

BLACK HILLS STATE UNIVERSITY
Policy and Procedure Manual

SUBJECT: Title IX & Sexual Harassment

NUMER: 4:7

Office/Contact: Title IX Coordinator, Office of the President

Sources: [SDBOR Policy 1:17](#); [SDBOR Policy 1:17.1](#); [SDBOR Policy 1:18](#); Clery Act, 20 U.S.C. § 1092(f), and the Violence Against Women Act, 34 U.S.C. § 12291(a).

1. Purpose

- a. This policy implements and/or supplements SDBOR Policy 1:17, SDBOR Policy 1:17.1, and SDBOR Policy 1:18 in accordance with applicable federal law.
- b. This policy also implements The Clery Act. For purposes relating to the annual security report required under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 USC § 1092(f)), conduct constituting Dating Violence, Domestic Violence Sexual Assault and Stalking under § 2.b; 2.c; 2.h; and 2.i of this policy shall be reported as crime, irrespective of its treatment under South Dakota law.

2. Definitions

- a. Quid pro quo harassment: school employee conditioning an educational benefit or service upon a person's participation in unwelcome sexual conduct
- b. Dating violence: violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.
 - i. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - ii. Dating violence does not include acts covered under the definition of domestic violence.
- c. Domestic violence: a felony or misdemeanor crime of violence committed
 - i. By a current or former spouse or intimate partner of the victim;

- ii. By a person with whom the victim shares a child in common;
 - iii. By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - iv. By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or
 - v. By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- d. Murder and non-negligent manslaughter: the willful (non-negligent) killing of one human being by another.
- e. Rape: 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.
- f. Robbery: the taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence or by putting the victim in fear.
- g. Aggravated Assault: an unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could and probably would result in serious personal injury if the crime were successfully completed.
- h. Sexual assault: any offense that constitutes rape, fondling, incest, or statutory rape:
- i. Rape has the same meaning as given above in § 2(e).
 - ii. Fondling: the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent

because of his/her age or because of his/her temporary or permanent mental incapacity.

iii. Incest: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by SDCL § 25-1-6, which provides that:

1. Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces, or aunts and nephews, and between cousins of the half as well as of the whole blood, are null and void from the beginning, whether the relationship is legitimate or illegitimate. The relationships provided for in this section include such relationships that arise through adoption.

iv. Statutory rape: sexual intercourse with a person who is under the statutory age of sixteen.

i. Stalking: engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- i. Fear for the person's safety or the safety of others; or
- ii. Suffer substantial emotional distress.

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

k. Reasonable person: a reasonable person under similar circumstances and with similar identities to the victim.

l. Substantial emotional distress: significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

3. Policy

- a. Black Hills State University will follow federal law, Title IX of the Education Amendment Acts of 1972, and its policy prohibiting discrimination and harassment in educational programs, activities and its employment practices. It ensures equal access to its educational programs and employment opportunities without regard to sex, gender, race, color, national origin, religion, age, disability, pregnancy, gender identity, sexual orientation, predisposing genetic characteristics, marital status, veteran status, military status, domestic violence victim status, or ex-offender status.
- b. Black Hills State University will provide an environment not impaired by sex and gender-based misconduct, including sex discrimination and sexual harassment. This includes, without limitation, sexual harassing, violent intimidating or discriminatory conduct by its students, employees or any other member or visitor to the University community.
- c. This policy applies to conduct occurring on campus, including academic programs, admissions, athletics, recruitment, financial aid, housing, employment, as well as certain off-campus programs/events/activities/facilities that are controlled by the university.
- d. The University encourages students/visitors and requires faculty/staff members to report all gender-based misconduct immediately to the Title IX Coordinator. See § 4.c of this policy.
- e. Title IX and the University strictly prohibits retaliation. Any action that attempts to penalize, intimidate or threaten a person who makes a report or cooperates in an investigation of gender-based misconduct, harassment or discrimination is prohibited.
- f. This University policy is in accordance with federal and state laws and regulations prohibiting discrimination and harassment. These laws include Title IX (prohibiting discrimination and harassment based on sex), the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, and Title VII.
- g. Under Title IX, the following conduct if based on sex constitutes sexual harassment:

- i. “Quid pro quo” harassment
- ii. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school’s education program or activity; or
- iii. Sexual assault, dating violence, domestic violence, or stalking (as those offenses are defined in the Clery Act, 20 U.S.C. § 1092(f), and the Violence Against Women Act, 34 U.S.C. § 12291(a)).
 1. Dating violence
 - a. The existence of a dating relationship shall be determined based on the reporting party'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.
 2. Domestic violence
 - a. For purposes of this section violent crimes are determined under the Federal Bureau of Investigation's (FBI) Uniform Crime Reporting (UCR) program, which classifies four offenses involving force or threat of force as violent crimes: murder and non-negligent manslaughter, rape, robbery, and aggravated assault, as set forth in 34 C.F.R. part 668 Appendix A to Subpart D of Part 668—Crime Definitions in Accordance With the Federal Bureau of Investigation's Uniform Crime Reporting Program.
- iv. Murder and Non-negligent Manslaughter
- v. Rape
- vi. Robbery
- vii. Aggravated Assault
- viii. Sexual Assault
- ix. Statutory Rape
- x. Stalking

- h. Consent may be implied from the facts and circumstances surrounding the commission of an act. Consent will not be found where an act has been done through the use of force, coercion, or threats of immediate and great bodily harm. Submission does not equal consent, and to establish consent, a party charged must utterly negate any element of force, coercion, or threat. Consent, once given, may be retracted. Consent will not be found under any of the following circumstances:
 - i. If the victim is less than thirteen years of age; or
 - ii. Through the use of force, coercion, or threats of immediate and great bodily harm against the victim or other persons within the victim's presence, accompanied by apparent power of execution; or
 - iii. If the victim is incapable, because of physical or mental incapacity, of giving consent to such act; or
 - iv. If the victim is incapable of giving consent because of any intoxicating, narcotic, or anesthetic agent or hypnosis; or
 - v. If the victim is thirteen years of age, but less than sixteen years of age, and the perpetrator is at least three years older than the victim.

4. Procedures

- a. The Title IX Coordinator will review reports of sexual harassment to determine and coordinate the institution's response in accordance with Board Policy 1:17.
 - i. The Title IX Coordinator will provide information to the involved parties regarding BHSU Title IX procedures and resources.
 - ii. The Title IX Coordinator will conduct an initial interview and will ask for a statement to help establish the case. As needed, supportive measures to protect the interests of those involved will be discussed and offered.
 - iii. Upon receipt of a formal complaint alleging sexual harassment (via the submission of a Formal Complaint by a complainant or Title IX Coordinator), the Title IX Coordinator will then refer the case to the

appropriate office for a thorough, timely, and unbiased formal investigation and adjudication of the matter pursuant to BOR Policy 1:17.

- b. The institution will establish programs designed to help prevent dating violence, domestic violence, sexual assault or stalking
 - i. by holding perpetrators accountable for their conduct;
 - ii. by encouraging victims to report incidents; and
 - iii. by informing students, staff and visitors of:
 - 1. Board policies proscribing, dating violence, domestic violence, sexual assault or stalking, including procedures compliant with Board Policies 1:17 and 1:18 to enforce those policies;
 - 2. Strategies individuals may use to protect themselves;
 - 3. Contact information for institutional officials responsible for investigating reports of, dating violence, domestic violence, sexual assault or stalking;
 - 4. Institutional resources to assist in reporting incidents and preserving evidence; and
 - 5. Institutional and community resources to assist victims.

c. Duty to Report

- i. At BHSU, all employees*, including student resident assistants, are required to report all gender-based misconduct immediately to the Title IX Coordinator. Faculty and staff members are to report any information they have concerning possible sexual harassment or sexual misconduct (which are defined in the following BOR policies: 1:17 Harassment including Sexual Harassment, 1:17.1 Prevention of Sexual Assault, Domestic Violence, and Stalking, and 1:18 Human Rights Complaint Procedures). This means that information about sexual harassment or misconduct shared with a faculty or staff person is not confidential. Faculty will receive training on duty to report.

**Exceptions to this apply to the Counseling Center, and the Health Center.*

- ii. For additional information or inquiries, please contact Dr. Breon Derby, BHSU Title IX Coordinator at 605-642-6977 or Breon.Derby@bhsu.edu.

5. Responsible Administrator

The Title IX Coordinator is responsible for the annual ad hoc review of this policy and its procedures. The University President is responsible for approval of this policy.

SOURCE: Approved by President Laurie Nichols on 11/12/2021.