

BENUE STATE UNIVERSITY SEXUAL MISCONDUCT POLICY STATEMENT

It is the policy of Benue State University to prohibit misconduct of employees and students on the basis of sex.

The purpose of this policy is to manage incidences of Sexual Misconduct at the University and to contribute to maintaining a campus culture of inclusivity and respect; upholding the rights of Employees and Students to fair treatment.

This policy expresses the behaviour expected of the University Community regarding Sexual Misconduct.

Definitions of Consent within the concept of this sexual misconduct policy document

Consent is *affirmative, conscious, voluntary, and revocable*. Consent to sexual activity requires of each person an affirmative, conscious, and voluntary agreement to engage in sexual activity.

In this document, reference to 'he' may where appropriate be in reference to 'her'.

It is the responsibility of each person to ensure they have the affirmative consent of the other to engage in the sexual activity. Lack of protest, lack of resistance, or silence do not, alone, constitute consent. Affirmative consent must be ongoing and can be revoked at any time during sexual activity.

The existence of a dating relationship or past sexual relations between the Complainant and Respondent will never by itself be assumed to be an indicator of consent (nor will subsequent sexual relations or dating relationship alone suffice as evidence of consent to prior conduct).

The Respondent's belief that the Complainant consented will not provide a valid defence unless the belief was actual and reasonable. In making this determination, the factfinder will consider all of the facts and circumstances the Respondent knew, or reasonably should have known, at the time. In particular, the Respondent's belief is not a valid defence where:

1. The Respondent's belief arose from the Respondent's own intoxication or recklessness;
2. The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented; or
3. The Respondent knew or a reasonable person should have known that the Complainant was unable to consent because the Complainant was incapacitated, in that the Complainant was:
 - a. asleep or unconscious;

- b. unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication; or
- c. unable to communicate due to a mental or physical condition.

Note: Incapacitation is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking, using drugs, or taking medication.

Sexual Misconduct

Sexual Misconduct includes;

- Sexual Harassment
- Sexual Violence
- Sexual Abuse

Sexual Harassment

Sexual Harassment is defined in legislation as conduct with a sexual component which is unwelcome, unsolicited and unreciprocated. **Sexual Harassment** means advances, requests for sexual favours, and any verbal, non verbal, visual or physical conduct of a sexual nature and includes:

- *Unwanted touching or pinching the skin to arouse or excite sexual feeling.*
- *Unwanted sexual looks, gestures, comments, jokes, teasing, remarks, questions or laughter.*
- *Unwanted sexual notes, letters, telephone calls or materials, using a computer or any communication or related device, electronic or mechanical, to convey sexual messages.*
- *Unwanted sexual pressure for dating a woman or a man.*
- *Sexual-related images associated with certain words such as girl, babe, honey, sweetheart, sugar, darling, etc.*
- *Whistling at someone with sexual intention.*
- *Converting talks at work places into sexual discussions at both working and leisure hours.*
- *Sexual hugging, embracing, kissing, patting or stroking someone.*
- *Telling lies, spreading rumours, gossiping or blackmailing about an individual's personal sexual life.*
- *Sexual comments or remarks about a person's body dress, appearance, voice, face or manner of walking.*
- *Sexual games, sports, singing or dancing at the leisure centre.*

- *Expressions of sexual innuendoes or remarks.*
- *Asking questions about someone's sexual life, history, preferences, interests or fantasies.*
- *Touching someone's sensitive part of the body, hair, dress or jewelry in a sexual-motivating manner.*
- *Displaying sexually suggestive signs or signals for drawing someone's attention to unexpressed sexual desire.*
- *Unsolicited, unwelcome flirtations, advances, and/or propositions of a sexual nature;*
- *Insults, jokes etc or anecdotes that belittle or demean an individual or a group's sexuality or gender;*
- *Unwelcomed sexually-oriented gestures, verbal expressions, or comments of a sexual nature about an individual's body, clothing, or sexual experience;*
- *Inappropriate displays of sexually suggestive objects or pictures;*
- *Unnecessary and inappropriate touching, such as patting, pinching, hugging, or brushing against an individual's body;*
- *Suggestions that submission to or rejection of sexual advances will affect decisions regarding such matters as an individual's assignments, examination, tests, job evaluation, promotion, etc.*

Sexual Harassment involving persistent following or stalking, and indecent exposure, may be considered sexual assault and possibly a criminal offence. Any individual who is subjected to such incidents should seek advice and support concerning reporting the matter to the police and/or the University Management.

Sexual Harassment may be perpetrated or experienced by people of any sexual orientation or gender identity.

Sexual Harassment may be a single incident or a persistent pattern of unwelcome behaviour.

Sexual Harassment does not include mutual attraction and consensual romantic involvement or friendship.

The University may consider behaviour to constitute Sexual Harassment if individual relationships change and become non-consensual, unwelcome and unreciprocated.

Unwanted sexual touching and incidents that occurred before the age of 15 are not included; the University considers this Sexual Abuse.

Sexual Violence

Sexual Violence will mean instances of:

- Sexual Assault
- Sexual Threat

Sexual Violence involving a physically violent and/or coercive component, or threats of physical violence, such as physical molestation or assault, may constitute a criminal offence.

Sexual Violence may be perpetrated or experienced by people of any sexual orientation or gender identity.

Sexual Violence may be a single incident or a persistent pattern of unwelcome behaviour.

Unwanted sexual touching and incidents that occurred before the age of 15 are not included; the University considers this Sexual Abuse.

Sexual Assault

Sexual Assault may mean unwanted sexual acts or behaviours which an individual did not consent to, or was not able to consent to, through the use of physical force, intimidation or coercion, including but not limited to:

- aggravated sexual assault (sexual assault with a weapon)
- attempted rape
- indecent assault
- penetration by objects and forced sexual activity that did not end in penetration
- rape (sexual penetration without consent).

Sexual Threat

Sexual Threat will mean an act of a sexual nature carried out against an individual's will through the use of physical force, intimidation or coercion made face-to-face.

Sexual Abuse

Sexual Abuse will mean Sexual Harassment and/or Sexual Violence and/or any other sexual activity involving a child (under the age of 15), beyond their understanding or contrary to currently accepted community standards.

Institutional Scope

The scope of this policy extends to all University Community premises and includes but is not limited to the University:

- campuses
- managed employee accommodation
- managed student accommodation

- sporting and recreational clubs and facilities to the extent that they fall within the University Community
- managed digital environments
- activities and situations related to University business that are not conducted on University premises, including but not limited to:
 - field trips
 - conferences
 - student's camps
 - inter-University events
 - parties and other social functions.

Sexual Misconduct on Premises Outside of the University Community

A member of the University Community may, while performing duties as an Employee, as a Student or as any other individual while undertaking official duties for the University, experience Sexual Misconduct on premises outside of the University Community. The University will liaise with the responsible authority to ensure that proper procedures are followed and will continue to provide support services.

The University understands that Sexual Misconduct conducted on a digital environment not managed by the University will be subject to this policy, where a Respondent is an Employee or Student, only where it impacts on their individual safety within the scope.

Individual Scope

The scope of this policy extends to all members of the University Community, including but not limited to:

- the University's Employees
- the University's Students
- individuals not employed by the University that undertake official duties for the University

Sexual Misconduct by an Individual Outside of the University Community

The University understands that a member of the University Community may, while performing duties as an Employee, as a Student or any other individual while undertaking official duties for the University, experience Sexual Misconduct by an individual outside of the University Community. In such circumstances, the University will liaise with the

responsible authority to ensure proper procedures will be followed and will continue to provide support services.

The scope of this policy extends to all individuals of the University Community performing duties as an Employee, as a Student or any other individual while undertaking official duties for the University on premises outside of the University Community.

Intent to Commit Sexual Misconduct

The University considers behaviour to be Sexual Misconduct if an individual harassed is, or has reasonable grounds for believing that rejection, refusal or objection to a request, advance or other conduct will disadvantage them in any way related to their working, studying or living environment. Disadvantage here also includes psychological and emotional distress affecting that individual's ability to pursue their usual work, study or individual activities.

The University will therefore not consider the intention of a Respondent in determining if Sexual Misconduct has occurred.

The University will consider the perception of a recipient (the Complainant) of conduct by a Respondent in determining whether Sexual Misconduct has occurred.

The University does not consider it necessary for the Complainant to have told a Respondent that their behaviour was unwelcome for the behaviour to constitute Sexual Misconduct.

Conflict of Interest

No individual should be placed in a situation where there is real or perceived conflict of interest. If a complainant or respondent believes that a real or perceived conflict of interest exists when a matter involving them is to be investigated, they can ask for an alternative case manager to be appointed.

A conflict of interest includes any circumstance, whether actual or perceived, arising from conflict between the performance of public duty and private or individual interests. All parties involved in the preliminary inquiry into and possible resolution of complaints of sexual harassment will ensure:

- they have no conflict of interest or bias in relation to any party to the complaint
- there is no perception by the parties that a conflict of interest exists
- they adhere to the University's Code of Ethics and Code of Conduct

- Individuals who have concerns about perceptions of possible conflict of interest or partiality should exclude themselves from the process.

Seeking Support

Someone who has experienced Sexual Misconduct can seek support from a range of people across campus and external to the University.

Taking Action

Where appropriate and where an individual feels safe to do so, they are encouraged to raise their concern with the other individual directly. Taking action can be as simple as:

- talking to the individual, or sending them an email, telling them what it is you have a concern about and asking them to stop doing it
- seeking appropriate support and advice.

Where it has not been appropriate to approach the individual directly, or where this step has been taken but the matter is still not resolved, an individual can consider making a Disclosure or a Report to the University. Not speaking directly to the individual(s) who has caused the concern does not prevent someone from making a Disclosure or Report.

Reports or Complaints

Individuals who have experienced unwelcomed sexual behaviour or sexual harassment are encouraged to report it, even if they are not certain whether a violation of this policy has occurred.

1. Allegations of unwelcomed sexual behaviour may be addressed through the informal process even if no prohibited conduct has occurred.
2. Allegations of unwelcome sexual behaviour may be addressed through the Head of Department or through the University Counselling Unit.
3. A report or complaint must state specific and credible allegations of sexual harassment to warrant a formal investigation. There is no time limit for making allegations; however, it may be difficult to substantiate the allegations if they are made after significant time has passed. Therefore, prompt reporting is strongly encouraged.
4. Individuals are encouraged to inform law enforcement authorities about instances of unwelcome sexual behaviours that involve violence, threatening behaviour, or physical

assault. Individuals are encouraged to contact law enforcement whenever they believe a crime may have been committed.

5. Any academic or administrative officer of the University who observes sexual harassment or unwelcome sexual behaviours, or who becomes aware of allegations of unwelcomed sexual behaviours or sexual harassment through the report of a complainant (including a third party) shall notify the Head of Unit of the respondent of the allegations within two business days.
6. In any case in which the alleged victim is a non-student employee of the University (including any member of the faculty or staff), the academic or administrative officer must inform the complainant of the options available under this policy (i.e., informal resolution or formal investigation) and provide notice of the allegations to the Head of Unit in which the alleged behaviours occurred or, when incidents do not occur within a unit, notify the Registry.

Sanctions for violation of the policy

1. Violations of the Policy on Sexual Harassment may lead to disciplinary sanctions up to and including termination and/or separation from Benue State University. Sanctions for violations of this policy should be commensurate with the nature of the violation and the respondent's disciplinary history.
2. Those who violate this policy should bear the consequences of their actions, even if factors such as substance abuse or personal problems contribute to misconduct. When the offence is serious, it is appropriate to consider separation from the University even in cases of first offense, and even when the respondent experiences remorse and/or did not intend to cause the resulting degree of harm.
3. In addition to other disciplinary action, persons who are found to have violated this policy may be required to participate in group counselling or personal therapy sessions, complete community service, enrol in a specific academic course, attend an educational workshop, and/or make restitution for economic damages caused by their behaviour.
4. It is the responsibility of the appropriate administrator to follow up with the parties at a reasonable interval(s) to assess their compliance with the disciplinary and/or remedial

sanctions imposed. More serious sanctions, up to and including termination of employment or separation from the University, may be imposed in the event that the respondent fails to comply with the sanctions initially imposed.

Protection of alleged victims, complainants, and others

1. Alleged victims will be informed of relevant procedural steps taken during the investigation and any interim protective measures taken. An alleged victim may be accompanied by a victim advocate and other support persons during the investigation process if the alleged victim so desires.
2. Throughout the investigation and resolution of a complaint, steps will be taken to protect alleged victims, complainants, witnesses, and others from harm caused by continuation of the alleged harassing behaviour.
3. Retaliation against alleged victims, complainants, and/or witnesses who provide information during an investigation pursuant to this policy is prohibited. Reasonable action will be taken to assure that alleged victims, complainants, and/or witnesses will suffer no retaliation as the result of their activities with regard to the process. Retaliation may result in disciplinary action against the person committing the retaliatory act(s).
4. Steps that may be taken to protect alleged victims, complainants, witnesses, and others from continued harassment and/or retaliation might include:
 - i. lateral transfers of one or more of the parties in an employment setting and a comparable move if a classroom setting is involved, and
 - ii. arrangements that academic and/or employment evaluations concerning the complainant or others be made by an appropriate individual other than the respondent.

Protection of respondents

Prohibition against knowingly false allegations. This policy shall not be used to bring knowingly false or malicious allegations of unwelcomed sexual behaviour or sexual harassment. Making such allegations may subject the complaining party to remedial and/or disciplinary action up to and including termination or separation from the University. Any

such disciplinary action will be initiated by the appropriate administrator overseeing the complainant(s). When seeking private advice and support from these offices or any University employee, persons should always confirm whether legal confidentiality applies to their communications with the person to whom they are speaking.

Confidentiality

1. In order to empower community members to voice concerns and report unwelcomed sexual behaviour or sexual harassment, the confidentiality of all parties will be protected to the greatest extent possible. However, confidentiality cannot be guaranteed in all cases, and academic and administrative officers of the university are expected to take some action once they are made aware that unwelcomed sexual behaviour or sexual harassment in violation of this policy may be occurring.
2. Anyone (victims or others) who wishes to consult with someone about a specific situation without making a report of unwelcome sexual behaviour or sexual harassment, or who wishes simply to learn more about enforcement of the policy, may contact staff of Centre for Counselling & Human Development (CCHD) and Centre for Gender Studies.
3. Alleged victims, third-party complainants, and respondents are expected to maintain confidentiality as well.
4. Dissemination of documents relating to reports or complaints of unwelcome sexual behaviour or sexual harassment and/or to the investigation of such reports or complaints, other than as necessary to pursue an appeal, grievance, or other legal or administrative proceeding, is prohibited.
5. Failure to maintain confidentiality by a respondent may be considered to be a form of retaliation. Failure to maintain confidentiality by any party (alleged victim, third party complainant, or respondent) may result in disciplinary action.

Breach of Policy

Failure to comply with this policy by a member of the University Community may be considered a breach of the Code of Ethics and Code of Conduct and may result in disciplinary action

Disciplinary Procedure

- (i) Disciplinary action may ordinarily be taken at the Departmental/Faculty level by the Head of Department/Dean/Provost/Director/Coordinator (each of which is hereinafter simply called “Head of Department”).
- (ii) Disciplinary action can also be initiated by the counselling Unit if the offenders are Head of Department or Faculty Deans who may be perceived to interfere in the disciplinary procedure.
- (iii) A Head of Department shall be responsible to the Vice-Chancellor of the University for the discipline of the staff assigned to his Department in all matters relating to the Department; and consequently, all members of staff shall obey all lawful directives of the Head of Department.
- (iv) The Head of Department shall have power to issue written queries to staff assigned to his Department in respect of any act of misconduct; and such staff shall reply in writing to such queries within 72 hours.
- (v) The Registrar shall be copied all written queries and responses for filing and or further action.
- (vi) The Head of Department shall comment on the response of the staff; and the nature of his response shall determine the next course of action, as provided for in the following provisions:
 - (a) If the Head of Department is satisfied with the response, there shall be no need for further action; and in that case, he shall communicate in writing to the staff and the Registrar appropriately.
 - (b) If the Head of Department is not satisfied with the response, he shall write his report to the Registrar who shall, through the Establishment Division, process and forward same to the Vice-Chancellor for further action.
- (vii) Upon receiving written communication from the Registrar, the Vice-Chancellor shall direct referral of the disciplinary process to the Senior Staff Disciplinary Committee (SSDC) for further investigation and recommendation to Council: Provided that the SSDC shall strive to conclude each disciplinary case referred to it within six months.
- (viii) Any staff not satisfied with the outcome of any disciplinary proceeding or action may,

if he so desires, appeal to the University Council, which shall deal with it as stipulated in the University Law or the Council's Standing Rules.

- (viii) Any staff of the University concerned with taking any action stipulated in the provisions of these Regulations on disciplinary procedure, apart from the staff facing the disciplinary action, shall take the prescribed action not more than two weeks from the time disciplinary processes were received by him.
- (ix) Any staff who fails or defaults in making a formal protest against the decision based on the recommendation of the SSDC within six months from the date the decision is communicated to him shall forfeit his right as provided here above.
- (x) All disciplinary processes and proceedings, terminating at whatever level, shall be kept by the Registrar in the affected staff's file.
- (xi) The University Counselling Unit shall be copied in all reports, processes and proceedings.

Senior Staff Disciplinary Committee

Composition of the Senior Staff Disciplinary Committee (SSDC)

The SSDC is comprised of the following, namely:

- (i) The Chairman of the Council or his nominee
- (ii) Deputy Vice-Chancellor (Administration)
- (iii) Two external members of the Council
- (iv) Two members of Senate to be elected by Senate as alternate members to participate when cases against academic staff are to be considered.
- (v) Two members of senior administrative staff to be appointed by the Registrar as alternate members to participate when cases against administrative and Technical staff are to be considered.
- (vi) The Registrar as Secretary.
- (vii) **In attendance:** A Legal Officer of the University.
- (viii) **Two members of ASUU elected by the ASUU congress (Suggested addition for the purpose of sexual misconduct.**

Powers of the Senior Staff Disciplinary Committee (SSDC)

The SSDC shall, in the discharge of its functions, have and exercise the following powers, namely:

- (i) To investigate, consider and determine all disciplinary cases involving all senior members of staff of the University except the Vice-Chancellor, the Deputy Vice-chancellors, and other Principal Officers of the University.
- (ii) To make recommendations to the Council on any matter where the punishment prescribed in the Regulations Governing the Conditions of Services is considered insufficient in the circumstance.
- (iii) To adopt its own procedure of proceedings as it deems fit from time to time.
- (iv) To determine from time to time sanctions to be meted for offences not contained in these Regulations; and any such determination shall be recommended to the Council.
- (v) To make recommendations to the Council on any matter that will promote proper and appropriate discipline of members of staff of the University.
- (vi) To report to the Council from time to time.

Types of Disciplinary Measures

The Senior Staff Disciplinary Committee (SSDC) shall, depending on the severity of the misconduct, recommend the following disciplinary measures:

- (i) Serious reprimand (in writing)
- (ii) Loss of annual increment for a specified period.
- (iii) Delay of promotion/ denial of appointment for a specified period.
- (iv) Loss of headship or other administrative position of honour and responsibility for a specified period.
- (v) Deferment of confirmation and withholding of appointment.
- (vi) Surcharge.
- (vii) Withholding of salary.
- (viii) Suspension for a specified period without pay
- (ix) Denial of Sabbatical Leave
- (x) Compulsory retirement
- (xi) Forced resignation
- (xii) Termination of appointment
- (xiii) Demotion and termination where termination alone is not considered adequate punishment

(xiv) Dismissal where rape is confirmed by a court of law.

Interdiction

- (i) Where a staff is under investigation for a criminal offence, whether or not connected with the University; or is facing disciplinary proceedings for gross misconduct that may lead to dismissal, the Registrar may interdict him from his duties forthwith.
- (ii) Formal notice of interdiction shall be given to the staff concerned in writing; and such notice shall state the date of the interdiction and the reasons for such interdiction.
- (iii) Where a staff has been interdicted, he shall be placed on half salary.
- (iv) A staff who is under interdiction shall be required to hand over all property of the University in his possession to the Head of Department and shall be forbidden from carrying out his duties and visiting his place of work except with the permission of the Registrar.
- (v) Where a staff under interdiction is found not guilty of all charges, his interdiction shall be lifted and he shall receive the balance of his salary for the whole period of his interdiction.
- (vi) The period of interdiction shall not exceed six (6) months within which it is expected that the investigation and/or a decision must have been reached on the matter, otherwise the staff shall be placed on suspension pending the determination of the matter.

Suspension

- (i) A staff who is under investigation for a criminal offence, whether or not connected with the University that last for more than six months shall be placed on suspension by Management pending the determination of the criminal matter.
- (ii) On the recommendation of SSDC Management may suspend a staff for a specified period of time.
- (iii) When a staff has been suspended, he shall there-upon be forbidden to carry out his duties and shall not visit his place of work without the written consent of the Registrar. He shall surrender all properties of the University in his charge to such

other staff as the Head of Department may direct.

- (iv) A staff under suspension is not entitled to any emoluments until the suspension is lifted: provided that a staff placed on suspension pending the determination of a criminal matter shall be entitled to retrospective emolument for the period under suspension if discharged and acquitted at the end of the exercise.

Procedure after Dismissal of Staff

- (i) A staff dismissed shall not be entitled to any benefits or emoluments, commencing from the date of the dismissal, except if his dismissal is reversed by the Council or the Court.
- (ii) Dismissal shall take effect from the date on which the staff concerned is officially notified that he has been dismissed.
- (iii) Any staff dismissed for gross misconduct shall immediately hand over University property in his possession and vacate the University premises forthwith.

Termination

A confirmed staff whose appointment is terminated by the University shall be entitled to:

- (a) Gratuity where he has put in up to five years but less than ten years of continuous service in the University;
- (b) Pension where he has put in up to ten or more years of continuous service in the University;

A staff whose appointment is terminated for gross misconduct shall immediately hand over University property in his possession and vacate the University premises forthwith.