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IX. Definitions

A. Sexual Misconduct Definitions

PROHIBITED CONDUCT

means one or more categories of prohibited behavior including:

- o Sexual Assault;
- o Sexual Exploitation;
- o Sexual Harassment;
- o Dating Violence;
- o Domestic Violence;
- o Stalking;
- o Retaliation; and
- o Violation of Protective Measures.

Definitions for each of the types of Prohibited Conduct are provided below.

SEXUAL HARASSMENT

means any unwelcome conduct or cues of a sexual nature, whether verbal/aural (sounds), visual/graphic (e.g. pictures and videos), physical, or otherwise, when:

- o Submission to such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, education, living environment, or participation in any University Program or Activity (commonly known as Quid Pro Quo);
- o Submission to or rejection of such conduct by an individual is used as the basis for or a factor in decisions affecting that individual's employment, education, living environment, or participation in a University Program or Activity (commonly known as Quid Pro Quo); and/or
- o Such conduct creates a hostile environment. A hostile environment exists when the unwelcome conduct of a sexual nature is sufficiently severe, persistent, or pervasive that it unreasonably interferes with an individual's participation in a university program or activity or creates an intimidating, hostile, offensive, or abusive environment for that individual's participation in a University Program or Activity (commonly known as Hostile Environment).

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Examples of conduct that may constitute Sexual Harassment include but are not limited to:

- o Unwanted intentional touching that otherwise does not typically constitute Sexual Assault, defined in this Policy;
- o Unwanted sexual advances, including repeated unwanted requests for dates, or repeated unwanted requests for sexual contact;
- o Unwanted written, verbal, or electronic statements of a sexual nature, including sexually suggestive comments, jokes, videos or innuendos;
- o Exposing one's genitalia, breasts, or buttocks, to another; and/or
- o Touching oneself sexually for others to view.

This definition addresses intentional conduct. It also includes conduct that results in negative effects even though such negative effects were unintended. Unwelcome conduct of a sexual nature constitutes Sexual Harassment if a Reasonable Person would consider it sufficiently severe, persistent, or pervasive as to interfere unreasonably with academic, other educational, or employment performance or participation in a university activity or living environment.

SEXUAL ASSAULT

means a physical, sexual act directed against another person without their Consent, including instances where the victim is incapable of giving Consent. Sexual Assault can occur between two individual of the same or different sexes and/or genders. This includes the following:

I. RAPE

means the carnal knowledge of a person, without the Consent of the victim, including instances where the victim does not have the Capacity to give Consent;

II. SODOMY

means oral or anal sexual intercourse with another person, without the Consent of the victim, including instances where does not have the Capacity to give Consent;

III. SEXUAL ASSAULT WITH AN OBJECT

means 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 does not have the Capacity to give Consent;

IV. FONDLING

means the touching of the private body parts of another person for the purpose of sexual gratification, without the Consent of the victim does not have the Capacity to give Consent;

V. INCEST

means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or

VI. STATUTORY RAPE

means sexual intercourse with a person who is under the statutory age of Consent in the applicable jurisdiction.

In the Commonwealth of Pennsylvania, the age of consent for sexual activity is 16. Minors aged 16 years of age or older can legally consent to sexual activity with anyone they choose, as long as the other person does not have authority over them as defined in Pennsylvania's institutional sexual assault statute. Minors under the age of 13 cannot consent to sexual activity. Minors aged 13-15 years

old cannot consent to sexual activity with anyone who is 4 or more years older than they are at the time of the activity.

DATING VIOLENCE

means any act of violence, including sexual violence, physical violence, or the threat of such 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 the existence of such a relationship is determined based on a consideration of the length, type, and frequency of interactions between the persons involved in the relationship.

DOMESTIC VIOLENCE

means any act of violence, including sexual violence, physical violence, or the threat of such 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.

STALKING

means 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

SEXUAL EXPLOITATION

means intentionally or knowingly taking sexual advantage of another person or violating the sexual privacy of another when Consent is not present. This includes, but is not limited to, the following actions (including when they are done via electronic means, methods or devices):

- o engaging in sexual voyeurism including observing or permitting others to witness or observe the sexual or intimate activity (e.g., disrobing, bathing, toileting) of another person without that person's Consent;
- o engaging in indecent exposure, or exposing intimate parts (including genitalia, groin, breasts and/or buttocks), or causing another to expose intimate parts when Consent is not present;
- o recording or distributing information, images or recordings of any person engaged in sexual or intimate activity in a private space without that person's Consent;
- o prostituting another individual;
- o causing Incapacitation of another person (through alcohol, drugs or other means) for the purpose of compromising that person's ability to give Consent to non-consensual sexual activity; or
- o actively aiding or assisting another person in committing an act of Prohibited Conduct.

RETALIATION

means an adverse (negative) action taken against a person for making a good faith report of Prohibited Conduct, being alleged to have committed Prohibited Conduct, participating, or refusing to participate, in any proceeding under this Policy.

- Retaliation may include intimidation, threats, coercion, harassment, or discrimination (including charging a Respondent under a different university policy instead of this Policy for the purpose of interfering with any right or privileged secured by Title IX or its implementing regulations).
- Retaliation may also include adverse employment or educational actions that would discourage a Reasonable Person from engaging in a Protected Activity protected under this Policy.

A finding of retaliation under this Policy is not dependent on a finding that the underlying sexual misconduct occurred. Retaliation is also prohibited by the university's Policy Against Retaliation.

Supportive Measures and other actions taken in accordance with this or other university policies generally do not constitute Retaliation. Similarly, charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy does not constitute prohibited Retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith. Retaliation also does not include pursuit of civil, criminal, or other legal action, internal or external to the university.

PROTECTED ACTIVITY

means participating in the university's processes related to this Policy, including but not limited to reporting Prohibited Conduct; pursuing a resolution of Prohibited Conduct; providing evidence in any investigation or hearing; or intervening to protect others who may have suffered Prohibited Conduct.

B. Definitions Relating to Consent

CONSENT

means a knowing and voluntary agreement to engage in sexual activity at the time of the activity. In order to be valid, consent must be knowing, voluntary, active, present and ongoing. Consent should be demonstrated through mutually understandable words or actions.

- Silence, remaining still or inactive (passive), or not actively resisting sexual activity does not imply consent.
- Consent to engage in one sexual activity does not mean consent to engage in another sexual activity. Consent must be obtained each time, at each step of sexual activity.
- Prior consent does not mean future consent. Consent must be obtained each time, at each step of sexual activity, even for those in an ongoing sexual relationship.
- Consent can be withdrawn at any time. If one individual withdraws consent through clear words or actions, the other person must cease sexual activity immediately.
- Consent cannot be obtained through Force, Incapacitation or Coercion (as defined here in).

FORCE

means using physical control (such as restraining a person), physical violence (such as hitting,

choking or displaying a weapon), or threats of either to cause a person to submit to unwanted sexual activity.

COERCION

means using an unreasonable amount of pressure or threats that would overcome the will of a Reasonable Person and cause them to submit to unwanted sexual activity. Coercion requires more than an attempt to persuade someone to engage in sexual activity. Coercion can include threats, such as threats to cause academic, employment, reputational or economic harm. When one person expresses that they do not consent to sexual activity or are withdrawing consent for sexual activity, applying continued pressure in order to get the person to submit to unwanted sexual activity can be considered Coercion.

INCAPACITATION

means that a person lacks the ability to make informed, deliberate choices about whether or not to engage in sexual activity. A person is Incapacitated — unable to give consent — because they are:

- under the age of consent (generally 16 years of age in Pennsylvania; see definition of Statutory Rape for additional information);
- physically or mentally helpless;
- asleep or unconscious; or
- unaware that sexual activity was requested, suggested, initiated and/or is taking place.

A person may be Incapacitated by the use of alcohol or other drugs. Incapacitation is a state beyond intoxication or drunkenness. A person is not necessarily Incapacitated solely as a result of drinking or using drugs; the level of impairment must be significant enough to render the person unable to give Consent.

For example, a person who is Incapacitated may not be able to answer some or all of the following questions:

- *Do you know where you are?*
- *Do you know how you got here?*
- *Do you know what is happening?*
- *Do you know whom you are with?*

A person who is Incapacitated may also demonstrate physical signs including but not limited to:

- *slurred or incomprehensible speech;*
- *unsteady manner of walking or inability to walk;*
- *vomiting or incontinence (a lack of voluntary control over urination and/or defecation).*

If a person under the influence of alcohol or drugs decides to participate in sexual activity that they would not participate in while sober, it does not necessarily mean that the person was Incapacitated or that the Consent was not valid.

Importantly, being impaired by alcohol or other drugs is not a defense to a failure to obtain Consent.

CAPACITY

means that the person has the ability under the law to give Consent to engage in sexual activity. This means that the person must be:

- Of legal age to give Consent (generally at least 16 years of age in Pennsylvania; see definition of Statutory Rape for additional information); and
- Able to make informed, deliberate choices about whether or not to engage in sexual activity.

A person who is not able to give consent is considered to be Incapacitated.

C. Policy Definitions

ACTUAL KNOWLEDGE

means that the university has notice of alleged Sexual Misconduct because the alleged misconduct has been reported to the Title IX Coordinator or any official of the university who has the authority to institute corrective measures on behalf of the university. These are individuals whose "actual knowledge" may be imputed to the university.

ADVISOR

An individual who provides support and advice for the Complainant or Respondent. The Complainant and Respondent may have an Advisor of their choice, who may be, but is not required to be, an attorney.

If either party does not have an Advisor present at the live hearing conducted under Section VI.C, the university will provide, without fee or charge to that party, a substitute Advisor of the university's choice who may be, but is not required to be, an attorney. In this event, the role of the Advisor provided by the university will be limited to the conducting of cross examination on behalf of the party that did not have an Advisor.

COMPLAINANT

In most circumstances, Complainant means a person who is reported to have experienced Prohibited Conduct. The term Complainant also includes such individuals who file a Formal Complaint and who participates in a process undertaken by the university to address the report of Prohibited Conduct (including Federal Rule Sexual Misconduct). In some cases, a Complainant may be different than the person who initially reports information to the university.

EMPLOYEE

person who is employed by the university to perform one or more of the following roles: regular instructional faculty, supplemental instructional faculty, research track faculty, visiting faculty, librarians, archivists, curators, graduate student instructors, graduate student staff assistants, graduate student research assistants, postdoctoral research fellows, and all regular and temporary staff.

FACULTY/FACULTY MEMBER

means all individuals who hold appointments on the tenure-track, research-track, teaching-track, librarian/archivist-track and special faculty track of the university, as well as individuals holding Emeritus Faculty status.

FEDERAL RULE SEXUAL MISCONDUCT

is a subset of Prohibited Conduct which meets the definition of Sexual Harassment in the

Title IX Regulations at 34 CFR Part 106.30.

Something which meets the definition of category of Prohibited Conduct (defined above) rises to the level of Federal Rule Sexual Misconduct when it meets ALL of the following three conditions:

- o The alleged conduct was perpetrated against a person in the United States; and
- o The conduct took place within the University's Programs or Activities.

PLUS one or more of the following conditions:

- i. An Employee engages in Quid Pro Quo Sexual Harassment against a Student; and/or
- ii. An individual engages in hostile environment Sexual Harassment that is so severe, pervasive, and objectively offensive that it denies another person equal access to the University's Programs or Activities; and/or
- iii. An individual engages in Sexual Assault, Dating Violence, Domestic Violence, or Stalking.

FORMAL COMPLAINT

means a written or typed document, signed by the Complainant or the Title IX Coordinator (electronically or otherwise), which requests that the university initiate the procedures outlined in Section VI. If the Complainant is under the age of 18 and not enrolled in an undergraduate or graduate program, the Complainant's parent or guardian must sign the Formal Complaint.

OTHER PROHIBITED CONDUCT

means any Prohibited Conduct that does not meet the definition of Federal Rule Sexual Misconduct.

REASONABLE PERSON

a person using average care, intelligence, and judgment in the known circumstances.

REPORT

means information shared with the university's Title IX Coordinator about one or more incidents of Prohibited Conduct which have occurred (or is continuing to occur) and which:

- o has impacted (or continues to impact) one or more members of the University Community; and/or
- o was or is committed by one or more members of the University Community; and/or
- o occurred or is occurring on property owned or controlled by the University or within the University's Programs or Activities.

RESPONDENT

an individual who is reported to have engaged in Prohibited Conduct (including Federal Rule Sexual Misconduct).

RESPONSIBLE EMPLOYEE

an individual who is required to report information of alleged Prohibited Misconduct

(including Federal Rule Sexual Misconduct) to the university's Title IX Coordinator. The categories of "Responsible Employee" includes:

1. University administrators and supervisors; and
2. Employees in certain designated positions and units or departments.

A Responsible Employee is required to share all relevant information about the alleged Prohibited Conduct, of which they are aware, with the Title IX Coordinator within 48 hours of learning them. Relevant information includes (to the extent known by the Responsible Employee):

- a. Name (or names) of the Complainant(s);
- b. Name (or names) of Respondent(s);
- c. Details about the nature of the alleged Prohibited Conduct; and
- d. Any information available about location(s), date(s), and/or time(s).

A full list of Responsible Employees and more information about a Responsible Employee's obligations can be found in Section VIII.

A Responsible Employee's receipt of information about alleged Prohibited Conduct (including Federal Rule Sexual Misconduct) will not automatically trigger a formal resolution under this Policy. The university will only commence Formal Resolution upon receipt of a Formal Complaint signed by the Complainant or the Title IX Coordinator.

STAFF/STAFF MEMBER

means all Employees of the university who do not hold faculty appointments. Staff does not include individuals whose primary relationship with the university is as a Student.

STUDENT

a person who was selected by the university for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at any of the University's Programs or Activities.

UNIVERSITY COMMUNITY

refers to university Students, Faculty and Staff.

UNIVERSITY'S PROGRAMS OR ACTIVITIES

Conduct takes place in the "University's Programs or Activities" when that conduct occurs: (1) in a location, at an event, or in a circumstance where the university exercises substantial control over both the Respondent and the context in which the conduct occurs; or (2) in any building owned or controlled by a student organization recognized by the university.

Examples: Conduct that occurs on-campus occurs within the University's Programs or Activities. Conduct that occurs off campus in locations or at events with no connection to the university is unlikely to occur in a program or activity of the university.

VIOLATION OF PROTECTIVE MEASURES

Any violation of an agreement or order that limits an individual's contact or interactions with another individual. Such agreement or order may have been issued under the authority of the university, another institution, or a local, state or federal government or court.

◦ [Articles of Incorporation](#)

◦ [Bylaws of the University](#)

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