

## PROHIBITED SEXUAL MISCONDUCT & DEFINITIONS

### A. PROHIBITED SEXUAL MISCONDUCT, PART 1

The College prohibits sexual misconduct by or against any member of the College community. Sexual misconduct consists of a range of unacceptable behaviors that violate this Handbook and could impact the employment or educational environment. Acts of Sexual Misconduct may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Prohibited Sexual Misconduct under this Handbook includes but is not limited to:

- > Hostile environment sexual harassment;
- > Non-consensual sexual contact;
- > Non-consensual sexual intercourse;
- > Sexual exploitation;
- > Bullying and cyber-bullying;
- > Other misconduct behaviors that are sex or gender based;
- > Aiding or facilitating sexual misconduct; and
- > Retaliation

#### 1. HOSTILE ENVIRONMENT SEXUAL HARASSMENT

Sexual harassment is any unwelcome sexual advance, request for sexual favors, or other unwelcome verbal or physical conduct of a sexual nature which is directed at an individual based on sex when such behaviors are sufficiently severe or pervasive to have the effect of unreasonably interfering with an individual's educational experience, working conditions, or living conditions by creating an intimidating, hostile, or offensive environment.

- a. In evaluating whether a hostile environment exists, the totality of known circumstances including the nature, frequency, intensity, location, context, and duration of the conduct will be considered from the perspective of both the reporting party and a reasonable person in the position of a responding party.
- b. A single or isolated incident of prohibited behavior may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the fewer number of incidents are necessary to establish a hostile environment, particularly if the harassment is physical.
- c. In some cases, sexual harassment is obvious and may involve an overt action, a threat or reprisal. In other instances, sexual harassment is subtle and indirect, with a coercive aspect that is unstated.
- d. It can occur between peers (e.g., student to student, employee to employee, faculty to faculty) or between persons of unequal power status (e.g. supervisor to subordinate, faculty to student, coach to student-athlete, student leader to student). Although

sexual harassment often occurs between individuals with unequal power, a person who appears to have less power in a relationship can also commit sexual harassment (e.g., student harassing faculty member).

- e. It can be committed by an individual or may be a result of the collective actions of an organization or group.
- f. It can be committed against an individual, an organization or a group.
- g. It can be committed by an acquaintance, a stranger, or someone with whom the reporting party has a personal, intimate or sexual relationship.
- h. It can occur by or against an individual of any sex, gender identity, or sexual orientation.
- i. It does NOT have to include intent to harm, be directed at a specific target, or involve repeated incidents.
- j. Examples of conduct that can constitute sexual harassment include, but are not limited to:
  - 1) Unwelcome sexual innuendo, propositions, or comments;
  - 2) Sexual slurs, humor or jokes of a sexual nature or about sex, gender identity, or gender expression;
  - 3) Disparaging, derogatory, demeaning, negative, or offensive language or remarks of a sexual nature or about sex, gender identity, or gender expression;
  - 4) Insults or threats based on sex, gender identity, or gender expression;
  - 5) Written materials, graffiti or the display or distribution of drawings, posters, pictures or objects of a sexual nature;
  - 6) Unwelcome written or electronic communications, such as e-mail, text messaging, websites, and Internet use of a sexual nature;
  - 7) Sexually charged name-calling; sexual rumors or ratings of sexual activity/performance;
  - 8) Unwelcome physical contact or suggestive body language, such as touching, patting, pinching, hugging, kissing, or brushing against an individual's body;
  - 9) Undue and unwanted attention, such as repeated inappropriate flirting, inappropriate or repetitive compliments about clothing, accessories or physical attributes, staring, or making sexually oriented gestures;
  - 10) Physical coercion or pressure placed upon an individual to engage in sexual activity or punishment for a refusal to respond or comply with sexual advances;
  - 11) Abusive, disruptive or harassing behavior, verbal, physical, or electronic which endangers another's mental or physical health, including but not limited to threats, acts of violence, or assault based on sex, gender and/or in the context of intimate partner violence; and
  - 12) Acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping or for failing to conform to stereotypical notions of masculinity and femininity.

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

Any intentional sexual touching, however slight, with any part of the body or any object, by a person upon another person, that is without consent and/or by force.

- a. Sexual contact is any intentional contact with the breasts, buttock, 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; or
- b. Any other intentional bodily contact in a sexual manner.

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

Any sexual intercourse, however slight, with any part of the body or any object, by a person upon another person, that is without consent and/or by force.

Sexual intercourse includes vaginal or anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.

## **4. SEXUAL EXPLOITATION**

Sexual exploitation refers to an act or acts committed through non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage or any other non-legitimate purpose. The act or acts of sexual exploitation are prohibited even though the behavior does not constitute one of the other sexual misconduct offenses. Sexual exploitation may involve individuals who are known to one another, have an intimate or sexual relationship, and/or may involve individuals not known to one another. Examples include, but are not limited to:

- a. Observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
- b. Non-consensual streaming, posting or transmitting of images; photographing; video or audio recording of sexual activity; nudity; or distribution of such without the knowledge and consent of all parties involved;
- c. Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity;
- d. Prostituting another individual and/or engaging in sex trafficking;
- e. Knowingly soliciting a minor for sexual activity;
- f. Knowingly creating, possessing, or disseminating child pornography;
- g. Knowingly exposing another individual to a sexually transmitted disease or virus without his or her knowledge;
- h. Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity;
- i. Exposing one's genitals in non-consensual circumstances;

- j. Inducing another to expose one's genitals.
- k. Knowingly making an unwelcome disclosure of (or threatening to disclose) an individual's sexual orientation, gender identity, or gender expression;
- l. Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections.

## **5. BULLYING AND CYBER-BULLYING**

The term "bullying" refers to extreme or repeated verbal, physical, social or psychological behavior that is harmful and involves the misuse of power by an individual or group towards one or more persons.

Bullying is unwanted attention, harassment, 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.

Bullying can include, but is not limited to, humiliation, intimidation and belittlement. Bullying is not only a form of sexual misconduct but also a type of harassment, which may be based upon other legally protected classes.

Bullying includes cyber-bullying, a particular form of bullying 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 or persons. This can be done through email, instant messaging, text messages, web pages, chat rooms, or even interactive game sites.

Cyber-bullying includes but is not limited to:

- a. Sending mean, threatening or harassing messages to another person or persons as described in the preceding paragraph;
- b. Spreading lies and rumors about others as described in the preceding paragraph;
- c. Posting pictures without the consent of the individual;
- d. Tricking someone into revealing their personal information and sending it to others;
- e. Creating websites, polls, or blogs about others that embarrass or hurt those persons; and
- f. Recording conversations or videos without the individual's consent and then posting them online.

## **6. AIDING OR FACILITATING**

Sexual misconduct includes aiding, facilitating, promoting or encouraging the behaviors prohibited by this Handbook. Aiding or facilitating may also include failing to take action to prevent an imminent act when it is reasonably prudent and safe to do so.

## **7. OTHER MISCONDUCT WHEN SEX OR GENDER-BASED**

Consistent with the values of an educational and employment environment free from discrimination based on sex, the College also prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility, based on sex

or sex-stereotyping, even if those acts do not involve conduct of a sexual nature. Examples include, but are not limited to:

- a. Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
- b. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities;
- c. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- d. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the College community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy); and

## **8. RETALIATION UNDER THIS HANDBOOK**

No individual or individual acting in support of or on behalf of that individual may intimidate, threaten, coerce, or discriminate against any other individual for the purpose of interfering with any right or privilege secured by this Handbook or because the individual has made a report or Formal Complaint, testified, assisted, participated or refused to participate in any manner in an investigation, proceeding or hearing under this Handbook.

Complaints alleging retaliation under this Handbook, including for the exercise of rights under this Handbook, must be filed with the TIX Coordinator and will be addressed and processed accordingly. If the individual who allegedly retaliated is not affiliated with the College and not otherwise subject to this Handbook, the College will process the Complaint and take appropriate measures.

The College retains the right to charge an individual for making a materially false statement in bad faith during the course of an investigation, proceeding or hearing. A determination whether or not the Respondent has engaged in Sexual Misconduct is not sufficient alone to conclude the alleged retaliator made a materially false statement in bad faith.

Retaliation constitutes an independent violation of this policy and may occur even when there is a finding that no sexual misconduct took place.

The exercise of rights protected under the First Amendment, if applicable, does not constitute retaliation prohibited under this Handbook.

## **B. PROHIBITED SEXUAL MISCONDUCT, PART 2**

- > Quid Pro Quo Sexual harassment;
- > Sexual assault;
- > Dating violence;
- > Domestic violence; and

- > Stalking and cyber-stalking

## 1. QUID PRO QUO SEXUAL HARASSMENT

An employee of the College, conditions the provision of an aid, benefit, or service of the College, on an individual's participation in unwelcome sexual conduct.

Examples include, but are not limited to:

- Change of academic or employment responsibilities (e.g., increase in difficulty or decrease of responsibility) based on sex, gender identity, or sexual orientation;
- Use of a position of power or authority to: threaten or punish, either directly or by implication, for refusing to tolerate harassment, for refusing to submit to sexual activity, or for reporting harassment; or promise rewards in return for sexual favors;

## 2. SEXUAL ASSAULT

Any sexual act directed against another person, without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent.

### a. **Forcible Rape:**

Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ or another person, without the consent of the Complainant.

### b. **Forcible Sodomy:**

Oral or anal sexual intercourse with another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

### c. **Sexual Assault with an Object:**

The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

### d. **Forcible Fondling:**

The touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

### e. **Sex Offenses, Non-forcible:**

#### 1) Incest

Non-forcible sexual intercourse, between persons who are related to each other,

within the degrees wherein marriage is prohibited by applicable state law.

2) Statutory Rape

Non-forcible sexual intercourse, with a person who is under the statutory age of consent of applicable state law.

### **3. DATING VIOLENCE**

Violence, on the basis of sex, committed by a person who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.

- a. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- b. For the purposes of this definition dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- c. Dating violence does not include acts covered under the definition of domestic violence.

### **4. DOMESTIC VIOLENCE**

Violence, on the basis of sex, committed:

- a. by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common; or
- b. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner; or
- c. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the relevant state; or
- d. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the relevant state.

To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

### **5. STALKING**

Engaging in a course of conduct, on the basis of sex, directed at a specific person, that would cause a reasonable person to fear for the person's safety, or the safety of others; or suffer substantial emotional distress.

For the purposes of this definition:

- a. Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- b. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.

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