexual exploitation is purposely or knowingly doing or attempting to do any of the following:

- Exposing of one's body in such a manner that another party reasonably could be offended or to display sexual behavior which another person reasonably finds offensive;
- Voyeurism, including trespassing, spying, or eavesdropping for the purpose of sexual gratification;
- Soliciting sex acts from a minor by oral, written, or electronic means;
- Possessing, producing, or disseminating child pornography;
- Recording or photographing private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts or buttocks) without consent;
- Disseminating or posting images of private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts, or buttocks) without consent;
- Allowing third parties to observe private sexual activity from a hidden location (e.g., closet) or through electronic means (e.g., Skype or livestreaming of images);
- Subjecting another person to human trafficking; or
- Exposing another person to a sexually transmitted infection or virus without the other's knowledge.

F. RELATIONSHIP VIOLENCE

Relationship violence includes any act of violence or threatened act of violence that occurs between individuals who are involved or have been involved in a sexual, dating, spousal, domestic, or other intimate relationship. Relationship violence includes "dating violence" and "domestic violence," as defined by the Violence Against Women Reauthorization Act of 2013.

Harmful behavior that includes, but is not limited to, the true threat of or actual physical assault or abuse, is prohibited pursuant to *The Golden Rule Student Handbook*. Harmful behavior will be addressed under this policy if it involves sexual, gender-based, or Title IX sexual harassment, relationship violence, or is part of a course of conduct under the stalking definition.

G. STALKING

Stalking occurs when a person engages in a course of conduct directed at a specific person under circumstances that would cause a reasonable person to fear for the person's safety or the safety of others, or to experience substantial emotional distress. Stalking includes "cyber-stalking," a particular form of stalking in which a person uses electronic media, such as the internet, social networks, blogs, phones, texts, or other similar devices or forms of contact.

H. RETALIATION

Retaliation means any adverse action taken against a person for making a good faith report of Prohibited Conduct or participating in or being a party to any proceeding under this policy, including requesting supportive measures (remedial and/or protective) for the purpose of interfering with any right or privilege secured by this policy. Retaliation includes threatening, intimidating, discriminating, harassing, coercing and any other conduct that would discourage a reasonable person from engaging in activity protected under this policy. Retaliation may be present even where there is a finding of "no responsibility" on the allegations of Prohibited Conduct. Also, an individual may be found to have engaged in retaliation when they were not a party to the initial report of discrimination. Retaliation does not include good faith actions lawfully pursued in response to a report of Prohibited Conduct. In determining whether an act constitutes retaliation, the full context of the conduct will be considered, including the individual right to freedom of speech.

Retaliation can include, but is not limited to, actions taken by the university, actions taken by one student against another student, actions taken by an employee against another employee or student, or actions taken by a third-party against a student or employee. See UCF Policy 2-700 *Reporting Misconduct and Protection from Retaliation* for additional information on prohibited retaliation.

I. AIDING AND ABETTING

Aiding and abetting is any act taken with the purpose of aiding or facilitating the commission of an act of Prohibited Conduct by another person.

OBLIGATION TO PROVIDE TRUTHFUL INFORMATION

All university community members are expected to provide truthful information in any report, investigation, or proceeding under this policy. Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in connection with an incident of Prohibited Conduct is prohibited and subject to disciplinary sanctions under *The Golden Rule Student Handbook* (for students or student organizations), and any other applicable and appropriate university policy and regulations (for employees). This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are not later substantiated.

PROCEDURES AND ENFORCEMENT

The specific procedures for reporting, investigating, and resolving allegations of Prohibited Conduct are based upon the nature of the respondent's relationship to the university (student, employee, registered student organization, DSO, or third party). Each set of procedures referenced below is guided by the same principles of fairness and respect for complainants and respondents. The procedures referenced below provide for a prompt and equitable response to reports of Prohibited Conduct. The procedures designate specific timeframes for major stages of the process, provide for thorough and impartial investigations that afford the complainant and respondent notice and an opportunity to present witnesses and evidence, and assure equal and timely access to the information that will be used in determining whether a policy violation has occurred. The university applies the preponderance of the evidence standard when determining whether this policy has been violated. "Preponderance of the Evidence" is defined as that degree of relevant evidence which a reasonable mind, considering the record as a whole, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

A. WHERE THE RESPONDENT IS A STUDENT OR REGISTERED STUDENT ORGANIZATION

The procedures for responding to reports of Title IX Sexual Harassment and Prohibited Conduct committed by students and registered student organizations are detailed in UCF Policy 2-012 *Title IX Grievance Policy* and UCF's *The Golden Rule Student Handbook* (<http://goldenrule.sdes.ucf.edu/>).

B. WHERE THE RESPONDENT IS A UNIVERSITY OR DSO EMPLOYEE

The procedures for responding to reports of Title IX Sexual Harassment and Prohibited Conduct committed by employees and DSOs are detailed in UCF Policy 2-012 *Title IX Grievance Policy* and UCF's Office of Institutional Equity's *Investigation Procedures*.
<https://oie.ucf.edu/documents/OIEInvestigationProcedures.pdf>

C. WHERE THE RESPONDENT IS BOTH A STUDENT AND AN EMPLOYEE

- The student-respondent procedures will apply if the respondent's primary status is as a student.
- The employee-respondent procedures will apply if the respondent's primary status is as an employee.
- If there is a question as to the predominant role of the respondent, the university will determine which of the procedures applies based on the facts and circumstances (such as which role predominates in the context of the Title IX Sexual Harassment or Prohibited Conduct). Where a respondent is both a student and an employee, the respondent may be subject to any of the sanctions applicable to students or employees.

D. WHERE THE RESPONDENT IS A THIRD-PARTY

The university's ability to take appropriate corrective action against a third-party will be determined by the nature of the relationship of the third-party to the university. The university will determine the appropriate manner of resolution consistent with the university's commitment to a prompt and equitable process under federal law, federal guidance, and this policy.

E. ENFORCEMENT

A student, employee, or registered student organization determined by the university to have committed an act of Prohibited Conduct is subject to disciplinary action, up to and including permanent separation from the university. Third-parties or DSOs who commit acts of Prohibited Conduct may have their relationships with the university terminated and/or their privileges of being on university premises withdrawn.

RELATED INFORMATION

A. STUDENTS AS RESPONDENTS

The Golden Rule Student Handbook: <http://goldenrule.sdes.ucf.edu/>
Title IX Grievance Policy [UCF Policy 2-012 Title IX Grievance Policy](#)

B. EMPLOYEES AND THIRD PARTIES AS RESPONDENTS

Regulation UCF-3.001 Non-Discrimination; Affirmative Action Programs
http://regulations.ucf.edu/docs/notices/3.001Non-DiscrimAffirmActionsPrograms_Nov10.pdf

Regulation UCF-3.0134 Grievances Alleging Discrimination
http://regulations.ucf.edu/docs/notices/3.0134GrievancesAllegingDiscrimination_finalMay09_000.pdf

Office of Institutional Equity's Investigation Procedures
<https://oie.ucf.edu/documents/OIEInvestigationProcedures.pdf>

[UCF Policy 2-012 Title IX Grievance Policy](#)

[UCF Policy 2-700 Reporting Misconduct and Protection from Retaliation](#)

[UCF Policy 2-015 Reporting Requirements Related to Nondiscrimination](#)

C. STATE AND FEDERAL LAWS

This policy prohibits specific forms of behavior that violate state and federal laws, including but not limited to the following:

Florida Civil Rights Act of 1992
http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0760/0760PARTIContentsIndex.html

Title VI of the Civil Rights Act of 1964
<https://www.gpo.gov/fdsys/pkg/USCODE-2010-title42/pdf/USCODE-2010-title42-chap21-subchapV.pdf>

Title VII of the Civil Rights Act of 1964
<https://www.eeoc.gov/laws/statutes/titlevii.cfm>

Title IX of the Education Amendments of 1972
<https://www.gpo.gov/fdsys/pkg/USCODE-2013-title20/pdf/USCODE-2013-title20-chap38.pdf>

Section 503 and 504 of the Rehabilitation Act of 1973
<https://www.dol.gov/agencies/ofccp/section-503>
<https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/statutes/section-504-rehabilitation-act-of-1973>

Americans with Disabilities Act of 1990
<https://www.eeoc.gov/americans-disabilities-act-1990-original-text>

Age Discrimination Act of 1975
<https://www.dol.gov/agencies/oasam/regulatory/statutes/age-discrimination-act>

Age Discrimination in Employment Act of 1967
<https://www.eeoc.gov/laws/statutes/adea.cfm>

Genetic Information Nondiscrimination Act of 2008
<https://www.eeoc.gov/laws/statutes/gina.cfm>

Equal Pay Act of 1963
<https://www.eeoc.gov/laws/statutes/epa.cfm>

Executive Order 11246
<https://www.dol.gov/agencies/ofccp/executive-order-11246/ca-11246>

Vietnam Era Veterans' Readjustment Assistance Act of 1974
<https://www.dol.gov/agencies/ofccp/vevraa>

CONTACTS

Office of Institutional Equity
12701 Scholarship Drive, Suite 101
Orlando, FL 32816-0030
Phone: 407-823-1336
Email: oiie@ucf.edu
Websites: www.oiie.ucf.edu and <https://letsbeclear.ucf.edu>.

INITIATING AUTHORITY

Vice President, University Compliance, Ethics, and Risk

POLICY APPROVAL (For use by the Office of the President)	
Policy Number: 2-004.3	
Initiating Authority and University Policies and Procedures Committee Chair:	
President or Designee: _____	Date: <u>8/30/22</u>
Alexander Cartwright	Digitally signed by Alexander Cartwright Date: 2022.09.16 09:09:36 -06'00'
	Date: <u>9/16/2022</u>

History 2-004 6/9/2017; 2-004.1 11/30/2017; EP-20-4 8/13/2020; 2-004.2 10/14/2020

2-004.3 Nondiscrimination Policy 12