
From: Doyle, Sheila [BOARD]
Sent: Wednesday, October 29, 2008 11:43 AM
To: Smith, Dianne [BOARD]
Subject: Fw: DRAFT Proposed Sexual Misconduct Guiding Principles
Importance: High
Attachments: 1008 BOR Guiding Principles.doc

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Cc: Donley, Robert [BOARD]
Sent: Tue Oct 28 12:46:36 2008
Subject: DRAFT Proposed Sexual Misconduct Guiding Principles

The attached draft is being forwarded for your review prior to tomorrow's Board meeting. Please let us know if you have any questions. Thank you.

<<1008 BOR Guiding Principles.doc>>

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Best Practices and Policy Guidelines

PROPOSED **IOWA BOARD OF REGENTS** **SEXUAL MISCONDUCT GUIDING PRINCIPLES**

Pursuant to the Iowa Board of Regents Resolution passed on September 25, 2008, the following *Guidelines* were established to assist the University of Iowa, Iowa State and University of Northern Iowa, Iowa Braille and Sight Saving School, and Iowa School for the Deaf, with the comprehensive review of their policies and procedures dealing with sexual assault and related issues. The Board of Regents *Guidelines* are intended to ensure that all five universities sexual misconduct policies are consistent with the best practices in higher education. The *Guidelines* set forth policy and legal compliance elements which result in proactive campus sexual misconduct policies and create effective sexual assault risk management practices.

Policy Compliance Elements: Creation of a proactive sexual misconduct policy requires the following elements to be addressed:

- Policy statements must begin with an institutional statement of mission and values. The statement of intent must include the institution's position regarding all forms of sexual misconduct, including sexual harassment, and sexual assault
- Establish physical jurisdictional limits for policy
- Identify specifically to whom the policy applies; student policies should be distinct from employee policies
- Provide coordinated victim services utilizing campus and/or community-based resources, which address reporting options for victims, including reporting to law enforcement, initiating civil action, as well as providing physical and emotional support. Include a statement of victim's rights, which must include the following:
 - Information on reporting to law enforcement that clearly informs the victim of this option
 - An opportunity to participate in campus discipline hearings
 - The right to be accompanied by an advisor during the investigation and hearing
 - The right to provide a victim's impact statement if the accused is found in violation
 - The right to know the outcome of the hearing, including determination and sanction imposed
- Policy must clearly identify the intersection of sexual misconduct policies with other policies such as drug and alcohol, and hazing policies
- Clearly articulate prohibited conduct and include unambiguous definitions of behaviors
- Provide a timeline for reporting incidents of sexual misconduct
- Designate a primary institutional employee or an office to coordinate all sexual misconduct, including specific contact information
- Ensure staff are properly trained on Title IX regulations where the student is the complainant

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- Provide a detailed explanation of university sexual misconduct policy procedures, investigation processes, reporting requirements, and a time frame for the investigation process
- Identify and articulate the adjudication process, including time frame and the manner in which the hearing is to be conducted
- Provide clear statement regarding confidentiality and limits on sharing and release of information
- Identify the institution's authority to take immediate action, which may include the following:
 - Imposing interim suspension
 - Modifying academic schedule of victim
 - Modifying housing arrangements for victim
 - Providing resources for medical and/or psychological support
- Specifically state the prohibition of retaliation for filing a complaint in good faith, or participating in an investigation or inquiry to a complaint
- Determine and set forth appeal framework, if any
- Set forth policy dissemination standards
- Set forth training protocol
- Describe the sanctions for violations and specific definitions of each sanction

Legal Compliance Elements: Creation of effective sexual assault risk management policies requires adherence to applicable state and federal laws:

- Title IX, 20 U.S.C. §§ 1681 – 1688, 34 C.F.R. Part 106
- Jeanne Clery Campus Crime and Security Act, 20 U.S.C. 1092(f) §§
- Family Educational Rights and Privacy Act “FERPA”, 34 C.F.R. Part 99
- Iowa Open Records Act, Iowa Code Section 22
- United States Department of Education, Office of Civil Rights Revised Sexual Harassment Guidance: Harassment of Student by School Employees, Other Students, or Third Parties, January 2001.

Dated: October 20, 2008

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General Considerations for Policy Development:

- ❖ Policies must withstand legal scrutiny by reflecting unambiguous language and procedures
- ❖ Avoid demonizing the accused
- ❖ Provide appropriate due process
- ❖ Ensure a fair and ethical process
- ❖ Recognize that confidentiality is a balancing act with the victim's interests, the rights of the accused, and legal parameters
- ❖ Sexual harassment and sexual assault should be addressed in separate sections
 - Provide details of what the offense means, not just a list of prohibited behaviors, but meaning, content and context; avoid speech codes to reduce risk for sexual misconduct liability
 - Definitions of prohibited conduct must provide students sufficient notice of behavioral expectations so that they may conform their conduct accordingly, and clearly recognize when behavior crosses the acceptable line
- ❖ Title IX requires a prompt and equitable response even if the complainant does not want to take further action. The university is required to respond to the extent possible to all reports of sexual misconduct. There must be a balance among the evidence, the legal requirements, and college policy in order to determine the proper equitable response
- ❖ Provide, within the policy delegations of authority, for reporting, investigating and correcting sexual misconduct of students and ensure those delegations are sufficiently articulated
- ❖ Consider creating a response team to oversee and evaluate certain types of complaints and make recommendations while the criminal and discipline process is ongoing
- ❖ Clearly articulate institutional policy regarding timing and protocol related to simultaneous criminal proceedings and discipline proceedings
- ❖ Ensure all staff are trained in sexual misconduct reporting, responding, investigation, and adjudication, and the implementation of university policy and procedures