Sexual Misconduct

Sexual misconduct incorporates a range of behaviors, including sexual assault, sexual harassment, intimate partner violence, stalking, and any other conduct of a sexual nature that is non-consensual or has the purpose or effect of threatening, intimidating, or coercing a person. Please refer to the “Definitions” section of this Policy for the definitions of these various terms.

Introduction

Inspired by our Jesuit and Catholic identity, Saint Peter’s University provides our diverse community of learners with individual attention where students are inspired to excel intellectually, lead ethically, serve compassionately, and promote justice in our ever-changing urban and global environment. Saint Peter’s University is committed to maintaining a safe and healthy educational and work environment.

Sexual misconduct is antithetical to the standards and ideals of our community. The University aims to eradicate and strictly prohibits any form of sexual misconduct. This Policy represents Saint Peter’s commitment to establishing a community free from sexual misconduct through uniform guidelines that promote University compliance with Title IX of the Education Amendments of 1972.

Scope of the Policy

This Policy applies to all members of the University community, including students, faculty, and staff, as well as to third parties (including guests and consultants), for sexual misconduct directed toward University students, faculty, or staff members. This Policy applies to conduct that occurs on and off campus and applies regardless of an individual’s sexual orientation or gender identity.

Privacy

Privacy is oftentimes a primary concern to someone who has experienced sexual misconduct. The University is committed to respecting privacy interests while investigating and addressing allegations of sexual misconduct.

The University will use its best efforts not to disseminate information about a report beyond the individuals involved in handling the University’s response. All proceedings, documents, and meetings related to the University’s investigation and complaint process are considered private.

Consistent with certain federal and state mandates, the University is required to issue annual reports containing information about certain offenses that occur on campus. That information is provided in statistical form only and does not include the names or other personally identifiable information of those involved.

Amnesty Policy

The University encourages the reporting of sexual misconduct. As a result, the University will not pursue drug or alcohol charges against individuals reporting offenses involving sexual misconduct based on the personal consumption of drugs or alcohol at or near the time of the incident. Amnesty does not preclude the University from pursuing educational measures, including discussion of the drug or alcohol offense regarding the risks and consequences of such activity.

Initial Steps to Take if You Experience Sexual Misconduct

Sexual assault, harassment, and other forms of sexual misconduct can have profound impacts on personal, professional, and academic life. If you have experienced sexual misconduct of any kind, the University urges you to take action to seek the help and support that you need.

Individual experiences of sexual misconduct vary widely, as do people’s needs. You have choices about what to do and when, and the University has people who can explain the options, answer your questions, and support you along the way.

1. Get to a safe place. In the immediate aftermath of a sexual assault, sexual violence, or other forms of sexual misconduct, the most important step to take is to get to a safe place. Whether it be your home, a friend's home, or with a family member, immediate safety is what matters most.
2. Seek medical treatment. If you have experienced physical or sexual violence, it is important to get care as soon as possible. Even if you feel okay, you may be injured or at risk of contracting a sexually transmitted infection or becoming pregnant. If you were sexually assaulted within the past 72 hours, you should strongly consider having physical forensic evidence collected at the time of your medical examination.
3. Collect and preserve evidence. Prompt collection of physical forensic evidence is particularly important, because DNA evidence is an integral part of an investigation. You should make every effort to save anything that might contain DNA. You should avoid washing your hands, brushing your teeth, showering, using the restroom, changing your clothes, combing your hair, or cleaning the scene of the incident. A Sexual Assault Nurse Examiner (SANE) is available through Christ Hospital and CarePoint Health. See additional resources. Saving voicemails, e-mails, and text messages also can be very powerful in building a strong case. Even if you do not initially plan to pursue a disciplinary or criminal complaint, it is good to keep those options open by retaining evidence.
4. Report the incident. If you have experienced or learned about sexual misconduct involving a member of the Saint Peter's community, you may file a report, as outlined below. By reporting the incident, you alert the University and enable administrators to respond appropriately both to your case and to broader patterns of concerning behavior. Reporting also allows you to discuss your options and gives you immediate access to various accommodations.
5. Get support. You should not have to cope with this experience alone. There are many places to turn, but the University's Center for Personal Development and Campus Ministry offer particular expertise. The Center for Personal Development is located on the 2nd Floor of Saint Peter Hall and can be reached at (201) 761-6420. Campus Ministry is located on the 1st Floor of the Mac Mahon Student Center and can be reached at (201) 761-7390.

Reporting Sexual Misconduct

Individuals are strongly encouraged to promptly report all observed or experienced incidents of sexual misconduct. As further detailed below, upon receiving a sexual misconduct report, different employees on campus have different abilities to maintain a victim's confidentiality. Please be advised that if you want to maintain confidentiality, a Complaint will not be filed and the University will be unable to conduct an investigation into the particular incident or pursue disciplinary action against the accused. A victim who at first requests confidentiality may later decide to file a Complaint with the University or report the incident to local law enforcement and thus have the incident fully investigated. In all circumstances, the University may have reporting or other obligations under state and federal law.

If a victim's request for confidentiality limits the University's ability to investigate a particular matter, the University will continue to take steps to limit the effects of the alleged sexual misconduct and prevent its recurrence(s). The University will continue to provide training and educational materials for students and employees; revise and publicize the University's policies on sexual misconduct; and conduct climate survey(s) regarding sexual misconduct.

Public awareness events such as "Take Back the Night," the Clothesline Project, candlelight vigils, protests, "survivor speak outs" or other forums in which students disclose incidents of sexual misconduct are not considered reports of sexual misconduct. However, any classroom discussion during which a student discloses an incident of sexual misconduct would be considered a report.

Submission of a false, misleading, or bad faith report or Complaint is considered a violation of this Policy, is prohibited, and may lead to sanctions.

Any retaliatory action against an individual for raising an allegation of sexual misconduct, for cooperating in an investigation of such a Complaint, or for opposing discriminatory practices is strictly prohibited.

A. Privileged and Confidential Communications – Professional and Pastoral Counselors

Professional, licensed counselors, and pastoral counselors who provide mental health counseling to members of the University community are not required to report any information about an incident to the Title IX Coordinator or Deputy Title IX Coordinator without a victim's permission. Following is the contact information for these individuals:

- Rev. Rocco Danzi, Director, Campus Ministry, (201) 761-7390
- Ron Becker, Director, Center for Personal Development, (201) 761-6420

- Colleen Szefinski, Counselor, Center for Personal Development, (201) 761-6420
- Alexandra Tarsitano, Counselor, Center for Personal Development, (201) 761-6420

B. Non-Confidential Communications – “Responsible Employees,” Campus Security Authorities, and Electronic Reporting

A “responsible employee” is a University employee who has the duty to report an incident of sexual misconduct to the Title IX Coordinator or Deputy Title IX Coordinator. A responsible employee must report to the Title IX Coordinator or Deputy Title IX Coordinator all relevant details about the alleged sexual misconduct shared by the victim, including the names of the victim and accused(s), any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident.

The following employees (or categories of employees) are the University’s responsible employees:

- Faculty (tenured, non-tenured, adjunct, temporary)
- Staff
- Administrators
- Vendors
- Coaches
- Deans
- Directors
- Coordinators
- Graduate Assistants
- Resident Assistants
- Health Services (nurses, doctors)

Campus Security Authorities (“CSAs”) also have a duty to report incidents of sexual misconduct to the Title IX Coordinator or Deputy Title IX Coordinator. CSAs must report to the Title IX Coordinator or Deputy Title IX Coordinator all relevant details about the alleged sexual misconduct shared by the victim, including the names of the victim and accused(s), any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident.

CSAs will assist the victim to obtain support and assistance through campus resources or external referrals and to initiate the Complaint process in conjunction with the Title IX Coordinator or Deputy Title IX Coordinator.

The following employees are the University’s CSAs:

- Erin McCann, Vice President for Student Life and Development, Title IX Coordinator, (201) 761-7360
- Travis Whisler, Dean of Students, Deputy Title IX Coordinator, (201) 761-7364
- Scott Torre, Director of Campus Safety, 1st Floor, Saint Peter Hall, (201) 761-7400
- Katie Arcuri, Associate Athletic Director Compliance Officer, 3rd Floor, Yanitelli Recreation Center (201) 761-7303

Individuals can file reports electronically via an online report form. These forms are directed to the Title IX Coordinator and Deputy Title IX Coordinator, who will become aware of all relevant details about the alleged sexual misconduct shared by the victim, including the names of the victim and accused(s), any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident. Electronic reports can be files by victims, third-parties, and anonymously.

The electronic report can be found at the following web address:

https://publicdocs.maxient.com/reportingform.php?SaintPetersUniv&layout_id=3 (https://publicdocs.maxient.com/reportingform.php?SaintPetersUniv&layout_id=3)

Filing a Complaint

After an individual makes a non-confidential report with one of the above-listed individuals, a victim is permitted to file a Complaint with the Dean of Students. The filing of a Complaint triggers the University’s responsibility for conducting

an investigation into the particular incident.[1] Submission of a false, misleading, or bad faith report or Complaint is considered a violation of this Policy, is prohibited, and may lead to sanctions.

An individual can choose not to file a Complaint about the incident. However, there may be times when the University may not be able to honor a victim's request and must file a Complaint, in order to provide a safe, non-discriminatory environment for all students, faculty, and staff. In deciding whether a Complaint must be pursued, the Title IX Coordinator will handle matters involving University employees, vendors, and/or third parties, while the Deputy Title IX Coordinator will handle matters involving students. In deciding whether a Complaint must be pursued, the Title IX Coordinator and/or Deputy Title IX Coordinator will consider the following factors:

- The increased risk that the accused will commit additional acts of sexual misconduct, such as:
- whether there have been other Complaints about the same accused;
- whether the accused has a history of arrests or records from a prior school indicating a history of violence;
- whether the accused threatened further sexual misconduct or other violence against the victim or others;
- whether the sexual misconduct was committed by multiple perpetrators;
- whether the sexual misconduct was perpetrated with a weapon;
- whether the victim is a minor;
- whether the University possesses other means to obtain relevant evidence of the sexual misconduct (e.g., security cameras or personnel, physical evidence);
- whether the victim's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.

If the Title IX Coordinator or Deputy Title IX Coordinator determines that it will file a Complaint, the Title IX Coordinator or Deputy Title IX Coordinator will inform the victim prior to any investigation. Ongoing support will be available throughout the disciplinary and criminal process.

Interim Actions

Upon receiving a Complaint about sexual misconduct, the University is permitted to take interim actions to assist the parties involved. The Title IX Coordinator, Deputy Title IX Coordinator, and/or the Dean of Students or designee will evaluate and decide the appropriate interim actions, in any. The University can assist the victim in accessing victim advocacy, academic support, counseling, health or mental health services, and legal assistance both on and off campus. The University also can inform the victim of the right to report a crime to campus or local law enforcement and provide the victim with assistance in doing so.

Interim actions directed at the victim or the accused may include: restriction to University facilities or activities, no-contact orders, providing alternate course completion, rescheduling exams or assignments, accessing academic support such as tutoring, changing a class schedule, changing on-campus housing, changing work schedule or University job assignment, escorting between classes and activities, interim suspension from the University, or any other actions that achieve the goals of this policy.

Investigation Process

A formal investigation will be employed when a victim files a sexual misconduct Complaint. Mediation is never an appropriate means of resolution for an alleged violation of sexual misconduct. The Dean of Students or designee has specialized training in investigations and will conduct interviews of the victim, accused, and any witnesses identified. Those interviews will be conducted separately and privately. The Dean of Students or designee may re-interview the victim and/or the accused as needed. The Dean of Students or designee will also review any evidence the parties or witnesses may have. The victim and accused have equitable rights during the investigative process. Either party may raise issues related to potential conflicts of interest to the Title IX Coordinator.

At the conclusion of the investigation, the Dean of Students or designee will decide whether to charge the accused with a sexual misconduct violation using a "preponderance of the evidence" standard. If the Dean of Students or designee decides to charge the accused, he or she will send a notice of the alleged violation to the accused's and the victim's respective University e-mail account. If the Dean of Students or designee decides not to charge the accused, he or she will notify the victim and the accused of this decision through their respective University e-mail account.

If a charge is issued, the Dean of Students or designee will then schedule a meeting with the victim to review the judicial process. The Dean of Students or designee will also schedule a separate meeting with the accused to review the judicial process. The Dean of Students or designee will explain the alleged violations, summarize the facts and information that substantiate the allegations, summarize the potential range of outcomes, summarize the role of an advisor, summarize the appeals process, and answer any of the individual's questions about the proceedings.

Any retaliatory action against an individual for raising an allegation of sexual misconduct, for cooperating in an investigation of such a Complaint, or for opposing discriminatory practices is strictly prohibited.

Hearing Procedures

A formal hearing resolution process will be employed when the Dean of Students charges an accused with a sexual misconduct violation. The hearing will normally be scheduled by the Dean of Students or designee within five (5) business or class days of the charge, barring any extenuating circumstances. The Dean of Students or his/her designee will be the hearing officer at the hearing.

The victim and the accused may each select one advisor of their choice which may include a parent, guardian, friend, attorney, or other person of their choice. The individual must notify the Dean of Students or designee two (2) University business or class days in advance of the hearing if accompanied by an advisor who is an attorney.

The hearing with the victim and the hearing with the accused will be conducted separately and privately. At the hearing, the victim and the accused shall present facts and circumstances that will enable the Dean of Students or designee to determine whether or not the accused is in violation of this Policy. The victim and the accused may present witnesses, provide personal testimony, and/or present relevant evidence, including but not limited to written statements, law enforcement reports, medical records, or other information directly related to the alleged violation(s). Questions or evidence regarding prior sexual conduct with anyone other than the accused is prohibited.

A witness is someone who directly observed an incident or has direct knowledge related to an incident, not hearsay. They should be able to speak knowledgeably about the incident and be able to provide relevant facts. Character witnesses are prohibited.

The advisor's actions are limited to advising the victim or the accused. The purpose of the advisor is to assist the victim or the accused in preparation for the hearing and/or to accompany the victim or the accused during the hearing. Advisors are prohibited from presenting information, asking questions, or making any statements during the hearing.

Absent significant and sufficient justification, failure of the victim or the accused to appear at the hearing will result in the case being heard without the victim or the accused being present (in absentia).

Barring any extenuating circumstances, within ten (10) business or class days of the final day of the hearing, the Dean of Students or designee will determine whether the accused is in violation of this Policy using a preponderance of the evidence standard. If the Dean of Students or designee determines the accused violated this Policy, then he or she may impose appropriate sanctions, as outlined below. Once a decision has been reached, both the victim and the accused will be informed in person and via an e-mail to their University e-mail address of the determination and any sanctions being imposed.

Sanctions

Violations of this Policy may result in interim or permanent sanctions as determined by the Dean of Students or designee. Submission of a false, misleading, or bad faith report or Complaint is considered a violation of this Policy, is prohibited, and may lead to sanctions.

Any retaliatory action against an individual for raising an allegation of sexual misconduct, for cooperating in an investigation of such a Complaint, or for opposing discriminatory practices is strictly prohibited.

Disciplinary actions to be taken against faculty, staff, or administration will be in accordance with the University's Employee Handbook.

Permitted sanctions that may be taken against a student may include any of the following (listed alphabetically):

- Administrative Hold: An encumbrance on a student account which precludes the student from altering their academic schedule, registering for classes, accessing University educational databases, re-enrolling, receiving transcripts, graduating, or other privileges.
- Apology Letter: A letter of atonement that acknowledges an understanding of how their behavior has impacted others or the community.
- Assessment: Mandated assessment conducted by a qualified professional. Examples include an assessment by a nurse, counselor, physician, or other qualified professional.
- Community Service: Non-paid work for an approved non-profit agency that is not affiliated with the University. This provides an opportunity for students to provide benefit to others and reflect on the impact of their actions through performing restorative service(s).
- Course Removal: Removal from a course or moved to another section of a course.
- Disciplinary Probation: A notice to the student that his or her behavior is of such a nature as to place that student in danger of removal from the University. The student is placed on disciplinary probation for a specified period of time. Any violation of this probation or other University policies, rules and expectations may cause the student to be immediately removed from the University.
- Dismissal: Permanent removal from Saint Peter's University. In addition to forfeiting all tuition and fees paid, the student may have restrictions imposed and is not eligible to apply for readmission at any time. The student must leave the campus on the date determined by the hearing officer. The student will be restricted from visiting the University, which may include a criminal trespass warning.
- Dismissal from Residence: Permanent or temporary dismissal from the residence halls which includes cancellation of the housing contract and forfeiture of residence fees including deposit.
- Educational Activity: Activities with educational outcomes that encourage reflection and engagement. Examples include but are not limited to meetings with appropriate officials, written research assignments, attending or presenting workshops, planning and implementing educational programs, creating educational materials, reflection papers, or other educational activities at the student's or student organization's own expense.
- Fines: A monetary assessment. Fine monies serve as punishment and are used to support educational programs.
- Follow-Up Meeting: A follow-up meeting with the Title IX Coordinator or Deputy Title IX Coordinator. The purpose of this meeting is to both evaluate the student's progress and determine if additional support is needed.
- Loss of Privileges: Denial of specified privileges for a designated period of time.
- No Contact Order: Prohibited contact with another person.
- Notation on transcript: A notation on the student's permanent academic record regarding the responsible finding of a violation of the Student Code of Conduct and subsequent sanction(s).
- Parental Notification: Notification of disciplinary documents sent to the parents or legal guardians of the student.
- Relocation: Required to relocate from a current room assignment to another room assignment.
- Restrictions: Temporary or permanent loss of privileges. Restriction may include leadership restrictions, parking restrictions, activity restrictions, facility restrictions, and other restrictions.
- Suspension: Suspension from the University involves the exclusion of the student from participation in any academic or other activities of the University for a specified period of time.
- Written Warning: Written notice to a student that he/she has failed to meet the University's standards of conduct. The warning will include a caution that the continuation or repetition of the conduct involved or other misconduct will result in a more serious sanction.

Appeal Process

The victim and/or the accused may request an appeal of the hearing decision and/or the sanctions imposed. A request for an appeal must be made within three (3) business or class days of the notification of the hearing decision and/or the sanctions imposed. The individual requesting an appeal must submit an appeal letter to the Title IX Coordinator.

The appeal must be based on one or more of the following circumstances, which must be specifically demonstrated in the request for an appeal:

- The individual has new and compelling information that was not reasonably available prior to the original hearing and that information is likely to have substantially changed the outcome of the hearing.
- The original hearing had significant procedural errors or irregularities that denied the individual(s) a fair hearing.
- The judicial decision is not supported by substantial information.
- The sanctions appear to be significantly incongruent with the violation.

An appeal will not be automatically granted. The Title IX Coordinator will decide whether to grant an appeal. Both parties will be notified via University e-mail if a request for an appeal is granted.

If a request for an appeal is granted, the Deputy Title IX Coordinator will serve as the appeal officer. The appeal officer will consider the record of the hearing as well as the information contained in the written request for an appeal.

The appeal officer may take the following actions after considering an appeal:

- Remand the matter to the original hearing officer to be reheard in whole or part. At the discretion of the appeal officer, a different hearing officer may be designated;
- Affirm the original decision and/or sanctions;
- Reverse the original decision and/or sanctions;
- Affirm or reverse the original decision in part and/or alter the sanctions which could increase or decrease the severity of the sanction(s).

A notification of the decision regarding the appeal will be made to the victim and the accused via University e-mail address. The appeal decision will be rendered within two (2) weeks of the granting of an appeal, barring any extenuating circumstances. The decision of the appeal officer is final and effective immediately.

Prevention and Education

The University is committed to preventing sexual misconduct and educating its faculty, staff, and students about sexual misconduct. Each academic year, new faculty will receive information about sexual misconduct during the new faculty orientation. Staff will attend an emergency protocol presentation. Similarly, new students will receive sexual misconduct information through presentations given during new student orientation. Parents who attend parent orientation will likewise have the opportunity to attend a presentation addressing sexual misconduct. Residents Assistants will be given special training on this Policy during RA training.

All students are required to complete the Campus Clarity's "Think About It" online module related to alcohol, drug, and sexual misconduct prevention and sanctions. The Title IX Coordinator, Deputy Title IX Coordinator, Campus Security Authorities, Dean of Students, and other responsible employees also receive annual training.

Additional Resources

Jersey City Police
West District Office
576 Communipaw Avenue
Jersey City, NJ 07304
Office: (201)547-5450
Fax: (201)547-5077

Jersey City Medical Center
355 Grand Street
Jersey City, NJ 07302
Office: (201) 915-2000
http://www.libertyhealth.org/

Hudson SPEAKS (Supports Prevents Educates Advocates to Keep Strong)
formerly Hudson County Rape Crisis Center
Christ Hospital and CarePoint Health
179 Palisades Avenue
Jersey City , NJ 07306
24 Hr. Hotline: (201) 795-5757

Office: (201) 795-8741 or (201) 795-5816
Fax: (201) 795-8761 or (201) 418-7017

Hudson County Prosecutor's Office & Sexual Assault Victims Assistance Unit (SAVA)
Duncan Avenue Complex
555 Duncan Avenue
Jersey City, NJ, 07306

http://www.hudsoncountyprosecutorsofficenj.org/special-victims-unit-2/
Office: (210) 915-1234

Hudson Pride
LGBTQ and HIV/AIDS Advocacy
32 Jones Street, Jersey City, NJ
Office: (201) 963-4779

Womenrising, Inc.- Domestic Violence Response
270 Fairmount Ave.
Jersey City, NJ 07306
Office: 24 hr. hotline: (201) 333-5700
http://www.womenrising.org/
womenrising@aol.com

Hudson County Prosecutor's Office

http://www.hudsoncountyprosecutorsofficenj.org/

New Jersey Coalition Against Sexual Assault (NJCASA)
www.njcasa.org (http://www.njcasa.org/)
http://www.njcasa.org/get-help-now (http://www.njcasa.org/get-help-now/)
http://www.njcasa.org/sexual-violence-nj/sart (http://www.njcasa.org/sexual-violence-nj/sart/)

White House Task Force to Protect Students from Sexual Assault
http://changingourcampus.org/

The Rape, Abuse and Incest National Network (RAINN)

www.rainn.org (http://www.rainn.org/)

The National Sexual Violence Resource Center (NSVRC)
www.nsvrc.org (http://www.nsvrc.org/)

Definitions

Sexual misconduct incorporates a range of behaviors, including sexual assault, sexual harassment, intimate partner violence, stalking, and any other conduct of a sexual nature that is nonconsensual or has the purpose or effect of threatening, intimidating, or coercing a person.

Dating Violence:

42 U.S.C.A. § 13925. The term “dating violence” means violence committed by a person— (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship. (i) The term “domestic violence” includes 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 the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

Domestic Violence:

Felony or misdemeanor crimes of violence committed by a current or former spouse 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, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of New Jersey, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the State of New Jersey.

Hostile Environment:

A "hostile environment" exists when sex-based harassment is sufficiently serious to deny or limit the student's ability to participate in or benefit from the University's programs or activities.

A hostile environment can be created by anyone involved in a University program or activity (e.g., administrators, faculty members, students, and campus visitors).

In determining whether sex-based harassment has created a hostile environment, the University considers the conduct in question from both a subjective and objective perspective. It will be necessary, but not enough, that the conduct was unwelcome to the student who was harassed. But the University will also need to find that a reasonable person in the student's position would have perceived the conduct as undesirable or offensive in order for that conduct to create or contribute to a hostile environment.

To make the ultimate determination of whether a hostile environment exists for a student or students, the University considers a variety of factors related to the severity, persistence, or pervasiveness of the sex-based harassment, including: (1) the type, frequency, and duration of the conduct; (2) the identity and relationships of persons involved; (3) the number of individuals involved; (4) the location of the conduct and the context in which it occurred; and, (5) the degree to which the conduct affected one or more student's education.

The more severe the sex-based harassment, the less need there is to show a repetitive series of incidents to find a hostile environment. Indeed, a single instance of sexual assault may be sufficient to create a hostile environment. Likewise, a series of incidents may be sufficient even if the sex-based harassment is not particularly severe.

This policy does not impair the exercise of rights protected under the First Amendment. The University's sexual misconduct policy prohibits only sex-based harassment that creates a hostile environment. In this and other ways, the University applies and enforces this policy in a manner that respects the First Amendment rights of students, faculty, and others.

Incapacitation:

Incapacitation is a mental or physical condition where a person is unable to grant consent or make informed and rational judgments or decisions. Incapacitation may be a state or condition resulting from the use of alcohol or other drugs, lack of sleep, unconsciousness, cognitive impairment, developmental disability, brain injury, or mental illness.

Intimidation:

Intimidation is behavior that places another person in reasonable fear of harm to their person or property. Intimidation can be manifested emotionally or physically, either directly or indirectly, and by use of social media.

Sexual Assault:

42 U.S.C.A. § 13925. The term "sexual assault" means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

20 U.S.C.A. § 1092. The term "sexual assault" means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

Sex Offenses Definitions From the National Incident-Based Reporting System Edition of the Uniform Crime Reporting Program

Sex Offenses—Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

A. Rape—The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

B. Sodomy—Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

C. Sexual Assault With An Object—To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

D. Fondling—The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

Sex Offenses—Nonforcible Unlawful, nonforcible sexual intercourse.

A. Incest—Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

B. Statutory Rape—Nonforcible sexual intercourse with a person who is under the statutory age of consent.

Sexual Consent:

“Consent” must be informed, voluntary, and mutual, and can be withdrawn at any time. There is no consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress is used. Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent. Silence or absence of resistance does not imply consent. Past consent to sexual activity with another person does not imply ongoing future consent with that person or consent to that same sexual activity with another person.

If a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact, nature, or extent of the sexual situation, there is no consent; this includes impairment or incapacitation.

Sexual Exploitation:

Sexual exploitation occurs when a person takes sexual advantage of another person for the benefit of anyone other than that person without that person’s consent. Examples of behavior that could rise to the level of sexual exploitation include: prostituting another person; recording images (e.g., video, photograph) or audio of another person’s sexual activity, intimate body parts, or nakedness without that person’s consent; distributing images (e.g., video, photograph) or audio of another person’s sexual activity, intimate body parts, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure and objects to such disclosure; and, viewing another person’s sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person’s consent, and for the purpose of arousing or gratifying sexual desire.

Sexual Harassment:

29 C.F.R §1604.11. (a) Harassment on the basis of sex is a violation of section 703 of title VII. 1 Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment. (b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis. (c) [Reserved] (d) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate

and appropriate corrective action. (e) An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees. (f) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under title VII, and developing methods to sensitize all concerned. (g) Other related practices: Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.

Stalking:

42 U.S.C. § 13925. The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to-- (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.

Retaliation:

Intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual's informal or formal complaint or participation in a school or OCR investigation or proceedings related to sexual violence or other civil rights concerns. Federal civil rights laws, including Title IX, make it unlawful to retaliate against an individual for the purpose of interfering with any right or privilege secured by these laws.

Any Complaint involving a University employee, vendor, or third party will be administratively handled through the Complaint Procedure outlined in the University's Employee Handbook. Any Complaint only involving students will be administratively handled through the procedures set forth in this Sexual Misconduct Policy.