

## **CATEGORY II: GENDER-BASED AND SEXUAL MISCONDUCT POLICIES & PROCEDURES**

### **SECTION 9: Gender-Based and Sexual Misconduct Policies**

#### **PART A: GENDER-BASED MISCONDUCT PROHIBITED BEHAVIORS**

Gender-Based Misconduct is a broad range of prohibited behaviors, and for the purposes of this Code, is defined as three distinct prohibited behaviors: 1) dating violence; 2) domestic violence; and 3) stalking.

1. **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 reporting individual/victim. It is controlling, abusive, and aggressive behavior in a romantic or intimate relationship. The abuse can include verbal, emotional, physical, or sexual abuse, or a combination. The existence of such a relationship shall be determined based on the reporting individual's/victim's statement, and with consideration of the type and length of the relationship and the frequency of interaction between the persons involved in the relationship. Two people may be in a romantic or intimate relationship, regardless of whether the relationship is sexual in nature; however, neither a casual acquaintance nor ordinary fraternization between two individuals in a business or social context shall constitute a romantic or intimate relationship. This definition does not include acts covered under domestic violence.
2. **DOMESTIC VIOLENCE** is a violent act committed by a current or former spouse or intimate partner; a person sharing a child with the reporting individual/victim; or a person living with or who has lived with the reporting individual/victim as spouse or intimate partner.
3. **STALKING** is when a person engages in a course of conduct (two or more acts by which the stalker directly, indirectly, or through third parties, follows, monitors, observes, surveils, threatens, or communicates about a person, or interferes with his or her property); directed at a specific person; and causes a reasonable person to fear for his or her safety or the safety of others, or causes that person to suffer substantial emotional damage. Examples include, but are not limited to, repeatedly following such person(s), repeatedly committing acts that alarm, cause fear, or seriously annoy such other person(s) and that serve no legitimate purpose, and repeatedly communicating by any means, including electronic means, with such persons in a manner likely to intimidate, annoy, or alarm him or her.

#### **PART B: SEXUAL MISCONDUCT PROHIBITED BEHAVIORS**

Sexual Misconduct is a broad range of prohibited behaviors, and for the purposes of this Code, is defined as four distinct prohibited behaviors: 1) sexual harassment; 2) non-consensual sexual contact; 3) non-consensual sexual intercourse; and 4) sexual exploitation.

1. **SEXUAL HARASSMENT** is conduct, including physical contact, advances, and comments in person and/or via phone, text message, email, or other electronic medium, that is (a) unwelcome; (b) is based on either sex or gender stereotypes, or is sexual in nature; and (c) is so severe or pervasive that it unreasonably interferes with a person's academic performance or equal opportunity to participate in or benefit from College programs or activities.

There are two types of Sexual Harassment: a) Hostile Environment and b) Quid pro quo.

A "Hostile Environment" may include:

- the frequency of the conduct (pattern or practice of harassment);
- the nature and severity of the conduct [single or isolated incident if sufficiently severe].

In analyzing whether a hostile work environment was created, the following may be considered:

- whether the conduct was physically threatening;
- whether the conduct was humiliating;
- the effect of the conduct on the alleged victim's mental or emotional state;
- whether the conduct was directed at more than one person;

- whether the conduct arose in the context of other discriminatory conduct;
- whether the conduct unreasonably interfered with the alleged victim's educational or work performance and
- whether the speech or conduct deserves the protections of academic freedom.

b. "*Quid pro quo* sexual harassment" exists when there are unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature; and when submission to or rejection of such conduct results in adverse educational or employment action.

2. **NON-CONSENSUAL SEXUAL CONTACT:**

Non-Consensual Sexual Contact is

- any sexual touching,
- however slight,
- with any object,
- by a man or a woman upon a man or a woman,
- without affirmative consent. \*

Sexual contact with the breasts, buttocks, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

3. **NON-CONSENSUAL SEXUAL INTERCOURSE:**

Non-Consensual Sexual Intercourse is

- any sexual intercourse (anal, oral, or vaginal),
- however slight,
- with any object,
- by a man or woman upon a man or a woman,
- without affirmative consent.\*

Intercourse however slight, meaning vaginal penetration by a penis, object, tongue or finger, anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact or genital to mouth contact).

**\*AFFIRMATIVE CONSENT DEFINITION:**

- Affirmative consent is a knowing, voluntary and mutual decision among all participants to engage in sexual activity.
- Consent may be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity.
- Consent is active, not passive.
- Silence or lack of resistance, in and of itself, does not demonstrate consent. Consent is required and is the responsibility of the person(s) initiating each specific sexual act regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent to any sexual act or prior consensual sexual activity between or with any party does not constitute consent to any other sexual act.
- The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression.
- Consent may be initially given but withdrawn at any time.
- When consent is withdrawn or cannot be given, sexual activity must stop.
- Consent cannot be given when a person is incapacitated.
- Incapacitation 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.