

# Interim Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, and Retaliation

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This Policy amendment is effective August 14, 2020. On May 6, 2020, the United States Department of Education released new Title IX regulations, effective August 14, 2020 (the “2020 Title IX Regulations”). The new 2020 Federal Title IX Regulations require modification of this policy. However, there are several lawsuits pending which seek to stay, delay or block implementation of some or all of the provisions in the 2020 Title IX Regulations. Should a court delay, stay or strike down, either temporarily or permanently, any *portion* of the 2020 Title IX Regulations, Hendrix College will make any necessary modifications to this Policy, which will become effective immediately. If a court delays implementation of or strikes down *all* of the regulations, the College may revert back or retain the previous version of this Policy.

## **Interim Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, and Retaliation**

Hendrix College strives to maintain an environment free from discrimination and harassment, where members of our community treat each other with respect, dignity and courtesy. The College adheres to the principles of equal educational and employment opportunity without regard to age, race, color, gender, disability, religion, sexual orientation, gender identity or expression, genetic information, or national origin. Accordingly, all acts of discrimination, harassment, retaliation, and sexual misconduct as defined by this policy are prohibited. The Hendrix College Interim Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, and Retaliation has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated.

### **I. Policy**

All members of the College community 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. Upon notice of discrimination as described by this policy, appropriate measures will be taken to end the conduct, remedy the effects on individuals and the Hendrix community, and prevent recurrence.

In order for the College to respond effectively and to proactively stop instances of discrimination, harassment, retaliation, and sexual misconduct within the College community, the College has designated the following as mandatory reporters of discrimination; all faculty, adjunct instructors, administrative staff including coaches, and Resident Life Staff, are required to notify any Official with Authority immediately after receiving information regarding a potential violation of this policy. Mandatory Reporters are encouraged to explain their reporting obligations prior to receiving any information that is subject to mandatory reporting. Employees who are statutorily prohibited from disclosing such information (Student Counseling, Health Services staff, Campus Chaplain), and support staff such as frontline dining services and facilities staff, are exempt from these reporting requirements.

Officials with Authority are those individuals who have the authority to initiate corrective action. Hendrix College Officials With Authority (OWA) include: the President of the College, Vice-Presidents, Student Affairs Staff, Public Safety Officers, and the Title IX Coordinator & Deputy Coordinators.

### **Faculty/Staff Relationships with Students**

There are inherent risks in any romantic or sexual relationship between individuals in positions of unequal power (such as teacher and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was

previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of this policy. The College does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the College. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student) are strongly discouraged.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the attention of their supervisor at the outset and will likely result in the removal of the employee from the supervisory or evaluative responsibilities or make changes to prevent an individual from being supervised or evaluated by someone with whom they have established a consensual relationship. Failure to self-report such relationships to a supervisor as required is a violation of this policy and may result in disciplinary action for an employee. Employees are cautioned that in many circumstances an imbalance of power, perceived or real, may occur in employee-student relationships. In such cases, consent is not an acceptable defense against an allegation of non-consensual sexual relationships.

Any romantic relationship between two employees (regardless of supervisory capacity) or between an employee and student should be promptly reported to the Office of Human Resources.

### **Reporting Procedures**

Any member of the community who believes they have experienced discrimination or misconduct that violates Hendrix College *Interim Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, and Retaliation* should report that conduct to any Official With Authority (OWA) in this policy. Reports of discrimination or misconduct will be investigated in a manner that is prompt, thorough, equitable, impartial and fair to all parties involved.

The OWA who receives the initial report will review the information (with other officials as appropriate) and determine if a policy violation is alleged to have occurred.

The College encourages any individual who has been subject to discrimination to report the incident(s) directly to one of the following Officials With Authority:

Dr. Allison Vetter, Title IX Coordinator – [title9@hendrix.edu](mailto:title9@hendrix.edu); [vetter@hendrix.edu](mailto:vetter@hendrix.edu);  
501.505.2901; SLTC 150

Shawn Goicoechea, Assistant Director of Human Resources and  
Deputy Title IX Coordinator – [goicoechea@hendrix.edu](mailto:goicoechea@hendrix.edu);  
501.450.1415; 1545 Washington Ave

Dr. Terri Bonebright, Provost – [bonebright@hendrix.edu](mailto:bonebright@hendrix.edu); 501.450.1273  
Fausett Hall, 2<sup>nd</sup> floor

Jim Wiltgen, VP Student Affairs – [wiltgen@hendrix.edu](mailto:wiltgen@hendrix.edu); 501.450.1222;

SLTC 2<sup>nd</sup> floor  
Michael LeBlanc, Assistant Dean of Students – [leblanc@hendrix.edu](mailto:leblanc@hendrix.edu);  
501.450.1222;  
SLTC 2<sup>nd</sup> floor  
Kesha Baoua, Interim VP for Diversity & Inclusion – [baoua@hendrix.edu](mailto:baoua@hendrix.edu);  
501.450.3824; 104 Fausett Hall  
Amy Weaver, Director of Athletics – [weaver@hendrix.edu](mailto:weaver@hendrix.edu); 501.450.3899; WAC 213  
David Bugh, Director of Public Safety – [bugh@hendrix.edu](mailto:bugh@hendrix.edu); 501.450.1467;  
Washington Ave.  
Vicki Lynn, VP of Human Resources – [lynn@hendrix.edu](mailto:lynn@hendrix.edu); 501.450.1494;  
1545 Washington

A conversation with an OWA does **not** require an individual proceed with conduct charges or the process outlined below. The College is committed to the preservation of the rights of both the complainant and the respondent (See Rights & Options), however the determination as to whether to proceed with conduct charges against an individual ultimately lies with the College.

Notice or complaints of discrimination, harassment, and/or retaliation may be made by filing a complaint with, or giving verbal notice to, any Official with Authority (listed above). Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail.

A Formal Complaint means a document submitted or signed by the Complainant or signed by the appropriate OWA alleging a policy violation by a Respondent and requesting that Hendrix College investigate the allegation(s). A complaint may be filed with an OWA in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section. As used in this paragraph, the phrase “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the College) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that Hendrix College investigate the allegations.

If notice is submitted in a form that does not meet this standard, the Official With Authority will contact the Complainant to ensure that it is filed correctly.

### **Jurisdiction**

This policy applies to the education program and activities of Hendrix College, to conduct that takes place on the campus or on property owned or controlled by Hendrix College, at Hendrix College-sponsored events, or in buildings owned or controlled by Hendrix College’s recognized student organizations. The Respondent must be a member of Hendrix College’s community in order for its policies to apply.

This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to Hendrix College’s educational program or employment opportunity. Hendrix College may also extend jurisdiction to off-campus and/or to online

conduct when the OWA determines that the conduct affects a substantial Hendrix College interest.

Regardless of where the conduct occurred, Hendrix College will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial Hendrix College interest includes:

- a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, employee or other individual;
- c. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- d. Any situation that is detrimental to the educational interests or mission of Hendrix College.

If the Respondent is unknown or is not a member of the Hendrix College community, the OWA will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of the Hendrix College's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the appropriate Official with Authority.

In addition, Hendrix College may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from Hendrix College property and/or events.

All vendors serving Hendrix College through third-party contracts are subject to the policies and procedures of their employers.

When the Respondent is enrolled in or employed by another institution, the OWA can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the Official with Authority may be able to assist and support a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to the Hendrix College where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

### **Attempted Violations**

In most circumstances, Hendrix College will treat attempts to commit any of the violations listed in the *Interim Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, and Retaliation* as violations of the policy.

### **Standard of Proof**

The standard of proof for determining responsibility for alleged violations of the *Interim Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, and Retaliation* will be the preponderance of evidence. When considering a complaint, the Panel will determine if the information gathered and evidence presented establishes that it is more likely than not the respondent(s) committed the violation.

### **False Reporting**

Hendrix College will not tolerate intentional false reporting of incidents. It is a violation of the *Interim Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, and Retaliation* to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws. A panel finding of not responsible is strictly a statement that a panel did not determine an alleged policy violation met the preponderance of the evidence standard and is not automatic grounds for a claim that a report was intentionally false. Any report determined to have been made in good faith will not be subject to false reporting sanctions.

### **Group Action**

When members of groups, individuals acting collusively, or members of an organization act in concert in violation of any policy, they may be held accountable as a group, and an investigation may proceed against the group as joint accused students and/or the organization itself. Charges proceeding against a group do not preclude any individual from facing charges or sanctions as an individual.

### **Retaliation**

Retaliation against an individual for reporting an allegation, for supporting a reporting party or for assisting in providing information relevant to an allegation is a violation of the *Interim Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, and Retaliation* and is subject to the full range of sanctions as any other policy violation. Retaliation can occur in-person or online by any member of the Hendrix Community (including a witness, complainant, reporting party, or respondent) or a third party. Acts of alleged retaliation should be reported immediately to an Official with Authority. Alleged violations of retaliation may be investigated along with the underlying complaint of sexual misconduct, or separately, at the discretion of the investigating official. Retaliation is defined as any materially adverse action taken against a person participating in a protected activity because of their participation in that protected activity.

### **Amnesty Policy**

The Hendrix College community encourages the reporting of both violations of this policy and criminal activity. Sometimes, complainants or those who witness allegations of

misconduct may be hesitant to report to college officials because they fear they themselves may be accused of policy violations. It is in the best interests of this community that as many individuals as possible choose to report to College officials. To encourage reporting, the College pursues a policy of offering complainants, their witnesses, and witnesses presented by the respondent, from minor policy violations related to the incident.

## **II. Support Services**

If you have an emergency contact the Conway Police Department by dialing: 9-1-1

If a student or employee reports experiencing discrimination or sexual misconduct to an Official With Authority, those officials will provide written notification to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims, both within the Hendrix community and the Conway community. Third parties who report information regarding discrimination/misconduct of a Hendrix community member also have the right to receive the same information listed above and in writing.

Students are encouraged to seek support through on-campus and off-campus services.

Students may contact the following on-campus services:

Hendrix College Public Safety – 501-450-7711

Counseling Services 501-450-1448 (there is no charge for this service)

Hendrix Medical Clinic – 501-852-1366, 1700 Altus St. Suite 110

<https://www.conwayregional.org/locations/clinics/hendrix-medical-clinic>

Chaplain's Office – 501-450-1263

Dean of Students Office – 501-450-1222

Student Outreach Services (SOS) – 501-450-1330, [sos@hendrix.edu](mailto:sos@hendrix.edu)

Residential Life Professional Staff – 501-450-1416

Hendrix Office of International Student Services (501-450-1265) for visa and immigration assistance

Hendrix Office of Financial Aid (501-450-1368)

Students may also choose to contact support agencies off campus which include the following:

Arkansas Crisis Center – 1-888-274-7472

Rape Crisis Hotline (501-801-2700) or (877-432-5368)

Arkansas Coalition Against Sexual Assault <https://acasa.us/>

Arkansas Coalition Against Domestic Violence [www.domesticpeace.com](http://www.domesticpeace.com)

Hope Rainn National Sexual Assault Hotline (800-656-4673)

Faulkner County Prosecuting Attorney's Victim Services Center (501-450-3051)

National Center for Victims of Crime [www.victimsofcrime.org](http://www.victimsofcrime.org)

24-hour Conway Women's Shelter Crisis Hotline (866-358-2265)

Arkansas Legal Services Partnership at (1-800-952-9243) or

<http://www.arlegalservices.org/> for legal assistance

Child Abuse Hotline 844-728-3224 or 800-482-5964



To report any education discrimination on the basis of race, sex, disability, etc. or request information on compliance programs, filing complaints, or to access regulatory documents, student may contact the U.S. Dept. of Education regional office.

U.S. Department of Education – Office of Civil Rights  
One Petticoat Lane  
1010 Walnut Street, 3rd floor, Suite 320  
Kansas City, MO 64106  
Telephone: 816-268-0550  
FAX: 816-268-0599; TDD: 800-877-8339  
Email: [OCR.KansasCity@ed.gov](mailto:OCR.KansasCity@ed.gov)

### **III. Investigation Procedures**

The wishes of the Complainant will be considered before proceeding with a formal investigation and grievance process. It is ultimately the discretion of the OWA as to whether or not the College will proceed. The College may determine when considering the safety of the community that it is necessary to proceed against the wishes or without the participation of the complainant. In the event the alleged misconduct is not a violation of the *Interim Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, and Retaliation*, the Complainant will maintain their access to support services and/or Supportive measures as appropriate.

Both the Complainant and Respondent will have the opportunity to have an initial meeting with the investigating official to discuss the investigative process, request supportive measures, learn about support resources, and otherwise ask questions of the investigator without providing a statement for the investigation. The Complainant and Respondent have the right to an advisor of their choice at the initial meeting and thereafter (See Rights & Options).

If either party elects to provide a statement about the alleged incident during the initial meeting that statement will be recorded. Statements may also be submitted in writing. In general, any information provided about the alleged incident to a College employee not listed as a confidential resource may be included in the investigative packet.

After initial interviews with the Complainant and Respondent, the Investigator will work with appropriate College officials to enact any supportive measures deemed reasonable and necessary, assist students in accessing support resources as needed, and determine if a formal investigation will proceed.

### **Supportive Measures**

Unless circumstances dictate otherwise, the OWA will promptly issue a “no contact” directive to all parties upon notice of any sexual assault complaint. In all cases, the college may implement any necessary supportive measures, deemed appropriate and reasonably available, regardless of whether a complaint has been filed or whether an investigation has commenced. Supportive Measures may include, but are not limited to:

- Issuing no contact directives
- Providing counseling services.
- Providing academic support services.
- Rescheduling class work, assignments, and examinations.
- Changing class schedules.
- Providing an escort to ensure that an individual can move safely between classes, work, and/or activities.
- Changing work arrangements or location.
- Arranging for the complainant to take an incomplete in a class.
- Reassigning on-campus housing.
- Dissolving a campus housing contract and offering a prorated refund.
- Providing alternative course completion options.
- Permitting a temporary withdrawal from the university.

Violations of Supportive Measures by either party are considered to be violations of the *Interim Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, and Retaliation*. Failure to abide by supportive measures is a violation of this policy (irrespective of whether the underlying complaint of discrimination is substantiated) and is subject to the full range of sanctions as any other policy violation. Any person who believes supportive measures are being violated should report the alleged violation in the same manner for reporting discrimination. Alleged violations of supportive measures may be investigated along with the underlying complaint of sexual misconduct, or separately, at the discretion of the investigating official.

### **Resolution Processes**

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with Hendrix College policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, with the exception of information the parties agree not to disclose related to Informal Resolution, discussed below. Hendrix College encourages parties to discuss any sharing of information with their Advisors before doing so.

### **Process A**

Hendrix College will act on any formal or informal notice/complaint of violation of the Hendrix College *Interim Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, and Retaliation* (the Policy”) that is received by the Title IX Coordinator<sup>1</sup> or any other Official with Authority by applying these procedures, known as “Process A.”

The procedures below apply **only** to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined by this policy involving students, staff, administrators, or faculty members.

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<sup>1</sup> Anywhere this procedure indicates “Title IX Coordinator,” the **Hendrix College** may substitute a trained designee.

When the jurisdiction does not fall within Process A, as determined by the investigator, Process B can also apply to sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined by this policy).

**1. Informal Resolution:** After a formal written complaint is filed, a complainant and respondent may both agree to enter into a process of informal resolution guided by the Title IX Coordinator. Informal resolutions may result in sanctions, excluding termination of employment. Parties electing to pursue an informal resolution may decide at any time to pursue the formal grievance process.

Informal Resolution can include:

- When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation.
- When the parties agree to resolve the matter through a negotiated resolution, usually before a formal investigation takes place; see discussion in b., below.
- When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process (similar to above, but usually occurs post-investigation); see discussion in c., below.

Prior to implementing Informal Resolution, Hendrix College will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by Hendrix College.

Hendrix College will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

**a. Negotiated Resolution:** The Title IX Coordinator, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and Hendrix College. Negotiated Resolutions are not appealable.

**b. Respondent Accepts Responsibility for Alleged Violations:** The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal is appropriate.

If Informal Resolution is applicable, the investigating official will determine whether all parties and Hendrix College are able to agree on responsibility, sanctions, and/or remedies. If so, the investigating official implements the accepted finding that the Respondent is in violation of Hendrix College policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented in order to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

**2. Formal Investigation Procedures.** An initial investigative report and evidence packet will be compiled by the investigator. This will include relevant evidence including the statements of complainants and respondents, witness interviews, and material evidence or information submitted by either party (e.g. text messages, social media posts, images, etc.). A Charge Letter will be issued to the respondent, and a copy provided to the complainant by the official investigating the case.

**3. Response to Initial Investigative Report & Notice of Hearing Panel Membership.** Both parties will be provided access to the initial report and evidence packet for review. Complainants and Respondents will have ten (10) calendar days to review the initial evidence packet and submit additional information, including witnesses and documents or additional statements to the investigator. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

**4. Final Investigative Packet and Notice of Live Hearing.** Once the period for submitting evidence has ended, the information will be compiled and a Final Investigative Packet will be provided to the complainant, respondent and panelists. At this time no additional evidence may be submitted unless it was unknown or unavailable and could not have been known or available at the time of the submission period.

Upon delivery of the Final Investigative Packet, the complainant and respondent will have no less than ten (10) calendar days to prepare for the live hearing. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Final Evidence Packet will also include the names of panelists who will be assigned to hear the case. Complainants and Respondents have three (3) calendar days from delivery to request the recusal of panelists for good cause such as bias or conflict of interest. Requests must be submitted in writing to the investigator or Title IX Coordinator and include a rationale. Both parties will be notified of any panel changes and provided at least 1 calendar day from notification of changes to contest the new panel composition. Each party may only challenge the panel (any members) once, if the change is granted that party may not challenge the new selection.

**5. Live Hearing Panel Composition.** Hearing Panel membership is limited to three full-time faculty and staff of the College who have been nominated by any Title IX Administrator, and who have been adequately trained within 12 months of the start of panel deliberation.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the Hendrix College.

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this Policy is not in good standing to graduate.

**6. Alternative Hearing Participation Options.** If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator or the Chair at least five (5) calendar days prior to the hearing.

The Title IX Coordinator or the Chair can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator or the Chair know at least five (5) calendar days prior to the hearing so that appropriate arrangements can be made.

**7. Pre-Hearing Meetings.** The Chair or hearing facilitator may convene individual pre-hearing meeting(s) with the parties and/or their Advisors to invite them to submit the questions or topics they (the parties and/or their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

The Chair, **only** with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator, or ask either or both to attend pre-hearing meetings.

**8. Live Hearing Process and Deliberations.** Hearing Panelists will determine responsibility for each charge and will base each determination on the preponderance of the evidence, whether it is more likely than not that the alleged conduct occurred and if so,

whether it constituted a policy violation. Responsibility will be determined by a majority of panelists. Hearing Panelists will also determine appropriate sanctions for the charge(s). A decision will be stated for each charge, and any sanctions will be accompanied by a rationale. Panelists will have 3 calendar days to reach a conclusion.

**a. The Order of the Hearing – Introductions and Explanation of Procedure**

The Chair explains the procedures and introduces the participants.

At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator appointed by the Title IX Coordinator.

The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

**b. Investigator Presents the Final Investigation Report**

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Panelists and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Panelists should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

**c. Testimony and Questioning**

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Panelists and then by the parties through their Advisors (“cross-examination”).

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request if agreed to by all parties and the Chair), the proceeding will pause to allow the Chair to consider it (and state it if it has not been stated aloud), and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may invite explanations or persuasive statements regarding relevance with the Advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Panelists at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

#### **d. Refusal to Submit to Cross-Examination and Inferences**

If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Panelists may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Panelists must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.

Cross-examination is an all or nothing proposition, meaning that if any question is refused, no statements of that party or witness are admissible. Only if a party or witness is willing to submit to cross-examination, and answers all questions, will their statements prior to or at the hearing be fully admissible. If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Panelists may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Panelists must disregard all statements. Evidence provided that is something other than a statement by the party or witness may be considered.

Whether a party or witness does or does not answer questions from the Panelists, their statements will be admissible as long as they are willing to submit to cross-examination questions, even if they are not asked such questions. The Panel may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the Panelists may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

If a party's Advisor of choice refuses to comply with the Hendrix College's established rules of decorum for the hearing, Hendrix College may require the party to use a different Advisor. If a Hendrix College-provided Advisor refuses to comply with the rules of decorum,

Hendrix College may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

**e. Recording Hearings**

Hearings (but not deliberations) are recorded by Hendrix College for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Panelists, the parties, their Advisors, and appropriate administrators of Hendrix College will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

**f. Deliberation, Decision-making, and Standard of Proof**

The Panelists will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. A simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

The Chair will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any sanctions.

This report must be submitted to the Title IX Coordinator within two (2) calendar days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

**g. Notice of Outcome**

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within two calendar days of receiving the Panelists' deliberation statement.

The Notice of Outcome will then be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official Hendrix College records, or emailed to the parties' Hendrix College-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by Hendrix College from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.



The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the Hendrix College is permitted to share such information under state or federal law; any sanctions issued which Hendrix College is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to Hendrix College's educational or employment program or activity, to the extent Hendrix College is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Outcome will also include information on when the results are considered by Hendrix College to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

### **Process B**

Process B applies to all forms of discrimination not covered by Process A, as determined by the investigator.

**Informal Resolution.** A complainant and respondent may both agree to enter into a process of informal resolution guided by the Investigator. Informal resolutions may result in sanctions, excluding suspension or expulsion. Parties electing to pursue an informal resolution forfeit their right to pursue the formal investigative process.

**Investigation Procedures.** An initial investigative report and evidence packet will be compiled by the investigator. This will include relevant evidence including the statements of complainants and respondents, witness interviews, and material evidence or information submitted by either party (e.g. text messages, social media posts, images, etc.). The investigator will review the initial investigative report and evidence packet to determine which policy(ies) if any, has been/are alleged to have been violated. In the event the investigator determines the alleged conduct, if true, represents a policy violation, a Charge Letter will be issued to both the respondent and complainant by the official investigating the case.

**Responding to the Charge.** For each charge outlined in the Charge Letter, Respondents will have four (4) calendar days to enter a statement of Responsible, Not Responsible, or No Contest.

#### **a. Responsible Statements**

If the individual in question accepts responsibility in a discrimination case, the student or employee will provide a statement for the Discrimination Panel to determine an appropriate sanction. By accepting responsibility, the individual in question is waiving their right to appeal any procedural matters or on the basis of newly discovered evidence. Respondents may accept responsibility for charges at any time during the process. At such time, all available information, along with final statements from either party, will be submitted to the panel for determining sanctions.

### **b. Not Responsible Statements**

If the responding party does not accept responsibility the investigation will proceed and a Review Panel may be convened. From this point on the individual in question is assumed not-responsible concerning the charges which have been leveled against them.

### **c. No Contest Statements**

If an individual is facing possible suspension (student), expulsion (student), or termination (employee) the individual may be eligible to provide a statement of No Contest. Allowing a No Contest Statement is at the discretion of the investigating official. Respondents who enter a Statement of No Contest accept the sanctions issued to them without contesting the conduct charge(s). If a respondent enters a Statement of No Contest the respondent waives their right to appeal based on any procedural matters or on the basis of newly discovered evidence. In the event the respondent is a student, Conduct violations for which a respondent enters a Statement of No Contest will appear on that student's conduct record.

**4. Response to Initial Investigative Report & Evidence Packet.** Both parties will be provided access to the initial report and evidence packet for review. Complainants and Respondents will have four calendar days to review the initial evidence packet and submit additional information, including witnesses and documents or additional statements to the investigator.

Upon review of the Initial Investigative Report and Evidence Packet the Complainant and Respondent may submit questions to be asked of the opposing party and/or any witnesses. Questions must be relevant to the investigation and may not include prohibited character/sexual history questioning. It is at the discretion of the investigator as to whether questions are allowed/administered, and if questions or their responses are included in the Final Investigative Report and Evidence Packet for panel review.

The Initial Evidence Packet will also include the names of the deputy assigned to review the case. Complainants and Respondents have two (2) calendar days to request the recusal of the reviewer for good cause such as bias or conflict of interest. Requests must be submitted in writing to the investigator and include a rationale. Both parties will be notified of any changes to the reviewer and provided at least 2 calendar days from notification of changes to contest the new reviewer. Each party may only challenge the reviewer once, if the change is granted that party may not challenge the new selection.

**5. Final Investigative Packet and Final Statements.** Once the period for submitting evidence has ended, the information will be compiled, and a Final Investigative Packet will be provided to the complainant, respondent and panelists. The panelists will receive a redacted copy in order to protect the anonymity of the parties. At this time no additional evidence may be submitted unless it was unknown or unavailable and could not have been known or available at the time of the submission period.

Upon delivery of the Final Investigative Packet, the complainant and respondent will have three (3) calendar days to submit a final statement. Final statements will be promptly made available to the panel.

**6. Reviewer and Deliberations.** In cases involving an employee respondent the reviewer will be an OWA listed in this policy or a designee assigned by the President who has received proper training to accomplish the task. Outside legal counsel may serve as the reviewer at the request of the President of the College.

In the event the reviewer requests additional information from the investigator, both parties will receive an updated packet with any new information and may be given, at the reviewer's discretion, an opportunity to respond to the new information.

The reviewer will determine responsibility for each charge and will base each determination on the preponderance of the evidence, whether it is more likely than not that the alleged conduct occurred and if so, whether it constituted a policy violation. The reviewer will have three (3) calendar days from receipt of Final Statements to deliberate and make a decision.

The Complainant and respondent will be notified simultaneously and in writing, within two (2) calendar days of the reviewer's decision. A decision will be stated for each charge, and any sanctions will be accompanied by a rationale.

Deliberations for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of the term will typically be held immediately after the end of the term during the summer, as needed, to meet the resolution timeline followed by Hendrix College.

#### **Procedural Rule for Addressing Prior Conduct Violations**

While previous conduct violations by the responding party are not generally admissible in an investigation, an OWA, their designee(s), or the Vice President of Human Resources (or designee) may supply previous complaint information to the panel, or may consider it if they are hearing the complaint, only if:

- 1) The respondent was previously found to be responsible or took responsibility;
- 2) The previous incident was substantially similar to the present allegation; or
- 3) Information indicates a pattern of behavior and substantial conformity with that pattern by the responding party.

#### **Sanctions**

The reviewer may impose one or more of the following sanctions for each policy violation.

Disciplinary actions may include assignment of required training, disciplinary probation, a formal reprimand in the employee's file, changes to work assignments, suspension without pay or termination. An employee who resigns prior to the conclusion of Process B may be marked as ineligible for rehire at the discretion of the Vice President for Human Resources.

## Appeal Process

Both the complainant and the respondent have a right to appeal the finding(s). A written request for appeal must be submitted to the designated Title IX Deputy, Shawn Goicoechea ([goicoechea@hendrix.edu](mailto:goicoechea@hendrix.edu)) or other OWA specified in the Notice of Outcome in the event that Mr. Goicoechea is the investigator assigned to the employee's case, within three (3) calendar days after a panel's decision is rendered. A request for appeal must be based on one of the following reasons:

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- (C) The Official(s) with Authority, Investigator(s), or Panelists had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

**1. Appeal Review.** The designated OWA will, within three (3) calendar days after receiving the request for appeal, determine whether the petition meets at least one of the three grounds for an appeal. The OWA may:

- a. deny the appeal if it does not meet one of the grounds;
- b. refer the complaint back to the reviewer for re-opening of deliberations.
- c. Refer the complaint to a new reviewer for deliberations.

*In the event the designated OWA is unable to process the appeal, another OWA will process the appeal using the same guidelines. If the designated OWA or other assigned deputy is unable to provide a response to the appeal request within three days, that official will notify both parties in writing within three days of receiving the request to provide an updated timeline for determining the status of the appeal.*

**2. Appeals Procedures.** If an appeal is granted and sent back to the reviewer, the reviewer will review the appeals document, any instructions or comments on the granting of appeal by the designated OWA, and any written or taped documentation regarding the original deliberation, as needed. The reviewer may confine their review to written or taped documentation only. However, they may speak with any student or employee involved with the investigative process for more information or clarification. The reviewer will respond in writing within five (5) calendar days of receiving the appeal from the OWA, unless extenuating circumstances exist, in which case the parties will be notified of the modified timeline.

**3. Response to the Appeal.** An appeal may be referred to the original reviewer or, at the discretion of the designated OWA, a new reviewer may be assigned the appeal. The assigned reviewer may take the following action:

- a. Uphold their original decision.
- b. Increase their original sanction.

- c. Decrease their original sanction.
- d. Change the finding of responsibility.

**4. Finality of Appeals.** Decisions made by the designated official and/or the reviewer are final.

### **Rights & Options**

Discrimination proceedings must be conducted by officials who do not have a conflict of interest or bias for or against either party. Requests for recusal of the OWA presiding over the case should be submitted to the President of the College who will assign the task of determining the merit of the recusal to another appropriate OWA for consideration.

**The right to one Advisor of your choosing.** Students/employees must provide the name of their Advisor to the investigator as soon as one is selected. Students/employees may change their Advisor at any time during the process provided they notify the investigator immediately. Advisors may accompany a complainant or respondent to any meeting related to the discrimination case. During the investigation the advisor's role is limited to providing support and private advice and consultation to the student/employee who is a complainant or respondent. Advisors may review the investigative packet, but are not permitted to copy or record materials in any way. The advisor may not directly question or submit information on behalf of the advisee. The investigator will communicate directly with complainants and respondents. The advisor may assist the student/employee in preparation of his or her complaint/response. In addition to these specific guidelines, advisors must follow the timelines and conduct procedures provided to their advisees. The identity of the Advisor will not be withheld from either party. Advisors may be asked to leave any meeting in which their conduct is unprofessional or disrespectful of College officials and if the guidelines for advisor conduct outlined here are not followed.

**Process A:** Once the complaint reaches the live hearing, advisors will be responsible for conducting cross-examination of the opposing party and witnesses. Complainants and Respondents will NOT be permitted to cross-examine any participating parties during the live hearing.

**Process B:** Advisors may not participate in examination of witnesses or presentation of materials or information to the panel members, investigator or appeals person.

**Present evidence by witness.** Non-members of the Hendrix community may be interviewed or present written statements pertinent to the charges in question. If witnesses fail to respond to requests for information or reasonable attempts to conduct interviews or collect statements, the process will progress without that information. Evidence must be pertinent to the charges in question. Character witnesses are not allowed.

**Right to Know Outcome and Sanctions.** The complainant and respondent will receive the outcome and sanctions (when applicable) in writing at the same time. Notification of the outcome will be sent within two (2) calendar days of the decision of the panel. If an appeal is filed and accepted, the Complainant and Respondent will receive notice of the appeal in

writing at the same time and will receive notice of the final outcome in writing at the same time. Third party reporters will not be notified regarding the outcome of a misconduct case.

If the victim is deceased as a result of the violation, the Title IX Office will provide the finding(s) to the victim's next of kin, if so requested in writing.

**Right to Appeal.** Both the complainant and the respondent have a right to appeal an outcome. A written request for appeal must be submitted to the designated official within three (3) calendar days after a conduct decision is rendered. The decision rendered during the appeal is final. There is no appeal of appeals. (For more information on appeals please see the appropriate policy section.)

**Right to not participate.** Any party may choose not to participate in an investigation or appeal; however, their exercise of that option will not preclude the investigating official, from making a determination regarding the complaint filed against the respondent. Parties will be notified by the investigating official if the process is moving forward without their participation.

Parties to an investigation are expected to respond to the Investigator/administrator within a reasonable timeframe. Failing to respond will NOT stop an investigation from proceeding. Any party provided proper notice of proceedings but fails to respond to requests to meet with the Title IX investigator fails to otherwise cooperate with the investigation, absent extenuating circumstances, that party will be deemed to have waived their opportunity to participate in the investigation.

**Right to Refuse to Submit to Cross-Examination and Inferences.** If a party or witness chooses not to submit to cross-examination at the hearing (Process A), either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Panelists may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Panelists must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.

The complainant has the right to:

**Be Notified When a Complaint is Delivered to Respondent(s).** Complainants are notified when a notice of allegations is delivered to the Respondent(s).

The respondent has the right to:

**Be Charged with a Specific Violation of College Policies.** Respondents have the right to be heard and defend themselves against allegations by participating in an investigation. In order to adequately prepare their case, it is the right of the Respondent to answer only the policy violations with which they have been charged.

## **Definitions**

### **Sexual Misconduct Offenses include, but are not limited to:**

1. Sexual Harassment
2. Dating Violence
3. Domestic Violence
4. Stalking
5. Sexual Exploitation

### **Sexual Harassment**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Arkansas regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice. Hendrix College has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved. Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex/gender or that is sexual that satisfies one or more of the following:

- 1) Quid Pro Quo:
  - a. an employee of the Hendrix College,
  - b. conditions<sup>2</sup> the provision of an aid, benefit, or service of the Hendrix College,
  - c. on an individual's participation in unwelcome sexual conduct.
  
- 2) Sexual Harassment:
  - a. unwelcome conduct,
  - b. determined by a reasonable person,

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<sup>2</sup> Implicitly or explicitly.

- c. to be so severe, and
- d. pervasive, and,
- e. objectively offensive,
- f. that it effectively denies a person equal access to the Hendrix College's education program or activity.<sup>3</sup>

3) Sexual assault, defined as:

- a) Sex Offenses, Forcible:
  - Any sexual act<sup>4</sup> directed against another person<sup>5</sup>,
  - without the consent of the Complainant,
  - including instances in which the Complainant is incapable of giving consent.<sup>6</sup>

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<sup>3</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances (“in the shoes of the Complainant”), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

<sup>4</sup> A ‘sexual act’ is specifically defined by federal regulations to include one or more of the following:

Non-consensual Sexual Intercourse:

- Penetration,
- no matter how slight,
- of the vagina or anus with any body part or object, or
- oral penetration by a sex organ of another person,
- without the consent of the Complainant.

Forcible Sodomy:

- Oral or anal sexual intercourse with another person,
- forcibly,
- and/or against that person’s will (non-consensually), or
- not forcibly or against the person’s will in instances in which the Complainant is incapable of giving consent because of age<sup>#</sup> or because of temporary or permanent mental or physical incapacity.

Sexual Assault with an Object:

- The use of an object or instrument to penetrate,
- however slightly,
- the genital or anal opening of the body of another person,
- forcibly,
- and/or against that person’s will (non-consensually),
- or not forcibly or against the person’s will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Non-consensual Sexual Contact:

- The touching of the private body parts of another person (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- forcibly,
- and/or against that person’s will (non-consensually),
- or not forcibly or against the person’s will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

<sup>5</sup> This would include having another person touch you sexually, forcibly, or without their consent.

<sup>6</sup> This definition set is not taken from SRS/NIBRS verbatim. ATIXA has substituted Complainant for “victim,” has removed references to his/her throughout, has defined “private body parts,” has removed the confusing and unnecessary term “unlawfully,” and has inserted language clarifying that the Hendrix College interprets



- b) Sex Offenses, Non-forcible:
  - o Incest:
    - 1) Non-forcible sexual intercourse,
    - 2) between persons who are related to each other,
    - 3) within the degrees wherein marriage is prohibited by Arkansas law.
  - o Statutory Rape:
    - 1) Non-forcible sexual intercourse,
    - 2) with a person who is under the statutory age of consent of 16.

4. Dating Violence, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a person,
- d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
  - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
  - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - iii. Dating violence does not include acts covered under the definition of domestic violence.

5) Domestic Violence, defined as:

- e. violence,
- f. on the basis of sex,
- g. committed by a current or former spouse or intimate partner of the Complainant,
- h. by a person with whom the Complainant shares a child in common, or
- i. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- j. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Arkansas, or
- k. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Arkansas.

\*To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

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“against the person’s will” to mean “non-consensually.” These are liberties ATIXA thinks are important to take with respect to the federal definitions, but users should consult legal counsel before adopting them.

6) Stalking, defined as:

- l. engaging in a course of conduct,
- m. on the basis of sex,
- n. directed at a specific person, that
  - i. would cause a reasonable person to fear for the person's safety, or
  - ii. the safety of others; or
  - iii. Suffer substantial emotional distress.

For the purposes of this definition—

- (i) Course of conduct means two or more acts, including, but not limited to,
  - acts in which the Respondent 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.
- (ii) Reasonable person means a reasonable person under similar circumstances
  - and with similar identities to the Complainant.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

### **Force, Coercion, Consent, and Incapacitation**

As used in the offenses above, the following definitions and understandings apply:

**Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., "Have sex with me or I'll hit you," "Okay, don't hit me, I'll do what you want.").

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

**Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

**Consent is:**

- knowing, and
- voluntary, and
- clear permission

- by word or action
- to engage in sexual activity.

Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on Hendrix College to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM<sup>7</sup> or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so Hendrix College’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

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<sup>7</sup> Bondage, discipline/dominance, submission/sadism, and masochism.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

### **Other Civil Rights Offenses**

In addition to the forms of sexual harassment described above, which are covered by Title IX, Hendrix College additionally prohibits the following offenses as forms of discrimination that may be within or outside of Title IX when the act is based upon the Complainant’s actual or perceived membership in a protected class.

- Sexual Exploitation, defined as: taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy. Examples of Sexual Exploitation include, but are not limited to:
  - Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
  - Invasion of sexual privacy.
  - Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person’s consent), including the making or posting of revenge pornography
  - Prostituting another person
  - Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the infection
  - Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person’s ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity

- Misappropriation of another person’s identity on apps, websites, or other venues designed for dating or sexual connections
- Forcing a person to take an action against that person’s will by threatening to show, post, or share information, video, audio, or an image that depicts the person’s nudity or sexual activity
- Knowingly soliciting a minor for sexual activity
- Engaging in sex trafficking
- Creation, possession, or dissemination of child pornography
- Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person;
- Discrimination, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities;
- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the Hendrix College community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity
- Bullying, defined as:
  - Repeated and/or severe
  - Aggressive behavior
  - Likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally

Violation of any other Hendrix College policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

Sanctions for the above-listed Civil Rights Offenses range from reprimand through expulsion/termination.

**Education/Awareness/Resources**

Hendrix College provides programming to students and employees to prevent sex offenses, dating violence, domestic violence, and stalking. These programs include primary prevention awareness programs directed at incoming students and new employees and ongoing prevention and awareness campaigns directed at students and employees. We are committed to providing such programs that are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research or assessed for value, effectiveness, or outcome. In planning and implementing

these programs we consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community, and societal levels.

These programs are sponsored by diverse departments and organizations on campus. For example, the Human Resources department provides programming for incoming employees. The Office of Student Activities and the Dean of Students Office provides programming for incoming students. Ongoing programming is provided by these departments and other departments and organizations throughout campus, including Residence Life, the Coalition on Gender and Sexuality, and Counseling Services. Examples of programming include freshmen orientation events Choices 101 and 102, sexual harassment training provided to employees, including student employees, the Take Back the Night event, and the posting and distribution of informational posters and brochures.

## **If you believe you have experienced discrimination:**

**1. Get to a Safe Place Quickly** - If the perpetrator is still in the area, or their presence on campus is threatening, call the Hendrix Public Safety Department (501-450-7711), call the Conway Police Department (911), or use a blue light emergency phone.

**2. Contact Someone to Help** - Contacting a supportive friend or family member, or a professional resource can be helpful when recovering from misconduct.

### **On-campus resources:**

Hendrix College Public Safety – 501-450-7711 (24/7)

Counseling Services 501-450-1448 (there is no charge for this service)

Hendrix Medical Clinic – 501-852-1366, 1700 Altus St. Suite 110

<https://www.conwayregional.org/locations/clinics/hendrix-medical-clinic>

Chaplain's Office – 501-450-1263

Hendrix Title IX – [title9@hendrix.edu](mailto:title9@hendrix.edu), 501-505-2901

Dean of Students Office – 501-450-1222

Residential Life Professional Staff – 501-450-1416

Dr. Allison Vetter, Title IX Coordinator – [title9@hendrix.edu](mailto:title9@hendrix.edu); [vetter@hendrix.edu](mailto:vetter@hendrix.edu);

501.505.2901; SLTC 150

Shawn Goicoechea, Assistant Director of Human Resources and

Deputy Title IX Coordinator – [goicoechea@hendrix.edu](mailto:goicoechea@hendrix.edu);

501.450.1415; 1545 Washington Ave

Dr. Terri Bonebright, Provost – [bonebright@hendrix.edu](mailto:bonebright@hendrix.edu); 501.450.1273

Fausett Hall, 2<sup>nd</sup> floor

Jim Wiltgen, VP Student Affairs – [wiltgen@hendrix.edu](mailto:wiltgen@hendrix.edu); 501.450.1222; SLTC 2<sup>nd</sup> floor

Michael LeBlanc, Interim Assistant Dean of Students – [leblanc@hendrix.edu](mailto:leblanc@hendrix.edu);

501.450.1222; SLTC 2<sup>nd</sup> floor

Kesha Baoua, Interim VP for Diversity & Inclusion – [baoua@hendrix.edu](mailto:baoua@hendrix.edu);

501.450.3824; 104 Fausett Hall

Amy Weaver, Director of Athletics – [weaver@hendrix.edu](mailto:weaver@hendrix.edu); 501.450.3899; WAC 213

David Bugh, Interim Director of Public Safety – [bugh@hendrix.edu](mailto:bugh@hendrix.edu); 501.450.1467;  
XXXX Washington Ave  
Vicki Lynn, VP of Human Resources – [lynn@hendrix.edu](mailto:lynn@hendrix.edu); 501.450.1494;  
1545 Washington  
Ellis Arnold, President of the College – [arnold@hendrix.edu](mailto:arnold@hendrix.edu); 501.4501351;  
Fausett Hall 3<sup>rd</sup> floor

**Off-campus resources:**

Arkansas Crisis Center – 1-888-274-7472  
Rape Crisis Hotline (501-801-2700) or (877-432-5368)  
Hope Rainn National Sexual Assault Hotline (800-656-4673)  
Faulkner County Prosecuting Attorney’s Victim Services Center (501-450-3051)  
National Center for Victims of Crime [www.victimsofcrime.org](http://www.victimsofcrime.org)  
24-hour Conway Women’s Shelter Crisis Hotline (866-358-2265)  
Arkansas Legal Services Partnership at (1-800-952-9243) or  
<http://www.arlegalservices.org/> or for legal assistance  
Child Abuse Hotline – 844-728-3224 or 800-482-5964

**3. Preserve Physical Evidence** – In addition to getting to a safe space, the college encourages individuals to preserve all evidence to assist the individual with their options of reporting. Preserving evidence may help prove an offense occurred and aid in obtaining a protection order. The following are tips for preserving evidence:

**General Tips**

Do not alter, dispose of or destroy any physical evidence.

- Preserve evidence of electronic communications by saving them and/or by taking screenshots of text messages, instant messages, social networking pages or other electronic communications, and by keeping pictures, logs or copies of documents that relate to the incident and/or respondent.
- Even if complainants choose not to make a complaint regarding discrimination they should nevertheless consider speaking with **Hendrix Public Safety** or other law enforcement to preserve evidence in the event that they change their mind at a later date.

**4. Seek Timely Medical Attention** – If you have been injured, you are encouraged to go for a medical exam as soon as possible because injuries should be treated promptly and evidence deteriorates quickly.

Hendrix Medical Clinic  
1700 Altus St. Suite 110 (In the Village)  
Conway, AR 72032  
<https://www.conwayregional.org/locations/clinics/hendrix-medical-clinic>

Conway Regional Health System  
2302 College Ave  
Conway, AR 72034  
[www.conwayregional.org](http://www.conwayregional.org)

Baptist Health Medical Center  
1555 Exchange Ave  
Conway, AR 72032  
[www.baptist-health.com](http://www.baptist-health.com)

Conway Regional Women's Center  
[www.conwayregional.org/locations/womenscenter](http://www.conwayregional.org/locations/womenscenter)  
501-513-5240

### **Specific to Gender-Based Misconduct**

#### **Preserving Evidence:**

- If there is suspicion that a drink may have been drugged, inform a medical assistance provider and/or law enforcement as soon as possible so they can attempt to collect potential evidence (e.g., from the drink, through urine or blood sample).
- Do not change out of the clothing you were wearing at the time of your assault. If you must change, place your old clothes in a paper bag and do not wash it.
- Pack a change of clothes to bring to campus **Health Services** or a local hospital.
- Do not shower, bathe, brush teeth, eat, drink or change bedding before going to the hospital or seeking medical attention.

**Develop a safety plan:** If you are experiencing relationship violence, developing a safety plan is important. This includes changing your routine, arranging a place to stay, and having a friend or relative go places with you. Decide in advance what to do if the stalker or abuser shows up at your home, work, school, or somewhere else. Memorize important phone numbers, such as the people to contact or places to go in an emergency. Keep spare change, calling cards, or a cell phone handy for immediate access to communication. Have money available for transportation if you need to take a taxi to escape. For more information see: <https://www.domesticpeace.com/safety-plan>

### **Title IX Staff**

The Title IX Coordinator and Deputy Title IX Coordinator may be contacted simultaneously at: [title9@hendrix.edu](mailto:title9@hendrix.edu) ; [titleix@hendrix.edu](mailto:titleix@hendrix.edu) ; [titlenine@hendrix.edu](mailto:titlenine@hendrix.edu)

Or individually

Title IX Coordinator:

Dr. Allison Vetter, [vetter@hendrix.edu](mailto:vetter@hendrix.edu), SLTC 150, 501-505-2901

Title IX Deputy:

Shawn Goicoechea, [goicoechea@hendrix.edu](mailto:goicoechea@hendrix.edu), 1545 Washington Ave, 501-450-1415

You may also report to these Title IX Deputies:



Vicki Lynn, VP of Human Resources, [lynn@hendrix.edu](mailto:lynn@hendrix.edu)  
Dr. Terri Bonebright, Provost of the College [bonebright@hendrix.edu](mailto:bonebright@hendrix.edu)  
Jim Wiltgen, Dean of Students, [wiltgen@hendrix.edu](mailto:wiltgen@hendrix.edu)  
Kesha Baoua, Interim VP for Diversity & Inclusion, [baoua@hendrix.edu](mailto:baoua@hendrix.edu)  
Amy Weaver, Director of Athletics, [weaver@hendrix.edu](mailto:weaver@hendrix.edu)

### **Federal Timely Warning Reporting Obligations**

Victims of sexual misconduct should also be aware that college administrators must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. The college will make every effort to ensure that a victim'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.

### **Federal Statistical Reporting Obligations**

Certain campus officials – those deemed Campus Security Authorities - have a duty to report certain crimes, including but not limited to 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 for reports of Clery crimes include: student/conduct affairs, campus law enforcement, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

### **How to Be an Active Bystander**

Bystanders play a critical role in the prevention of sexual and relationship violence. They are "individuals who observe violence or witness the conditions that perpetuate violence. They are not directly involved but have the choice to intervene, speak up, or do something about it."<sup>8</sup> We want to promote a culture of community accountability where bystanders are actively engaged in the prevention of violence without causing further harm. We may not always know what to do even if we want to help. Below is a list<sup>9</sup> of some ways to be an active bystander. Further information regarding bystander intervention may be found. If you or someone else is in immediate danger, dial 911. This could be when a person is yelling at or being physically abusive towards another and it is not safe for you to interrupt.

1. Watch out for your friends and fellow students/employees. If you see someone who looks like they could be in trouble or need help, ask if they are ok.
2. Confront people who seclude, hit on, try to make out with, or have sex with people who are incapacitated.
3. Speak up when someone discusses plans to take sexual advantage of another person.
4. Believe someone who discloses sexual assault, abusive behavior, or experience with stalking.
5. Refer people to on or off campus resources listed in this document for support in health, counseling, or with legal assistance.

### **For initiators of sexual activity**

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of sexual misconduct:

1. DON'T MAKE ASSUMPTIONS About consent; About someone's sexual availability; About whether they are attracted to you; About how far you can go; About whether they are physically and mentally able to consent to you;
2. Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
3. Mixed messages from your partner should be a clear indication that you should step back, defuse the sexual tension, and communicate better. Perhaps you are misreading them. Perhaps they haven't figured out how far they want to go with you yet. You need to respect the timeline with which they are comfortable.
4. Don't take advantage of someone's drunkenness or drugged state, even if they did it to themselves.
5. Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size. Don't abuse that power.
6. Understand that consent to some forms of sexual behavior does not necessarily imply consent to other forms of sexual behavior.
7. On this campus, silence and passivity cannot be interpreted by you as an indication of consent. Read your potential partner carefully, paying attention to verbal and nonverbal communication and body language.

## Risk Reduction Tips

With no intent to victim blame and recognizing that only abusers are responsible for their abuse, the following are some strategies to reduce one's risk of sexual assault or harassment (taken from Rape, Abuse, & Incest National Network, [www.rainn.org](http://www.rainn.org))

- If you have limits, make them known before things go too far.
- **Tell a sexual aggressor "NO"** clearly and loudly, like you mean it.
- Try to extricate yourself from the physical presence of a sexual aggressor.
- Grab someone nearby and ask for help.
- Be responsible for your alcohol intake/drug use and realize that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- **Be aware of incapacitating drugs** like Rohypnol and GHB. See the detailed information below or go to [www.911rape.org](http://www.911rape.org).
- **Be aware** of your surroundings. Knowing where you are and who is around you may help you to find a way to get out of a bad situation.
- Try to **avoid isolated areas**. It is more difficult to get help if no one is around.
- **Walk with purpose**. Even if you don't know where you are going, act like you do.
- **Trust your instincts**. If a situation or location feels unsafe or uncomfortable, it probably isn't the best place to be.
- **Try not to load yourself down** with packages or bags as this can make you appear more vulnerable.
- **Make sure your cell phone is with you** and charged and that you have cab money.
- **Don't allow yourself to be isolated** with someone you don't trust or someone you don't know.
- **Avoid putting music headphones in both ears** so that you can be more aware of your surroundings, especially if you are walking alone.
- **When you go to a social gathering, go with a group of friends**. Arrive together, check in with each other throughout the evening, and leave together. Knowing where you are and who is around you may help you to find a way out of a bad situation.
- **Trust your instincts**. If you feel unsafe in any situation, go with your gut. If you see something suspicious, contact law enforcement immediately (local authorities can be reached by calling 911 in most areas of the U.S.).
- **Don't leave your drink unattended** while talking, dancing, using the restroom, or making a phone call. If you've left your drink alone, just get a new one.
- **Don't accept drinks from people you don't know or trust**. If you choose to accept a drink, go with the person to the bar to order it, watch it being poured, and carry it yourself. At parties, don't drink from the punch bowls or other large, common open containers.
- **Watch out for your friends, and vice versa**. If a friend seems out of it, is way too intoxicated for the amount of alcohol they've had, or is acting out of character, get him or her to a safe place immediately. A real friend will get in your face if you are about to make a mistake. Respect them if they do.
- **If you suspect you or a friend has been drugged, contact law enforcement immediately (local authorities can be reached by calling 911 in most areas of the U.S.)**. Be explicit with doctors so they can give you the correct tests (you will need a

urine test and possibly others).

- If you need to get out of an uncomfortable or scary situation here are some things that you can try:
  - **Remember that being in this situation is not your fault.** You did not do anything wrong, it is the person who is making you uncomfortable that is to blame.
  - **Be true to yourself.** Don't feel obligated to do anything you don't want to do. "I don't want to" is always a good enough reason. Do what feels right to you and what you are comfortable with.
  - **Have a code word with your friends or family** so that if you don't feel comfortable you can call them and communicate your discomfort without the person you are with knowing. Your friends or family can then come to get you or make up an excuse for you to leave.
  - **Lie.** If you don't want to hurt the person's feelings it is better to lie and make up a reason to leave than to stay and be uncomfortable, scared, or worse. Some excuses you could use are: needing to take care of a friend or family member, not feeling well, having somewhere else that you need to be, etc.
- **Try to think of an escape route.** How would you try to get out of the room? Where are the doors? Windows? Are there people around who might be able to help you? Is there an emergency phone nearby?
- **If you and/or the other person have been drinking,** you can say that you would rather wait until you both have your full judgment before doing anything you may regret later.

### **Legal Definitions**

This section is for reference only and definitions in this policy are independent of state and federal legal definitions. All conduct processes address violations of Hendrix College Student handbook and are not intended to take the place of criminal proceedings. In the event that a student would like to pursue criminal charges they may do so without interfering with or otherwise altering any above mentioned process or rights. The Title Investigator (501-505-2901) or Public Safety (501-450-7711) will assist students who wish to make a report to law enforcement at the request of the student.

**Arkansas state law definitions pertaining to sexual assault, domestic violence, dating violence, and stalking. THESE ARE THE DEFINITIONS USED FOR LAW ENFORCEMENT. These definitions do NOT apply to the College's definitions of prohibited conduct.**

Sexual Assault - is a generic term that is defined as any involuntary sexual act in which a person is threatened, coerced, or forced to engage against his/her will to include (but not limited to rape, acquaintance rape, date rape, and gang rape).

Arkansas legal definition of rape - A person commits rape if he/she engages in sexual intercourse or deviant sexual activity with another person: (a) by forcible compulsion; (b) who is incapable of consent because he/she is physically helpless; or, (c) who is less than fourteen (14) years old (the assailant must be two years older than the victim for this to apply); or (d) where the victim is less than sixteen (16) years old and is incapable of consent because of being mentally defective or mentally incapacitated. Rape is a Class Y 114 felony.

Arkansas legal definition of sexual misconduct – A person commits sexual misconduct if he/she engages in sexual intercourse or deviate sexual activity with another person not his/her spouse who is less than sixteen (16) years old. Sexual misconduct is a Class B misdemeanor.

Acquaintance rape refers to a rape committed by a non-stranger who is known to the victim, and can include a friend, acquaintance, family member, neighbor, classmate, or co-worker.

Date rape refers to a type of acquaintance rape where the victim has consented to accompany or go on a date with the perpetrator.

Gang rape is a rape that involves more than one perpetrator.

The Arkansas statute on rape is genderless, which means that both men and women can be rape victims and perpetrators. Sexual assault can occur whenever consent is not freely given by the victim; whenever the victim fears that he/she will be injured if he/she does not submit; whenever the victim is incapable of giving consent or resisting due to alcohol or drugs; and whenever the perpetrator uses physical force, threat, coercion, or intimidation to overpower the victim.

Incest occurs when a person, being sixteen (16) years of age or older, purports to marry, has sexual intercourse with, or engages in deviate sexual activity with another person sixteen (16) years of age or older whom the actor knows to be: **(1)** An ancestor or a descendant; **(2)** A stepchild or adopted child; **(3)** A brother or sister of the whole or half-blood; **(4)** An uncle, aunt, nephew, or niece; or **(5)** A step grandchild or adopted grandchild. Incest is a Class C felony.

### **Sexual Assault**

Sexual assault in the first degree occurs when the person engages in sexual intercourse or deviate sexual activity with a minor who is not the actor's spouse and the actor is **(A)** Employed with the Department of Correction, the Department of Community Correction, the Department of Human Services, or any city or county jail or a juvenile detention facility, and the victim is in the custody of the Department of Correction, the Department of Community Correction, the Department of Human Services, any city or county jail or juvenile detention facility, or their contractors or agents; **(B)** A mandated reporter under § 12-18-402(b) and is in a position of trust or authority over the victim and uses the position of trust or authority to engage in sexual intercourse or deviate sexual activity; or **(C)** An employee in the victim's school or school district, a temporary caretaker, or a person in a position of trust or authority over the and uses his or her position of trust or authority over the victim to engage in sexual intercourse or deviate sexual activity. Sexual assault in the first degree is a Class A felony.

Sexual assault in the second degree occurs when **(a)** A person **(1)** Engages in sexual contact with another person by forcible compulsion; **(2)** Engages in sexual contact with another person who is incapable of consent because he or she is: Physically helpless; Mentally

defective; or Mentally incapacitated; (3) Being eighteen (18) years of age or older, engages in sexual contact with another person who is: Less than fourteen (14) years of age; and not the person's spouse. Sexual assault in the second degree is a Class B felony.

Sexual assault in the second degree is a Class D felony if committed by a minor with another person who is: Less than fourteen (14) years of age; and not the person's spouse.

Sexual assault in the third degree occurs when a person engages in sexual intercourse or deviate sexual activity with another person who is not the actor's spouse, and the actor is: (A) Employed with the Department of Correction, Department of Community Correction, Department of Human Services, or any city or county jail, and the victim is in the custody of the Department of Correction, Department of Community Correction, Department of Human Services, or any city or county jail; (B) Employed or contracted with or otherwise providing services, supplies, or supervision to an agency maintaining custody of inmates, detainees, or juveniles, and the victim is in the custody of the Department of Correction, Department of Community Correction, Department of Human Services, or any city or county jail; or (C) A mandated reporter under § 12-18-402(b) or a member of the clergy and is in a position of trust or authority over the victim and uses the position of trust or authority to engage in sexual intercourse or deviate sexual activity; or being a minor, engages in sexual intercourse or deviate sexual activity with another person who is: less than fourteen (14) years of age; and not the person's spouse. Sexual assault in the third degree is a Class C felony.

Sexual assault in the fourth degree occurs when a person being twenty (20) years of age or older: (A) Engages in sexual intercourse, deviate sexual activity, or sexual contact with another person who is: less than sixteen (16) years of age; and not the person's spouse; or Sexual assault in the fourth degree under subdivisions (a)(1)(A) and (a)(2) is a Class D felony. Sexual assault in the fourth degree under subdivision (a)(1)(B) is a Class A misdemeanor if the person engages only in sexual contact with another person as described in subdivision (a)(1)(B).

### **Domestic Violence**

Domestic battering in the first degree.

(a) A person commits domestic battering in the first degree if: (1) With the purpose of causing serious physical injury to a family or household member, the person causes serious physical injury to a family or household member by means of a deadly weapon; (2) With the purpose of seriously and permanently disfiguring a family or household member or of destroying, amputating, or permanently disabling a member or organ of a family or household member's body, the person causes such an injury to a family or household member; (3) The person causes serious physical injury to a family or household member under circumstances manifesting extreme indifference to the value of human life; (4) The person knowingly causes serious physical injury to a family or household member he or she knows to be sixty (60) years of age or older or twelve (12) years of age or younger; or (5) The person: (A) Commits any act of domestic battering as defined in § 5-26-304 or § 5-26-305; and (B) For conduct that occurred within the ten (10) years preceding the commission of the current offense, the person has on two (2) previous occasions been convicted of any

act of battery against a family or household member as defined by the laws of this state or by the equivalent laws of any other state or foreign jurisdiction. Domestic battering in the first degree is a Class B felony.

However, domestic battering in the first degree is a Class A felony upon a conviction under subsection (a) of this section if: **(A)** Committed against a woman the person knew or should have known was pregnant; or **(B)** The person committed one (1) or more of the following offenses within five (5) years of the offense of domestic battering in the first degree: Domestic battering in the first, second, or third degree or a violation of an equivalent penal law of this state or of another state or foreign jurisdiction.

Domestic battering in the second degree.

**(a)** A person commits domestic battering in the second degree if: **(1)** With the purpose of causing physical injury to a family or household member, the person causes serious physical injury to a family or household member; **(2)** With the purpose of causing physical injury to a family or household member, the person causes physical injury to a family or household member by means of a deadly weapon; **(3)** The person recklessly causes serious physical injury to a family or household member by means of a deadly weapon; or **(4)** The person knowingly causes physical injury to a family or household member he or she knows to be sixty (60) years of age or older or twelve (12) years of age or younger. Domestic battering in the second degree is a Class C felony.

However, domestic battering in the second degree is a Class B felony if: **(A)** Committed against a woman the person knew or should have known was pregnant; **(B)** The person committed one (1) or more of the following offenses within five (5) years of the offense of domestic battering in the second degree: Domestic battering in the first, second, or third degree or a violation of an equivalent penal law of this state or of another state or foreign jurisdiction or **(C)** The person committed two (2) or more offenses of battery against a family or household member as defined by a law of this state or by an equivalent law of any other state or foreign jurisdiction within ten (10) years of the offense of domestic battering in the second degree.

Domestic battering in the third degree.

**(a)** A person commits domestic battering in the third degree if: **(1)** With the purpose of causing physical injury to a family or household member, the person causes physical injury to a family or household member; **(2)** The person recklessly causes physical injury to a family or household member; **(3)** The person negligently causes physical injury to a family or household member by means of a deadly weapon; or **(4)** The person purposely causes stupor, unconsciousness, or physical or mental impairment or injury to a family or household member by administering to the family or household member, without the family or household member's consent, any drug or other substance.

Domestic battering in the third degree is a Class A misdemeanor.

However, domestic battering in the third degree is a Class D felony if: **(A)** Committed against a woman the person knew or should have known was pregnant; **(B)** The person committed one (1) or more of the following offenses within five (5) years of the offense of domestic

battering in the third degree: Domestic battering in the first, second, or third degree or a violation of an equivalent penal law of this state or of another state or foreign jurisdiction , aggravated assault on a family or household member, § 5-26-306; or **(C)** The person committed two (2) or more offenses of battery against a family or household member as defined by a law of this state or by an equivalent law of any other state or foreign jurisdiction within ten (10) years of the offense of domestic battering in the second degree.

### **Dating Violence**

Dating violence: Arkansas state statutes do not address dating violence separately from domestic violence and assault and battery.

### **Stalking**

**(a) (1)** A person commits stalking in the first degree if he or she knowingly engages in a course of conduct that would place a reasonable person in the victim's position under emotional distress and in fear for his or her safety or a third person's safety, and the actor: **(A)** Does so in contravention of an order of protection consistent with the Domestic Abuse Act of 1991, § 9-15-101 et seq., or a no contact order as set out in subdivision (a)(2)(A) of this section, protecting the same victim, or any other order issued by any court protecting the same victim; **(B)** Has been convicted within the previous ten (10) years of:**(i)** Stalking in the second degree; **(ii)** Terroristic threatening, § 5-13-301 or terroristic act, § 5-13-310; or **(iii)** Stalking or threats against another person's safety under the statutory provisions of any other state jurisdiction; or **(C)** Is armed with a deadly weapon or represents by word or conduct that he or she is armed with a deadly weapon.  
Stalking in the first degree is a Class C felony.

**(b) (1)** A person commits stalking in the second degree if he or she knowingly engages in a course of conduct that harasses another person and makes a terroristic threat with the purpose of placing that person in imminent fear of death or serious bodily injury or placing that person in imminent fear of the death or serious bodily injury of his or her immediate family. Stalking in the second degree is a Class D felony.

**(c) (1)** A person commits stalking in the third degree if he or she knowingly commits an act that would place a reasonable person in the victim's position under emotional distress and in fear for his or her safety or a third person's safety. Stalking in the third degree is a Class A misdemeanor.

In the National Incident-Based Reporting System User Manual from the FBI UCR Program, non-consensual sexual intercourse is referred to as **Rape** and is defined as the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

In the National Incident-Based Reporting System User Manual from the FBI UCR Program, non-consensual sexual contact is referred to as **Fondling** and is defined as the touching of the private parts of another person for the purposes 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.



**Sex Offender Registry**

The campus community should contact the Conway Police Department (501-450-6120) for listings and information regarding registered sex offenders, or visit the Arkansas Crime Information Center at: <http://acic.org/offender-search/index.php>

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