

## **V. Sexual Misconduct Policy Definitions**

### **Complainant**

The individual who is alleged to be the victim of conduct that could constitute sexual harassment or other sexual misconduct under this Policy.

### **Respondent**

The individual(s) who has been reported to be the perpetrator of conduct that could constitute sexual harassment or other sexual misconduct under this Policy. A group or an organization may not be considered as a respondent. Formal complaints against more than one respondent may be consolidated where the allegations arise out of the same facts or circumstances. However, if complaints are consolidated, each respondent must be considered as an individual.

### **Sex Discrimination**

Actions that occur on the basis of sex (where sex includes sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity) and that, except as necessary for compliance with Federal and State law, cause an individual to be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by Centre College. Actions that may constitute sex discrimination include those that:

- Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;
- Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;
- Deny any person any such aid, benefit, or service;
- Subject any person to separate or different rules of behavior, sanctions, or other treatment;
- Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;
- Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit, or service to students or employees;
- Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

### **Sexual Misconduct**

Conduct based on an individual's sex that excludes an individual from participation, denies the individual the benefits of, treats the individual differently or otherwise adversely affects a term or condition of, an individual's employment,

education, living environment, or participation in a program or activity. Sexual misconduct encompasses all forms of sexual harassment, differential treatment based on sex, and gender-based harassment. Sexual misconduct also includes the threat or the commission of behavior used to obtain sexual gratification against another's will or at the expense of another such as inducing fear, shame, or mental suffering. Sexual misconduct includes unwanted sexual acts or actions, whether by an acquaintance, a person in a position of authority, or a stranger that occur without indication of consent of both individuals or under threat or coercion. Sexual misconduct can occur either forcibly and/or against a person's will, or when a person is incapable of giving consent.

Sexual misconduct is a violation of Centre College policy, but certain acts of sexual misconduct may also violate Federal Title IX Policy. Sexual misconduct that constitutes conduct prohibited under Federal Title IX Policy:

- Must have occurred in the United States.
- Must have occurred in the College's educational program or activity.
- Must fall under one of these three behaviors:
  - An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct (Quid Pro Quo).
  - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's educational programs or activities.
  - Sexual assault, dating violence, domestic violence, or stalking as defined by the Violence Against Women Act.

### **Sexual Harassment**

The College prohibits sexual harassment. Harassment on the basis of sex is a form of sexual misconduct. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- submission to such conduct is made either explicitly or implicitly a requirement of employment or participation in a College program or activity,
- submission to or rejection of such conduct by an individual is used as the basis for employment or other College decisions affecting such individual, or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working, academic, or campus environment.

The College recognizes two types of sexual harassment: quid pro quo (something for something) and hostile environment misconduct. *Quid pro quo harassment* occurs where sexual activity is demanded in exchange for an

actual, tangible job or academic benefit. *Hostile environment harassment* exists where the conduct creates an environment that may impair another individual's academic or professional performance, or hinder their ability to function within the community. Examples of sexual harassment include but are not limited to sexual exploitation; relationship intimidation and abuse; sexually-charged name calling; retaliation against someone who reports sexual harassment; and use of language or the presentation of posters/banners and/or t-shirts that promote the diminishing of a particular sex or gender.

## **Sexual Assault**

The College prohibits sexual assault. Sexual assault, a form of sexual misconduct, refers to physical acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. Rape, sexual battery, and sexual coercion are all acts of sexual assault. Examples include, but are not limited to:

- Having or attempting to have sexual intercourse with another individual without consent. Sexual intercourse includes vaginal or anal penetration, however slight, with a body part or object, or oral copulation by mouth-to-genital contact.
- Having or attempting to have sexual contact with another individual without consent. Sexual contact includes kissing, touching the intimate parts of another, causing the other to touch one's intimate parts, or disrobing of another without permission. Intimate parts may include the breasts, genitals, buttocks, mouth, or any other part of the body that is touched in a sexual manner.

## **Sexual Abuse**

Sexual abuse refers to two broad types of sexual misconduct by employees and others who are affiliated with the College but are not students. Specifically, sexual abuse means: (1) serial sexual misconduct or (2) child molestation. Serial sexual misconduct means any actual or alleged illegal or otherwise sexual misconduct that has more than one victim and is committed by, or alleged to have been committed by, faculty staff, or volunteers affiliated with the College. Child molestation means actual or alleged illegal or other sexual misconduct with a minor.

## **Consent**

Consent for sexual activity is based on the mutual understanding and respect of all people involved for the desires and wishes of their partner(s). In order for individuals to engage in sexual activity of any type with each other, there must be clear consent. Consent is sexual permission. Consent:

- Is mutually understandable when a reasonable person would consider the words or actions of the parties to have manifested an understandable agreement between them to do the same thing, in the same way, at the same time and with one another;

- Is not merely the absence of a verbally stated “no”, silence without actions demonstrating permission, cannot be assumed to show consent;
- Is never final or irrevocable;
- Is time-limited and situation-specific; even if someone obtained consent from a partner(s) in the past, this does not mean that consent is automatically granted again;
- Can only be given by someone who is free from verbal or physical pressure, coercion, intimidation, threat, or force; and
- Can only be given by someone in an unimpaired state of mind who is able to understand what is happening.

Consent is not valid if the person from whom consent is sought is impaired by the use of alcohol or drugs, is asleep, passed out, or unconscious. There is not consent when:

- A person is forced to submit through the use of forcible compulsion.
- A person does not expressly or implicitly acquiesce in the other party’s conduct under circumstances other than forcible compulsion or incapacity to consent.
- A person is deemed to be incapable of consenting because he/she/they is/are less than 16 years old, has an intellectual or other disability that prevents them from having the capacity to give consent or is physically helpless.
- A person is incapable of giving consent if the person is under the age of 18 and the other person is at least 10 years older at the time of the sexual activity.
- A person is mentally incapacitated or physically helpless due to the influence of any intoxicating substance.
- A person is unconscious or for any other reason is physically unable to knowingly communicate unwillingness to act.

The use of alcohol or drugs does not minimize or excuse a person’s behavior or responsibility for committing sexual misconduct. If you were assaulted while under the influence of alcohol or other drugs, your intoxicated state does not excuse the behavior of your attacker.

### **Incapacitation**

Incapacitation is a state where one cannot make a rational, reasonable decision because they lack the ability to understand the who, what, when, where, why, or how of their sexual interaction. Sexual activity with someone one

knows to be, or should know to be, mentally or physically incapacitated (by alcohol or other drug use, unconsciousness, sleep, blackout, or any other means) is an act of sexual misconduct.

### **Capability to Give Consent**

An objective standard will be used in determining whether a person is incapable of giving consent due to the person's use or consumption of drugs or alcohol, or if a physical or mental condition is present. That is, consent is not valid when:

- From the standpoint of a reasonable person, the Respondent knew, or reasonably should have known, that the other person was incapable of giving consent due to the person's use or consumption of drugs or alcohol, or that the person's physical or mental condition would prevent knowing and voluntary consent; or
- The person was, in fact, incapable of giving consent due to the person's use or consumption of drugs or alcohol, or the person was incapable of providing knowing or voluntary consent due to a physical or mental condition.

### **Domestic Violence**

A felony or misdemeanor crime of violence committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under applicable domestic or family violence laws.

### **Dating Violence**

Violence committed by a person who is or has been in a social relationship or intimate nature with the victim. The existence of such a relationship will be determined based on consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

### **Relationship Intimidation and Abuse**

A pattern of behavior or behaviors used by a person to maintain power and control over another person in an intimate relationship. Relationship abuse may include physical violence, threats, coercion, stalking, emotional abuse, manipulation, or financial control.

### **Stalking**

The College prohibits stalking. Stalking is defined as a course of conduct involving more than one instance of unwanted attention, misconduct, physical or verbal contact, or any other course of conduct directed at an individual that could be reasonably regarded as likely to alarm or place that individual in fear of harm or injury, including physical, emotional, or psychological harm. This includes cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used to pursue, harass, or make unwelcome contact with another person. Stalking and cyber-stalking may involve individuals

who are known to one another or have an intimate or sexual relationship, or may involve individuals not known to one another.

## **Sexual Exploitation**

The College prohibits sexual exploitation. Sexual exploitation happens when:

- a person takes non-consensual, unjust, or abusive advantage of another either for their own advantage or benefit, or for the benefit or advantage of anyone other than the one being exploited; and
- that behavior does not otherwise constitute one of the other defined sexual misconduct offenses.

Examples of sexual exploitation include but are not limited to prostitution, non-consensual video or audio-taping of sexual or other private activity, exceeding the boundaries of consent (e.g., permitting others to hide in a closet and observe consensual sexual activity, videotaping of a person using a bathroom), engaging in voyeurism, or engaging in consensual sexual activity with another person while knowingly transmitting an STD or HIV/AIDS without informing the other person of such infection.

## **Bullying**

The College prohibits bullying and cyberbullying. Bullying or cyberbullying is harassing conduct that may take many forms, including verbal acts and name-calling; graphic and written statements, which may include the use of cell phones or the Internet; or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Bullying or cyberbullying creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a person's ability to participate in or benefit from the services, activities, or opportunities offered by the College. When such harassment is based on gender, sexual orientation, or perceived gender or sexual orientation, it is considered sexual misconduct.

## **Retaliation**

It is a violation of this Policy to act or attempt to retaliate, intimidate, or seek retribution against anyone involved in or connected to reporting a concern, the investigation of, and/or the resolution of a sexual misconduct allegation. Individuals who refuse to participate in the processes described under this Policy are also protected against retaliation for their decision. Retaliation also includes filing charges against a person for conduct that arises out of the same facts and circumstances but does not involve sex discrimination or sexual harassment, for the purpose of interfering with any right or privilege. Retaliation against an individual for the purpose of interfering with any right or privilege secured by Title IX is also unlawful.

The College recognizes that retaliation can take many forms, may be committed by an individual or a group against an individual or a group, and that the Respondent can also be the subject of retaliation by the Complainant or a third party. Complaints alleging retaliation shall be filed using this process. The College will take immediate and responsive

action to any report of retaliation and may pursue disciplinary action as appropriate. An individual reporting sexual misconduct is entitled to protection from any form of retaliation following a report that is made in good faith, even if the report is later not proven.

### **Responsible Employees**

Employees who are required to report any alleged sexual misconduct incidents to the Title IX Coordinator, but the College has not conferred upon them authority to take corrective action to end the discrimination or to redress the sexual harassment. The following are Responsible Employees under this Policy: The President of the College and all members of Senior Staff; all Public Safety employees, the Office of Student Life (including Resident Assistants and Residence Directors), the Athletics Department, the Human Resources Office, and all Faculty.

### **Conflict of Interest and Bias**

Conditions that affect College employees or officials or designated officials which may impact the process of providing a fair and impartial investigation. These conditions include instances where:

- The official was directly involved in the matter, was a witness to the matter, or has personal knowledge of disputed facts concerning the matter;
- The official has a personal bias or prejudice against Complainants or Respondents generally or in the matter;
- The official or a person in their immediate family is related to a participant in the matter;
- The official is in the same Department or Office as a participant in the process; or
- The official currently or has previously been a supervisor or subordinate to a participant in the process.