

SEXUAL MISCONDUCT POLICY INCLUDING: SEXUAL ASSAULT, SEXUAL EXPLOITATION, INTIMATE PARTNER VIOLENCE (DOMESTIC OR DATING VIOLENCE), STALKING & RETALIATION

PC 9.4

Date of Last Update:

March 03, 2016

Approved By:

- President's Cabinet

Responsible Office:

Inclusion and Equity

POLICY STATEMENT

I. Sexual Misconduct is any conduct that is considered sexual assault, dating violence, domestic violence, stalking and sexual exploitation as those terms are defined by this policy. Sexual Misconduct is prohibited conduct at the University. No employee, student or other person at the University shall engage in Sexual Misconduct. The University will take prompt and effective steps to end Sexual Misconduct, eliminate any hostile environment caused by Sexual Misconduct, prevent its recurrence, and remedy the discriminatory effects on the victim and others as appropriate.

This policy and related procedures for addressing complaints of Sexual Misconduct apply to all University programs and activities, including those conducted off-campus. Where relevant, if the off-campus Sexual Misconduct did not occur in the context of a University program or activity, the University will consider the effects of such off campus Sexual Misconduct when evaluating whether it otherwise creates a hostile environment on campus or in an off-campus education program or activity.

PROCEDURES

II. Reporting, Procedures & Notifications

1. Reporting: Reports of Sexual Misconduct should be made immediately to the [Title IX Office](#) and can also be [filed online](#). Under Title IX, most University employees are considered “Responsible Employees” meaning they are required to report to the Title IX Office incidents

of Sexual Misconduct that they observe or about which they learn. Professional counselors at the University who provide mental-health counseling are not considered “Responsible Employees” and, therefore, are not required to report any incident of Sexual Misconduct. Other resources are also available: see the following [link](#). Any inquiry concerning the application of Title IX may be referred to the Title IX Coordinator or to the [U.S. Department of Education Office of Civil Rights](#).

2. Procedures: [Procedures](#) for responding to reports of Sexual Misconduct are maintained by the Division of Inclusion and Equity. Procedures will be reviewed on an annual basis for proposed revision to be normally implemented the following academic year. Revisions to procedures are approved by the Vice President of Inclusion and Equity, in consultation with the President’s Cabinet. The University community (students and employees) will also be broadly consulted and periodically surveyed to obtain input on revisions.
3. Notification: The University community will be notified, annually, of this policy and any revisions, inquiry contact information, and available resources and provided regular training regarding this policy as well as education related to the prevention and awareness of and response to Sexual Misconduct.

DEFINITIONS

III. Definitions

1. Sexual Assault is an offense that meets the definition of rape, fondling, incest, or statutory rape, as defined in the Federal Bureau of Investigation’s (FBI) Uniform Crime Reporting (UCR) program, as having or attempting to have sexual intercourse or sexual contact with another individual by force or threat of force; without affirmative consent; or where the person is incapacitated.

2. Sexual Assault consists of (a.) Sexual Contact and/or (b.) Sexual Intercourse that occurs without (c.) Affirmative Consent.

a. **Sexual Contact** is any intentional sexual touching, however slight, with any object or body part (as described below), performed by a person upon another person.

i. Sexual Contact includes: (a) intentional touching of the breasts, buttocks, groin or genitals, whether clothed or unclothed, or intentionally touching another with any of these body parts; and (b) making another touch you or themselves with or on any of these body parts; (c) causing another to touch one’s intimate parts, disrobing or exposure of another without permission.

b. **Rape** is sexual penetration, however slight, of another person without affirmative consent. Penetration can be of the mouth, vagina, or anus, and can be with a penis, tongue, finger, or foreign object.

c. Sexual Intercourse is vaginal or anal penetration, however slight, with any object or body part (as described below) performed by a person upon another person; and/or, oral penetration involving mouth to genital contact.

i. Sexual Intercourse includes: (a) vaginal penetration by a penis, object, tongue, or finger; (b) anal penetration by a penis, object, tongue, or finger; and (c) any contact, no matter how slight, between the mouth of one person and the genitalia of another person.

d. Affirmative Consent is informed (knowing); voluntary (freely given); and, active (not passive), meaning that, through the demonstration of clear words or actions, a person has indicated permission to engage in mutually agreed-upon sexual activity and the consenting person is not incapacitated as defined by this policy.

i. Affirmative Consent cannot be obtained by Force. Force includes: (a) the use of physical violence, (b) threats, (c) intimidation, and/or (d) coercion.

1. *Physical violence* means that a person is exerting control over another person through the use of physical force. Examples of physical violence include but are not limited to hitting, punching, slapping, kicking, restraining, strangling, and brandishing or using any weapon.

2. *Threats* are words or actions that would compel a reasonable person to engage in unwanted sexual activity. Examples include threats to harm a person physically, to reveal private information to harm a person's reputation, or to cause a person academic or economic harm.

3. *Intimidation* is an implied threat that menaces or causes reasonable fear in another person. A person's size, alone, does not constitute intimidation; however, a person's size may be used in a way that constitutes intimidation (e.g., blocking access to an exit).

4. *Coercion* is the use of an unreasonable amount of pressure to gain sexual access. Coercion is more than an effort to persuade, entice, or attract another person to have sex. When a person makes clear a decision not to participate in a particular form of Sexual Contact or Sexual Intercourse, a decision to stop, or a decision not to go beyond a certain sexual interaction, continued pressure can be coercive. In evaluating whether coercion was used, the University will consider: (i) the frequency of the application of the pressure, (ii) the intensity of the pressure, (iii) the degree of isolation of the person being pressured, and (iv) the duration of the pressure.

ii. Affirmative Consent cannot be gained by taking advantage of the incapacitation of another, where the person initiating sexual activity knew or reasonably should have known that the other was incapacitated.

1. Incapacitation means that a person lacks the ability to make informed, rational judgments about whether or not to engage in sexual activity.

2. Incapacitation is such that it renders the person incapable of self-care and protection. Incapacitation could be the result of alcohol or other drugs or due to a temporary or permanent physical or mental health condition.

iii. Affirmative Consent to one form of sexual activity does not, by itself, constitute Affirmative Consent to another form of sexual activity.

IV. Intimate Partner Violence

Intimate Partner Violence is any act of Domestic Violence or Dating Violence as defined by this Policy.

1. Domestic Violence is any act of violence committed by any of the following individuals: (a) a current or former spouse or intimate partner of the victim; (b) person with whom the victim shares a child in common; (c) person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; and/or, (d) a resident or former resident of the victim's household in the event such household residents have a current or prior intimate relationship.

a. An incident of domestic violence can consist of a single act of violence or a pattern of violent acts that includes, but is not limited to, sexual or physical abuse, or the threat to engage in such abuse.

2. Dating Violence is any act of violence committed by a person who is, or has been, in a social relationship of a romantic or intimate nature with the victim that does not fall within the definition of "domestic violence."

a. Dating violence includes, but is not limited to, sexual or physical abuse or assault or the threat of such abuse or assault.

b. For the purposes of determining Intimate Partner Violence, whether the relationship is of a romantic or intimate nature is determined by a variety of factors, including: (a) the length of the relationship, (b) the type of relationship, and (c) the frequency of interaction between the persons involved in the relationship.

c. A relationship of a romantic or intimate nature means a relationship that is characterized by the expectation of affection or sexual involvement between the parties.

d. An incident of dating violence can consist of a single act of violence or a pattern of violent acts that includes, but is not limited to, sexual or physical abuse, or the threat to engage in such abuse.

V. Stalking

1. **Stalking** occurs when a person engages in a course of conduct directed at a specific person under circumstances that would cause a reasonable person to fear bodily injury or to experience substantial emotional distress.

a. Course of conduct means two or more acts, including but not limited to acts in which a person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's property.

b. Reasonable person means a reasonable person under similar circumstances.

c. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

2. Stalking includes "cyber-stalking," a particular form of stalking in which a person uses electronic media, such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact. This policy prohibits all stalking, not just stalking that occurs within the context of a relationship.

VI. Sexual Exploitation

Sexual Exploitation is purposely or knowingly doing any of the following:

1. Causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give Affirmative Consent (see Section III.2)d.) to sexual activity;
2. Allowing third parties to observe private sexual activity from a (a) hidden location (e.g., closet), or (b) through electronic means (e.g., Skype or live streaming of images);
3. Engaging in voyeurism (e.g., watching private sexual activity without the consent of the participants or viewing another person's intimate parts (including genitalia, groin, breasts or buttocks) in a place where that person would have a reasonable expectation of privacy);
4. Recording or photographing private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts or buttocks) without consent;
5. Disseminating or posting images of private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts or buttocks) without consent;
6. Knowingly exposing another person to a sexually transmitted infection or virus without the other's knowledge;
7. Arranging for others to have non-consensual sexual contact, as defined by the Sexual

Misconduct policy, with a non-consenting person.

VII. Retaliation

1. Definition: Retaliation means any adverse action taken against a person for making a good faith report of prohibited conduct (see, generally, policies on [Sexual Misconduct](#), [Sexual or Gender-based Harassment](#), and [Anti-Harassment](#)) or participating in any proceeding under University policy or policies.

a. Retaliation includes threatening, intimidating, harassing, coercing or any other conduct that would discourage a reasonable person from engaging in activity protected under University policy or policies.

b. Retaliation may be present even where there is a finding of “no responsibility” on the allegations of prohibited conduct.

c. Retaliation does not include good faith actions lawfully pursued in response to a report of prohibited conduct.

2. Reporting: Acts of alleged retaliation should be reported immediately to the Vice President for Inclusion and Equity, or designees, and will be promptly investigated. The University will take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

More information about Procedures related to this policy, and other useful information can be accessed at the following [link](#).
