

Sexual Misconduct Policy and Procedures

VI. Conduct Covered by This Sexual Misconduct Policy and Procedure

The Policy Definitions of Prohibited Conduct and the Definition of Affirmative Consent are listed below. All Employees, Students, Faculty, and Third Parties who are enrolled, employed, or reasonably connected to the University are subject to these policies and possible discipline for behavior that violates the policy definitions described below:

A. **"Unlawful Sex and Gender Discrimination"** is any action that denies a person access to, or the benefits of, any program or activity or employment opportunity, solely on the basis of sex or gender.

B. **"Limitations on Consensual Relationships"**: In order to protect the integrity of the University academic and work environment, this policy outlines limitations on consensual romantic or sexual relationships between and among faculty, staff, and students. When individuals are involved in a consensual romantic or sexual relationship and are in positions of unequal authority or power, there is the potential for a conflict of interest, favoritism, and exploitation of power.

- Anyone with supervisory, evaluative, or mentoring authority who controls or influences another person's employment, academic advancement, extracurricular or athletic team participation, scholarship or financial support, grades, recommendations, wage status, or promotion at the University is prohibited from having a romantic or sexual relationship with that person regardless of consent.
- Faculty, employees, and staff are prohibited from having a romantic or sexual relationship with any undergraduate student, regardless of whether the faculty, employee, or staff member currently exercises or expects to have any pedagogical or supervisory responsibility over the student. For the purposes of this policy, if a graduate student teaches courses to any undergraduate students for a semester, then starting that semester in which the graduate student begins to teach undergraduate students, that graduate student is prohibited from having a romantic or sexual relationship with any undergraduate student. This policy rule applies to that graduate student for as long as that student is enrolled at the University, even if that graduate student is no longer instructing undergraduates.
- If anyone is promoted into a position or has a change of circumstances that results in a conflict with this policy limiting consensual relationships, this information must be

reported by the faculty, employee, or staff member to a supervisor, a vice president, or the executive director of human resources, who will contact the Title IX coordinator for assistance in resolving the conflict.

C. **"Sexual Harassment"** encompasses many of the specific policy definitions listed in this Sexual Misconduct Policy. Sexual Harassment is a form of sex discrimination. It is defined as "unwelcome conduct" of a sexual nature, including but not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of an individual's employment, academic standing, status in a program, course or activity; or
2. submission to or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting an individual, or for academic evaluation, grades or advancement; or
3. such conduct is sufficiently pervasive, offensive, or abusive to have the purpose or reasonable effect of interfering with an individual's work or educational performance, or creating an intimidating, hostile, or offensive work or educational environment.

The effect of the conduct will be evaluated based upon the perspective of a reasonable person in the position of the complainant. "Unwelcome Conduct" is conduct considered to be undesirable or offensive to the individual if that person did not request, consent to, or invite the particular conduct. Please see Affirmative Consent to Sexual Activity below.

Some examples of sexual harassment include, but are not limited to:

- Unwanted sexual advances, requests for sexual favors or propositions of a sexual nature;
- Direct or implied threats that submission to sexual advances is a condition for employment promotion, good grades, recommendations, etc.
- Unwelcome verbal or physical conduct of a sexual nature which an individual regards undesirable or offensive, including, but not necessarily limited to, sexually explicit jokes, statements and questions or remarks about sexual activity or experience.
- Physical assault, including rape;

D. **Affirmative Consent to Sexual Activity for Incidents Involving Students:** In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing, and voluntary affirmative consent prior to and during sexual activity. The following is the University's policy for affirmative consent to sexual activity that applies to sexual activity involving

a student.

Affirmative Consent is defined as a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

The Six Guiding Principles regarding Consensual Sexual Activity: These principles, along with the above definition, will be used to evaluate whether sexual activity was consensual or violates our sexual misconduct policy:

1. Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
2. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
3. Consent may be initially given but withdrawn at any time.
4. Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity.
--Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent
--Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
5. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
6. When consent is withdrawn or can no longer be given, sexual activity must stop.

Minors Lack Consent: According to New York state law, a minor, defined as anyone less than 17 years of age, is incapable of consenting to sexual activity with a person 18 years of age or older. The University adopts this prohibition of sexual activity by adults with minors on all University property, and at any and all University-sponsored activities or functions outside New York state regardless of out-of-state laws.

Consent to Sexual Activity Not Involving a Student: Consent is defined as all people in a sexual encounter agreeing to the sexual activity. Agreement to sexual activity is defined as informed, freely given, and mutually understandable words or actions that indicate a willingness to participate in the particular sexual activity. A person may decide at any time that they no longer

consents and wants to stop the sexual activity.

E. **"Sexual Assault / Rape"** is defined as physical sexual acts against another person that include vaginal, anal, or oral sexual intercourse with another person, touching sexual or intimate parts of another person, or inserting a foreign object, however slight, into any sexual or intimate parts of another person:

1. Without consent from the other person; or by coercion or threat; or
2. When the other person is incapable of giving consent due to being physically or mentally helpless for any reason, including being asleep or unconscious at the time, or being incapacitated because of the use of alcohol or drugs;
3. When the other person is unable to give consent due to a disability, mental incapacity or age (a person under 17 years of age cannot consent to sexual activity with anyone over 18 years of age).

This definition includes, but is not limited to, any form of non-consensual intercourse and/or sexual activity, **actual or attempted**, by person(s) known or unknown to the victim. This includes assault by multiple offenders. See New York State Penal Law Section(s) 130.00.

F. **"Sexual Exploitation and Other Sexual Misconduct"** occurs when someone takes advantage of another person without the person's consent and exploits or attempts to sexually exploit that person. The following are activities prohibited under this provision:

1. Voyeurism or peeping, which is purposefully watching, videotaping or recording undressing, or engaging in sexual activity. This also includes allowing others to observe private sexual activity from hidden locations or by electronic means.
2. Sexual exhibitionism, where a person engages in sexually explicit activity in public spaces on campus or to be viewed by the public while on campus using computer hardware or software.
3. Displaying or distributing nude or sexually explicit images of another person on campus or the Internet without the person's consent.
4. Sexual coercion, which is when someone threatens another by stating an intention or threat to expose the other person's sexual orientation, consensual sexual experiences, sexually explicit photographs or videotapes or other images to family, friends, or the public.
5. Writing or marking of graffiti on University property that is sexually graphic in nature.
6. Unwelcome gestures of a sexual nature toward another person.
7. Fondling / Forcible Touching which is defined as non-consensual forcible touching of sexual or intimate parts of another person for the purpose of degrading or abusing such persons or for gratifying the actor's sexual desire.
8. Prostituting another person or soliciting a prostitute to campus or a campus event to engage

in prostitution.

9. Knowingly exposing another individual to a sexually transmitted infection or virus without the other individual's knowledge.

10. Incest, which is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

11. Stealthing, which is defined as:

- The act of removing a condom during sexual intercourse without the knowledge or consent of the sexual partner; (or)
- The act of intentionally misleading a sexual partner to believe a condom is being used during sexual intercourse after having agreed to do so.

G. **"Stalking"** is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress. For purposes of this definition "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 method, action, device, or means, monitors, observes, follows, surveils, threatens, or communicates to or about a person or interferes with a person's property. "Reasonable person" means a reasonable person under similar circumstance and with similar identities to the victim. "Substantial emotional distress" means significant mental anguish or suffering that may, but does not necessarily, require professional treatment or counseling.

H. **"Dating Violence"** means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where existence of such a relationship shall be determined based on the complainant's statement and with consideration of the following factors: (i) length of the relationship, (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual, physical, or psychological abuse, or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

I. **"Domestic Violence"** means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim

under New York domestic or family violence laws, or by any other person against an adult or youth victim who is protected from that person's acts under New York domestic or family violence laws.

J. **"Mutilation and Retaliation for Reporting"**: Any member of the University community or

J. **Intimidation and Retaliation for Reporting** : Any member of the University community or third party who attempts either directly or indirectly to violate a University No Contact Restriction or to intimidate, threaten, retaliate, interfere with, restrain, coerce, discriminate against, or harass any person for reporting, attempting to report, or responsibly pursuing a complaint, or any person who is a witness cooperating in a University investigation regarding possible violations of any of the University's policies regarding sexual misconduct, will be subject to prompt and appropriate disciplinary action, including possible termination or expulsion from the University.

Further Definitions Used in this Policy:

K. **"Bystander"** shall mean a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of an institution.

L. **"Confidentiality"** may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with state and federal law, including but not limited to 20 U.S.C. 1092(f) and U.S.C. 1681(a). Counseling and Psychological Services mental health counselors, University Health Services medical providers and Campus Ministry pastoral counselors are examples of institution employees who may offer confidentiality.

M. **"Privacy"** may be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with this and other applicable laws, including informing appropriate institution officials. Institutions may substitute another relevant term having the same meaning, as appropriate to the policies of the institution. All designated as Campus Security Authorities must report information and should so inform the individual reporting.

N. **"Reporting Individual"** shall encompass the terms victim, survivor, complainant, claimant, or witness with victim status; for this policy, the reporting individual is referred to as the Complainant.

O. **"Clery Reporting"** refers to the data collected by the Department of Public Safety on violent crimes (including sexual assault/rape, domestic violence, dating violence, and stalking) occurring on or near University property and is compiled in the University's Annual Security

Report. Only aggregate data is reported and no personally identifiable information is collected. For more information on Clery Reporting, please review the Annual Security Report or contact the Department of Public Safety.

Pages in Sexual Misconduct Policy and Procedures

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- [I. Policy Statement](#) ([/info/21366/policies/2719/sexual_misconduct_policy_and_procedures/2](#))
- [II. Purpose](#) ([/info/21366/policies/2719/sexual_misconduct_policy_and_procedures/3](#))
- [III. Scope](#) ([/info/21366/policies/2719/sexual_misconduct_policy_and_procedures/4](#))
- [IV. Notice of Non-Discrimination Policy](#)
([/info/21366/policies/2719/sexual_misconduct_policy_and_procedures/5](#))
- [V. Duties of Title IX Coordinator & Designation of Deputy Coordinators](#)
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