

From: John E. Bonine, B.B. Kliks Professor of Law  
To: University Senate  
Date: October 8, 2014  
Re: Motion 2 for amending the Student Conduct Code

I move that a new subsection (d) be added to UO Policy 571-021-0105(30), as shown in square brackets and red underline in the following:

## 571-021-0105 - Definitions

(30) "Sexual Misconduct" means:

(a) Unwanted Penetration is Penetration of another person, or causing the Penetration of another person, when one:

(A) Does not first obtain Explicit Consent from that person; or

(B) Knows or should have known the person was incapable of explicit consent by reason of Mental Disorder, Mental Incapacitation, or Physical Helplessness.

(b) Nonconsensual personal contact occurs when a student subjects another person to contact of a sexual nature when a reasonable person would know that such contact would cause emotional distress:

(A) Without having first obtained Explicit Consent; or

(B) When he or she knows or should have known the person was incapable of explicit consent by reason of Mental Disorder, Mental Incapacitation, or Physical Helplessness.

(c) Sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that interferes with work or academic performance because it has created an intimidating, hostile, or degrading environment and would have such an effect on a reasonable person of the alleged complainant's status when the conduct is unwelcome and sufficiently severe or pervasive that it deprives that person of benefits of the University's educational environment.

[(d) A single episode of behavior that meets (a), (b), or (c) can be sufficient for a finding of sexual misconduct.]

**<< This is a clarification. Furthermore, for Title IX purposes "a single or isolated incident of sexual harassment may, if sufficiently severe, create a hostile environment." U.S. DEP'T OF EDUC. OFFICE FOR CIVIL RIGHTS, REVISED SEXUAL HARASSMENT GUIDANCE: HARASSMENT OF STUDENT BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES n. 72 at p. 6 (2001, available at <http://www.ed.gov/offices/OCR/archives/pdf/shguide.pdf>. If a single incident of sexual harassment may create a hostile environment for purposes of Title IX, it seems obvious that a single incident of nonconsensual personal sexual contact, assault, etc., could also constitute sexual "misconduct.">>**

**<< Sandy Weintraub, UO Director of Student Conduct and Community Standards (in consultation with the Assistant Dean of Students, Chicora Martin, on this and most other matters) agrees with this addition. He points out that this is already the practice, although it is not explicit in the Code.>>**