



Number: 0-004
Title: Sex Discrimination
Responsible Office: Compliance & Ethics and Central Human Resources

Date of Origin: 12-22-11

Date Last Amended: 1-31-25

Date Last Reviewed: 1-31-25

I. PURPOSE AND INTENT

The University of South Florida (USF) community is most successful when it is based on respect and fair treatment of all people. USF does not discriminate on the basis of sex and prohibits sex discrimination in any Education Program or Activity that USF operates, including in admission and employment. These efforts promote an equitable environment for everyone while ensuring compliance with Title IX of the Education Amendments of 1972 and the Violence Against Women Act (VAWA) Amendments to the Clery Act. Inquiries about the application of Title IX at USF may be referred to USF's Title IX Coordinator, the Office of Civil Rights, or both. Current information may be found at <https://www.usf.edu/title-ix/>. The Title IX Coordinator is:

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USF addresses Protected Category discrimination and harassment beyond sex-based issues through separate mandates. For information on discrimination based on age, disability, equal pay or compensation, genetic information, national origin, race, color, or religion, refer to [USF Policy 0-007 Diversity and Equal Opportunity: Discrimination and Harassment](#). In some cases, USF Policy 0-007 may also apply to sex-based discrimination. All disclosures of discrimination based on sex must be reported to Title IX & VAWA Compliance. The Title IX Coordinator, in consultation with the Equal Opportunity Office (EO), will determine the appropriate policy to apply.

II. STATEMENT OF POLICY

USF Policy 0-004 applies to all forms of sex discrimination, whether they fall under the jurisdiction of Title IX or constitute other prohibited conduct outside the scope of Title IX. Regardless of the specific categorization, such conduct is subject to review and investigation under this policy. The Title IX & VAWA Compliance Office is responsible for addressing all Reports of sex discrimination, ensuring a fair and impartial process in compliance with institutional policies, Title IX, and applicable federal and state laws.

III. DEFINITIONS

- **Actual Knowledge:** When USF receives Notice of conduct that reasonably may constitute harassment, discrimination, or Retaliation in its Education Program or Activity.
- **Complainant:** A student or employee who is alleged to have been subjected to conduct that could constitute discrimination, harassment, or Retaliation under the Policy; or a person other than a student or employee who is alleged to have been subjected to conduct that could constitute discrimination or harassment or under the Policy and who was participating or attempting to participate in USF's Education Program or Activity at the time of the alleged discrimination, harassment or Retaliation. A Complainant may also be a parent, guardian, or other authorized legal representative with the legal right to act on behalf of a Complainant.
- **Confidential Resource:** An individual who, by virtue of their regular duties (e.g., medical assistance, counseling, or victim assistance) may be privy to certain information that is protected by federal and state laws and cannot be shared without your explicit permission. Examples include Counselors, Doctors, Nurses, and Victim Advocates.
- **Consent:** Knowing, voluntary and clear permission by word or action to engage in sexual activity. Since individuals may experience the same interaction in different ways, 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. Consent in relationships must also be considered in context. When parties consent to BDSM or other forms of kink, non-consent may be shown by the use of a safe word.

Consent can also be withdrawn once given if 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 USF 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.

- **Education Program or Activity:** Locations, events, or circumstances where USF exercises substantial control over both the Respondent and the context in which the sexual discrimination occurs and includes any building owned or controlled by a student organization that is officially recognized by USF.
- **Force:** 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.”). 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.
- **Formal Complaint:** A document filed and signed by a Complainant or signed by the Title IX Coordinator alleging sex discrimination against a Respondent and requesting an investigation of the allegations.
- **Incapacitation:** A person cannot consent if they are unable to understand what is happening, 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. Consent is not valid if obtained by a Respondent who knew or should have known a Complainant was incapacitated.

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 or medications.

- **Investigator:** The person(s) charged by USF with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into a Final Investigative Report and file of directly related evidence.
- **Notice:** An employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- **Official with Authority (OWA):** A University employee who has authority to institute corrective measures on behalf of the University. Includes Presidents, Provosts, Vice Presidents, Deans, Department Chairs, UPD, Student Outreach Support (SOS), Student Conduct & Ethical Development (SCED), Central Human Resources (CHR), Title IX, and Supervisors with authority to discipline.
- **Party/Parties:** The Complainant(s) and Respondent(s), collectively.
- **Pregnancy or Related Conditions:** Pregnancy, childbirth, termination of pregnancy, or lactation, medical conditions related thereto, or recovery therefrom.
- **Report:** Information brought to the attention of a USF Employee alleging conduct prohibited under this Policy; a Report is not considered to be a Formal Complaint. A Party may bring a Report and then subsequently file a Formal Complaint.
- **Respondent:** An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or sex discrimination; or Retaliation for engaging in a protected activity under this Policy.
- **Responsible Employee:** Any employee of USF except for student employees or Confidential Resources. Responsible Employees are required to notify the Title IX Coordinator within 24 hours of a disclosure of sex discrimination by any USF Employee, student, Vendor, or Visitor

- **Retaliation:** Words or action(s) taken against an individual because of the individual's participation in a protected activity that would discourage a reasonable person from engaging in a protected activity. Retaliation may include intimidation, threats, coercion, physical harm and/or adverse employment or educational actions. Protected activity includes an individual's participation in the reporting, investigation, and/or resolution of an alleged violation of University policy. Retaliation may be found even when an underlying Report made in good faith was not substantiated. Retaliation may be committed by either Party, or any other individual or group of individuals.
- **Sanction:** A consequence imposed on a Respondent who is found to have violated USF policy.
- **Sex Act:** An act of physical intimacy for sexual pleasure or gratification, usually involving genital, oral, or anal contact.
- **Supportive Measures:** Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available. They are offered without fee or charge to the Parties, to restore or preserve access to USF's Education Program or Activity, including measures designed to protect the safety of all Parties and/or USF's educational environment and/or to deter discrimination, harassment, and/or Retaliation.
- **Title IX Coordinator:** The person with primary responsibility for overseeing and enforcing USF Policy 0-004. As used in these policies and procedures, the Title IX Coordinator also includes their designee(s).
- **USF Employee:** Any individual employed by USF in one of the following employee position types: Faculty, Administration, Staff, or Temporary. The term "temporary" employee refers to any person occupying an OPS position type.
- **USF Student:** Student is an individual admitted, enrolled, or registered for any University course or program, regardless of the medium of the course or program, or degree-seeking status, or when not enrolled or registered for a particular term, who is eligible to enroll in future terms without seeking readmission. A student who withdraws is academically dismissed after allegedly violating the Student Code of Conduct or has a continuing relationship with the University is still considered a student. For the purpose of this policy, the term "student" may be interchangeable with "student organization" when the term "student organization" is not directly specified.

- **Vendor:** Any individual or company that provides goods or services to the University or University visitors.
- **Victim:** The person who experienced the sexual harassment.
- **Violence:** Actually and intentionally touching or striking another person against the will of the other.
- **Visitor:** Any individual who is visiting a University campus, property, or University-sponsored event who is not otherwise a student, employee, Vendor, or contractor.

IV. **PROHIBITED CONDUCT**

USF prohibits sex discrimination between faculty, staff, Vendors, Visitors, and students in all academic, educational, extracurricular, athletic, and other University programs. USF enforces this Policy whether these programs occur on campus, in a USF-sponsored class or training session, or elsewhere. USF promptly addresses Reports or Actual Knowledge of alleged sex discrimination, taking action to stop the inappropriate behavior, remedy its effects, and prevent the recurrence of the prohibited conduct while respecting the rights of all individuals.

Sex discrimination involves treating someone unfavorably because of that person's sex, including pregnancy. Sex discrimination can be further defined as conduct on the basis of sex or that is sexual in nature that meets one or more of the following definitions:

- A. Sexual Harassment:** Unwelcome conduct based on sex determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to USF's Education Program or Activity;
- B. Sexual Assault:** Any sex act directed against another person, forcible or without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity;
- C. Rape:** 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 forcibly or against that person's will (non-consensually) or in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity;

- D. Fondling:** The touching of the private body part(s) of another person (buttocks, groin, breasts) for the purpose of sexual gratification committed forcibly or against that person's will (non-consensually), or when the Complainant is incapable of giving consent because of temporary or permanent mental or physical incapacity;
- E. Incest:** Non-forcible sexual intercourse between persons who are related to each other, within the degrees wherein marriage is prohibited by Florida law.
- F. Statutory Rape:** Non-forcible sexual intercourse with a person who is under the statutory age of consent of 18.
- G. Dating Violence:** Violence on the basis of sex committed by a person who is in or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the statements of the Parties 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 Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating Violence does not include acts covered under the definition of Domestic Violence;
- H. Domestic Violence:** Violence on the basis of sex committed by a current or former spouse or intimate partner of the Complainant by a person with whom the Complainant shares a child in common or by a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the state of Florida or 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 the state of Florida. To categorize an incident as Domestic Violence, the relationship between the Respondent and 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;
- I. Stalking:** Engaging in a course of conduct directed at a specific individual, based on sex, that would cause a reasonable individual to fear for the individual's or the safety of others or suffer substantial emotional distress. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, an individual, or interferes with an individual's property. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling. A reasonable individual is a

person(s) under similar circumstances and with similar identities to the Complainant.

V. REPORTING

A. Who May Report

Anyone can report sex discrimination. While Responsible Employees must submit Reports using the [Online Report Form](#), others can report by notifying a Responsible Employee, submitting an [Online Report Form](#), or contacting the Office of Compliance & Ethics by email, mail, phone, or delivered in person using the information on page 1. Those not considered Responsible Employees may report anonymously through Ethics Point, an independent third-party vendor, via the [USF Compliance & Ethics](#) website or call (866) 974-8411.

Reporting does not require initiation of a Formal Complaint, and in most cases, USF can honor a Complainant's request not to start a resolution process. In cases of pattern behavior, severe misconduct, or a significant threat to health and/or safety, USF may need to initiate a resolution process, and Complainants are not required to participate in that process. If a Complainant chooses not to file a Formal Complaint, USF will protect the privacy of the information provided to the extent possible.

B. Who Must Report

All USF Employees, unless specifically exempted as noted below, must promptly report allegations of sex discrimination involving a USF Employee(s), student(s), organization(s), Vendor(s), or Visitors(s) to Title IX & VAWA Compliance within 24 hours. **Failure to report may result in disciplinary action, including possible termination of employment.** For more information on Responsible Employees, see the [Title IX Website](#).

C. Other obligations

Responsible Employees must maintain privacy, sharing information only with Title IX & VAWA Compliance. In addition to reporting, the Responsible Employee must provide the Victim (or disclosing individual) with information on confidential advocacy, counseling, and support services, as well as the right to file a Formal Complaint with the University and/or report a crime to law enforcement. This information and printable flyers may be found on the [Title IX website](#).

D. Pregnancy

When informed of Pregnancy or Related Conditions, Responsible Employees must provide the discloser (or their legal representative) with the Title IX Coordinator's contact information and explain that the Title IX Coordinator ensures protection against sex discrimination and promotes equal access.

E. Exemptions to Reporting

1. Confidential Resources: Employees whose regular duties include offering medical assistance, counseling, or victim assistance are exempt from reporting when acting in their primary role, including all employees in the following organizational units: The Center for Victim Advocacy, The Counseling Center, The Wellness Center, The Ombudsman, Student Health Services, and Human Resources Workers' Compensation Administrator or FMLA Leave Consultant.
2. USF Research Projects: If a participant in an Institutional Review Board–approved human subject research project (a “USF Research Project”) discloses an incident of alleged sex discrimination during the research, that disclosure will not initiate the University’s reporting obligations under this Policy.

F. External Review

The Director of Title IX & VAWA Compliance must be notified before any USF department, office, unit, or employee engages in external review of a sex discrimination allegation.

VI. TRAINING

Responsible Employees must complete Title IX training within 30 days of hire and annually thereafter. Details about this training are available on the [Title IX website](#). The Title IX Coordinator may require additional training as needed in response to Reports and when federal regulations are updated.

VII. TITLE IX COORDINATOR RESPONSIBILITIES

- Oversee the review of Reports and Formal Complaints related to Prohibited Conduct.
- Manage the implementation of Supportive Measures and resolution processes. For details on these processes, consult the [Sex Discrimination Procedure Document](#).
- Monitor compliance with Title IX Federal Regulations, provide education and training, and annually report on all Policy violations.
- Report abuse of minors or vulnerable adults to Child & Family Services, as required by law.
- Refer allegations outside the purview of this Policy to the appropriate USF offices or external organizations.
- Oversee the emergency removal process for Respondents. For more information, refer to the [Sex Discrimination Procedure Document](#).
- Ensure implementation of all final Remedies and Sanctions.

VIII. GENERAL PRINCIPLES

A. Revisions to this Policy

This Policy supersedes any previous policies related to sex discrimination or retaliation. USF reserves the right to change this document as necessary. The Title IX Coordinator or designee may implement reasonable adjustments to accommodate changes in the academic calendar or other unforeseen circumstances, ensuring fairness to all parties involved. Reasonable notice will be provided to both Parties along with the justification for any adjustments made.

The Title IX Coordinator or other University Responsible Office may propose amendments through the [University Regulation and Development Procedure](#).

If state or federal law, regulations or court decisions alter the requirements regarding sex discrimination in a way that impacts this document, this document may be immediately amended to address those changes.

B. Related Regulations and Policies

- [USF Policy 0-020 Retaliation, Retribution, Or Reprisals Prohibited](#)
- [USF Policy 1-022 Consensual Relationships](#)
- [USF Policy 0-007 Diversity and Equal Opportunity: Discrimination and Harassment](#)
- [USF Regulation 6.0021 Student Code of Conduct](#)
- [USF Policy 6-032 Child Abuse Reporting](#)
- [Sex Discrimination Procedure Document](#)

HISTORY

Date Approved: Dec. 22, 2011

Substantively Amended: Jan. 31, 2025, Sept. 6, 2023, Jan. 20, 2023

Technically Amended: Sept. 26, 2022, Sept. 7, 2022, Nov. 16, 2021, Oct. 6, 2021, Apr. 26, 2021, Aug. 14, 2020, Apr. 30, 2020, Feb. 4, 2020, Aug. 22, 2019, Jan. 3, 2018, Oct. 19, 2015, Sept. 7, 2012

Biennial Review: Jan. 31, 2025, Jan. 30, 2023

Other: Jul. 1, 2020 (Consolidation)