

From: John E. Bonine, B.B. Kliks Professor of Law
To: University Senate
Date: October 8, 2014
Re: Motion 4 for amending the Student Conduct Code

I move that deletions be made in subsection (h) of UO Policy 571-021-0120(3) and that a simple cross-reference to the previous definition of sexual misconduct be made (plus subparagraph renumbering), as shown in strike-out text, square bracket insertion, and red underlining in the following:

OAR 571-021-0120 - Violations of Community Standards by Individual Students

The following conduct violates the community standards that are essential to the core educational mission of the University of Oregon and subjects a Student or Student Organization to sanctions under the Student Conduct Code:

* * *

(3) Standards Relative to the Rights of Individuals and to the Welfare of the University Community. An environment conducive to learning is one where the rights, safety, dignity and worth of every individual are respected. The following conduct endangers such an environment, and threatens the welfare of the University community as a whole:

(h) Sexual Misconduct. ~~A mission of the Student Conduct Code is to encourage good decision-making, personal integrity, and interpersonal behavior that is cooperative rather than coercive and that respects the rights of others. Sexual misconduct violates these values, and is committed when a student engages in sexual behavior described [, as defined] in OAR 571-021-0105(30).~~

~~— (A) A complaint alleging Sexual Misconduct may be filed whenever Sexual Misconduct~~

~~— (i) Materially interferes with another person's academic performance or participation in a University Sponsored Activity, or performance of University employment;—~~

~~— (ii) Is committed on University Premises or at a University Sponsored Activity; or—~~

~~— (iii) Demonstrates reasonable threat to the health or safety of a Member of the University Community or the alleged student survivor.—~~

<< There is no need for any of the requirements of subparagraph (A) or its subparagraphs (i), (ii), or (iii). We propose to delete them and to renumber subsequent paragraphs.>>

<< Sandy Weintraub, suggested that this will be greatly simplified if (1) the prohibition of "sexual misconduct" simply refers to the definition of it and (2) all of the criteria in subsection (A) are removed. We agree.>>

~~(A) Sexual gratification or pleasure of any party involved is not relevant to a determination of whether Sexual Misconduct occurred.~~

~~(B) A violation of provisions of the alcohol or drug policy in the Student Conduct Code does not affect a person's ability to file a complaint regarding another person's Sexual Misconduct on the same occasion.~~

~~(C) Consent to one form of sexual activity does not automatically operate as explicit consent to any other form sexual activity. A "no" always means that explicit consent is not present, whereas a "yes" to one~~

act at one time does not mean “yes” to other acts or to the same act at other times. Voluntarily making oneself incapacitated does not mean one is giving explicit consent to any form of sexual activity.