



Sexual Misconduct, Harassment and Discrimination **Policy**

PURPOSE: To make clear the Universities role and authority in conducting claims related to Sexual Misconduct, harassment, discrimination on campus.

MONITOR: Title IX coordinator

AUTHORIZATION: CEO and Board of Directors

AUTHORIZATION DATE: 2015

REVIEWED BY: CEO, Academic Dean, Director of Student Affairs and Dean of Enrollment Management

REVISION DATE(S): June 2020 – changes to Title IX guidance from the Department of Education, definitions and equal protections;

EFFECTIVE DATE: June 2020

NEXT REVIEW DATE: October 2021

POLICY APPLIES TO: All members of the University community, including but not limited to staff, students, faculty, guests, patients, practitioners.

SCOPE

This policy applies to Virginia University of Integrative Medicine (“University”) students, employees, employees of contractors, visitors, guests, and other third parties.

This policy applies to acts of prohibited conduct when:

- (1) the conduct occurs on campus or other property owned or controlled by the University;
- (2) the conduct occurs in the context of a University employment or education program or activity, including, but not limited to, University-sponsored research, on-line, or internship programs; or
- (3) the conduct occurs outside the context of University employment or a University educational program or activity, but has continuing adverse effects on or creates a hostile environment for an individual while on the University's campus or other property owned or controlled by the University or in any University employment or educational program or activity.

INTRODUCTION

As an institution of higher education that promotes the rights and safety of all members of the campus community, VUIM requires that individuals treat one another with respect, dignity, and fairness. In an intimate relationship, these values are of paramount importance. Sexual misconduct, which is prohibited under this policy, includes a broad range of behavior such as inappropriate touching, sexual exploitation, sexual intercourse without consent and other forms of sexual violence. Some forms of prohibited conduct may be a crime. Sexual misconduct, as defined in this policy, may violate Title IX of the Higher Education Amendments of 1972 and/or the Violence Against Women Act (VAWA) and Virginia State Education Law. Such violations will not be tolerated by the University.

This policy provides procedures for reporting, investigating and adjudicating claims of sexual misconduct, harassment, and discrimination in the context of Title IX. It applies to all members of the University community, including the University's students, faculty, and staff, and applies regardless of one's sexual orientation, gender, gender identity, or gender expression. Non-community members (e.g. alumni, family or friends of students, vendors, etc.) visiting campus or participating in any University program or activity are expected to abide by the behavioral expectations of this policy.

This policy is in coordination with the Student Code of Conduct, Formal Complaints and FERPA.

STUDENTS RIGHTS

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;

5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the institution, any student, the accused or the respondent, their friends, family and acquaintances within the authority of the institution;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.

POLICY

It is a violation of University policy to engage in Sexual Assault, Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Exploitation, Dating Violence, Domestic Violence and Stalking, and Complicity in the commission of any act prohibited by this policy, and Retaliation against a person for the good faith reporting of any of these forms of conduct or participation in any investigation or proceeding under this policy (collectively, "Prohibited conduct"). Prohibited conduct is prohibited regardless of the sex, sexual orientation, and/or gender identity/expression of the Complainant or Respondent.

Whether conduct is unwelcome is a subjective determination based on the specific Complainant. Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Individuals found in violation of this policy will be subject to appropriate disciplinary action, up to and including termination of employment of employees and suspension or dismissal of students.

A Responsible Administrator is *not* a confidential resource.

Complaints can be made to any of the Responsible Administrators by those who allege to have been the victim of a violation of this policy, by a third party on a victim's behalf or anonymously. While certain other employees may also have a reporting obligation, if a complaint is made to anyone other than one of the Responsible Administrators, the complainant risks the possibility that it will not come to the attention of the proper University officials and may, therefore, not be acted upon. For purposes of this policy, faculty and academic advisors are not considered

Responsible Administrators. In addition, unless a report is made to someone listed as a Confidential Resource, confidentiality cannot be assured. The decision to file a formal complaint with the University in no way restricts you from also filing criminal charges.

VUIM responsible administrators:

All VUIM staff, except faculty, academic advisors and student employees.

Confidentiality

A Responsible Administrator will discuss with the complainant available avenues and options. A complainant may be able to take advantage of multiple options simultaneously. Options include contacting law enforcement (if the incident involves a crime) and/or pursuing disciplinary action against the accused and/or mediation. In situations where the either parties well-being requires, other options may include immediate remedial action, such as no-contact orders between the parties, changes in class assignments, or work assignments to assist in avoiding contact, or other measures to enhance either parties safety, such as increased monitoring of an area.

If an individual makes a report to a Responsible Administrator, one still has the right to make an anonymous report; to request that the University maintain the report as confidential (i.e., not reveal his/her identity); and/or to request that the University not conduct an investigation or that action not be taken against an alleged perpetrator. Even VUIM Offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary to the Title IX Coordinator to investigate and/or seek a resolution. If a complainant requests that his/her name be kept confidential (or if the complainant makes an anonymous complaint), the University's ability to respond to the complaint may be limited. While the University endeavors to comply with the complainant's wishes, it is not required to honor these requests. Depending on the circumstances, this may or may not be possible. The University may, in appropriate circumstances, decide it must move forward with an investigation and/or disciplinary processes. In making such a determination the University must consider its obligation to provide a safe, non-discriminatory environment for all students and employees. The University has designated the Title IX Coordinator as the individual who will evaluate any requests for confidentiality.

The University will seek consent from the complainant prior to investigating. To determine whether to investigate despite the complainant's request not to do so, the University will consider a range of factors, including, but not limited to:

- The severity and impact of the sexual misconduct;
- The respective ages of the parties;
- Whether the complainant is a minor under the age of 18;
- Whether the respondent has admitted to the sexual misconduct;
- Whether there have been other sexual violence or harassment complaints about the respondent;
- Whether the respondent has a history of arrests or records from a prior school indicating a history of violence;

- Whether the respondent threatened further sexual violence or other violence against the victim or others;
- Whether the sexual violence was committed by multiple respondents;
- Whether the sexual violence was perpetrated with a weapon; and
- The overall safety of the campus community (including the complainant).

If the University determines that an investigation is required, it will promptly notify the reporting individuals and take action as necessary to protect them.

Cleary Act Compliance

The University is required to include for statistical reporting purposes the occurrence of certain incidents in its Annual Security Report (ASR). Names of individuals involved in incidents are not reported or disclosed in ASRs. In the case of an emergency or ongoing dangerous situation, the University will issue a timely warning to the campus unless issuing such a warning may compromise current law enforcement efforts or when issuing the warning itself could potentially identify the reporting individual. In such circumstances, the name of the alleged perpetrator may be disclosed to the community, but the name of the victim/complainant will not be disclosed.

PROCESS

Community members are encouraged to report sexual misconduct, harassment and discrimination when it occurs, whether observed or as a result of an activity they were directly a part of. The process begins when a report is submitted to a “responsible administrator”, the Title IX coordinator or Director of Student Affairs. There is no time limit for reporting prohibited conduct to the University under this policy.

Chad Egresi, Title IX Coordinator
(703) 539-8692
cegresi@vuim.edu

Byung Kim, Director of Student Affairs
(703) 865-0132
bkim@vuim.edu

If a report alleges a plausible violation of this policy, the University will take prompt and equitable action to eliminate prohibited conduct, prevent its recurrence and remedy its effects.

Upon receipt of a report, the Title IX Coordinator shall promptly contact the reporting party and, if known and different from the reporting party, the complainant. The Title IX Coordinator shall discuss with the complainant the options available to the complainant under the University grievance procedures, including the option to submit a formal complaint, and the supportive measures that are available. The Title IX Coordinator may provide supportive measures, as determined appropriate by the Title IX Coordinator, to any individual involved in a report of prohibited conduct, regardless of whether the complainant requests that the University initiate an investigation of the Prohibited conduct. The Title IX Coordinator may also impose emergency measures as necessary to protect the physical health and safety of the complainant, respondent, or other individuals.

In order to initiate a formal investigation of prohibited conduct by the University, a complainant must submit a formal complaint to the Title IX Coordinator. Upon receipt of a formal complaint requesting that the University investigate an allegation of prohibited conduct, the University shall follow the procedures described in the institutional policy on Formal Complaints (Grievance). A Respondent shall be presumed to be not responsible for the alleged conduct until a determination is made as to responsibility at the end of the grievance process. The University shall use the preponderance of the evidence standard in determining responsibility for a violation of this policy for all cases. Being impaired by alcohol and/or other drugs is no defense to violating this policy.

An investigation may occur because a complainant wishes to proceed with a complaint, or because the University determines that this is necessary despite the wishes of the complainant.

The University endeavors to ensure that complaints are responded to in a prompt, fair and impartial manner. The investigation is usually performed by one or more of the Responsible Administrators listed above, but the University may appoint any appropriate person(s) to conduct the investigation. The complainant and the respondent will be given an equal opportunity to present information in the context of the investigation. An investigation usually involves interviews of witnesses and reviewing relevant documentation.

This policy applies campus-wide and sets forth behavioral expectations for all. However, the applicable investigatory and disciplinary procedure that will be applied in a particular case depends on whether the accused is a student, a faculty member, an employee, or a non-community member. If a complaint is made under this policy, the following will apply:

- A complaint against a student will be referred to the Title IX Coordinator or Director of Student Affairs and processed in accordance with the Student Conduct Code Policy.
- A complaint against a faculty and/or staff member will be referred to the CEO.
- A complaint against a non-community member (e.g., a visitor to campus, an alumnus, a vendor, a parent, etc.) will be investigated but no formal procedure applies. The University may opt to ban the non-community member from University property or take other appropriate responsive measures. The complainant and respondent will be notified in writing of the outcome of such a complaint.

In cases where the individual has more than one status with the University (such as a student who is also employed with the University, or any employee who takes courses at the University), the University will determine in its discretion which status is primary; in such a situation, sanctions imposed may include both sanctions related to each status. A non-member of the University community may make a report that a University community member has violated this policy. A non-community member's complaint will be processed in accordance with the applicable disciplinary procedure (above).

The complainant and respondent may be accompanied by an advisor of choice (at the party's own expense, if the advisor is a paid advisor) during any investigatory meeting, disciplinary hearing or other proceeding held pursuant to this policy. If the complaint involves a sexual assault, domestic or dating violence, or stalking, the advisor may be an attorney. The advisor cannot be a witness in the proceedings. They are a silent and non-participating presence who is there solely to observe, consult with and provide moral support to the complainant or

respondent. The advisor may not disrupt or distract from the meeting or proceeding. They are not permitted to address or otherwise make any direct statements to the witnesses, investigators, hearing panel or any other adjudicators. An advisor who does not abide by this role may be precluded from further participation in any meetings, hearings or proceedings, and the University will proceed in the advisor's absence.

The complainant and respondent will have an equal opportunity to present relevant information and evidence. The University may proceed with a complaint, including an investigation and through to a disciplinary outcome, even if the complainant and/or respondent elect not to participate.

As stated previously, the standard for decisions in disciplinary proceedings, in this context, is a preponderance of the evidence, meaning that it is more likely than not a violation of this policy occurred. Both parties will receive simultaneous written notice of outcomes of all disciplinary proceedings, to the extent permitted by law. Both the complainant and respondent will have the right to appeal pursuant to the applicable disciplinary procedures identified above. The University endeavors to complete the investigatory phase and disciplinary proceeding within 60 days, but this timeframe may be extended if necessary, under the circumstances.

Methods of Resolution

The Title IX Coordinator (or designee) will review all submissions. If the Title IX Coordinator (or designee) determines charges are appropriate, the student will be notified of the alleged violation and the appropriate resolution procedure. There are several resolution procedures:

Conduct Hearing

A Conduct Hearing is the basic method of resolution for all offenses that warrant sanctions. Typical sanctions include educational tasks, written warnings, conduct probation, fines, community service, community restitution, referral for resources, suspension or dismissal from the university.

Students have the right to appeal decisions made during a Conduct Hearing via the CEO (or designee), who will serve as the appellate officer. In some instances, the case may still be referred to the Community Conduct Council by appellate officer. (See the Appeal Process for more details.)

Expedited Hearing

If a student's continued presence on campus endangers university property, the physical safety or well-being of other members of the campus community, affects his/her physical or emotional safety or well-being or disrupts the educational process of the community, the Title IX Coordinator (or designee) may initiate an expedited hearing. An expedited hearing may convene immediately and may void a student's 48-hour notice of hearing.

Additional Information for Each Method of Conduct Resolution

1. Student conduct records are confidential and are available only to persons who have permission from the students. Limited conduct information may be shared with other VUIM administrators and faculty members who have a legitimate need to know.
2. All hearings are closed to the general public.
3. If an accused student fails to appear for a scheduled hearing, the hearing may be decided in his/her absence. The Title IX Coordinator (or designee) will hear the case based on the available information. The university will not necessarily drop charges of misconduct if an accused student leaves VUIM for any reason (e.g., voluntary withdrawal, required resignation, separation or dismissal from the university).
4. An accused student may bring an adviser to a hearing. The adviser must be a member of the university community and can be a student, faculty or staff member. During the hearing, the adviser may only advise during recesses granted by the Title IX Coordinator and may clarify procedural questions before, during or after the hearing.
5. The Title IX Coordinator makes decisions about responsibility and sanction(s). These decisions shall be based on the evidentiary standard of "preponderance of evidence," meaning the Title IX Coordinator determines if it is more likely than not the alleged violation occurred.
6. The university requires administrative staff maintain confidentiality regarding conduct matters. Individual(s) who report the alleged violation(s) may be informed of the official decision. Information about assigned sanctions may be shared with reporting parties as deemed appropriate by the Title IX Coordinator (or designee). The Title IX Coordinator may share information about conduct charges, findings and sanctions with university personnel who, at the discretion of the Title IX Coordinator, have a legitimate need to know.

Appeal Process

A student found responsible for a violation of university policy during a Student Conduct Hearing may request an appeal based on one of the following:

1. insufficient information that a policy was violated or the availability of new evidence;
2. a serious procedural error in resolving the case; and/or
3. a sanction inappropriate for the violation.

A request for an appeal to the CEO (or designee) must be made in writing within 72 hours of receipt of the original written decision. Typically, an appeal decision will be rendered within 10 business days, unless the sanction includes suspension or dismissal. After review, the CEO (or designee) may:

1. affirm the finding(s) of the original hearing authority;
2. reverse the finding(s) of the original hearing authority;
3. alter the sanction(s) of the original hearing authority (and, if altered, sanctions may be made more or less severe); or
4. refer the case to an appeal hearing.

A subsequent appeal, which is permitted only in cases in which suspension or dismissal are assigned, must be submitted in writing to the CEO (or designee) within 48 hours of receipt of the appeal decision. CEO (or designee) may:

1. affirm the finding(s) of the original hearing authority;
2. reverse the finding(s) of the original hearing authority;
3. alter the sanction(s) of the original hearing authority (and, if altered, sanctions may be made more or less severe); or
4. uphold the appeal decision made by the Title IX Coordinator (or designee).

The decision of the CEO (or designee) on all hearing appeals resulting in suspension or dismissal is the final decision for VUIM. The decision of the CEO (or designee) on all other appeals is the final decision for VUIM.

Conduct Findings

- Found Responsible: The accused student is responsible for a violation of this policy as charged.
- Found Not Responsible: The accused student is not responsible for a violation of this policy.

Conduct Sanctions

Reasons for Sanctioning

A sanction is a consequence placed upon a student for violating this policy. The purposes of imposing sanctions are twofold: to protect the university community from behavior that is detrimental to its health, safety and educational mission; and to assist students in understanding what it means to be accountable for their actions and/or what the consequences may be for future behavior.

All students who are sanctioned will be treated with fair consideration, and all circumstances involved in an incident will be considered in sanctioning as each individual case is unique. A student charged as an accessory may be subject to the same sanction(s) as the primary violator.

Repeat Violations

VUIM employs a progressive discipline system in which succeeding violations entail more serious consequences, including suspension and dismissal from the university.

Sanctions

A student may be sanctioned to one or more of the following depending on the seriousness of the violation. Sanctions are determined by the Title IX Coordinator.

Restriction of activities or privileges: participation in any and/or all organized university activities other than required academic endeavors are restricted for a designated period.

Written warning: official record that a student has been warned about behavior.

Fines: monetary sanctions.

No-contact order: student is prohibited from having any direct or indirect contact or contact via a third-party with a particular person. Violation may result in suspension or dismissal.

Referral: requires the student seek appropriate guidance or resources for his/her success.

Removal of property: required removal of property.

Restitution: reimbursement by the student to cover the cost of repair or replacement of damaged or misappropriated property.

Conduct probation: period of self-reflection during which a student is on official warning that subsequent violations of university rules, regulations or policies are likely to result in more severe sanctions, including suspension or dismissal from the university. In most cases, when a student is placed on conduct probation, parental notification will be part of the process to discuss a student's success plan.

Conduct suspension: a temporary cancellation of a student's enrollment at VUIM with approval from the Title IX Coordinator (or designee). Once assigned this sanction, a student is immediately removed from classes and banned from university property. A student cannot enter university property during his/her term of suspension without prior permission from the Title IX Coordinator (or designee) nor graduate. Any classes taken at another institution while suspended cannot be transferred to VUIM.

Campus ban: student is banned from being present on either the entire campus or specified areas of the campus.

Dismissal from the university: a permanent cancellation of a student's enrollment at VUIM with approval from the Title IX Coordinator (or designee). Once assigned this sanction, students are immediately removed from classes and banned from university property. A student cannot enter university property once dismissed without prior permission from the Title IX Coordinator (or designee) nor re-enroll or graduate from VUIM.

Retaining Records

See records retention schedule.

Release of Records

External release of records will occur in accordance with federal law.

DEFINITIONS

Prohibited conduct: Prohibited conduct is defined as the following:

A. As provided in the Title IX Regulations, the following is defined as sexual harassment under Title IX and prohibited under this policy:

a. Sexual Assault: Any sexual act directed against another person, without the Consent of the Complainant including instances where the Complainant is incapable of giving Consent.

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

2. 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 age or because of temporary or permanent mental or physical incapacity.

3. 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 age or because of temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia, e.g., a finger, bottle, handgun, stick.

4. 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 age or because of temporary or permanent mental or physical incapacity.

b. Sexual Assault: Nonforcible sexual intercourse

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

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

c. Quid Pro Quo Sexual Harassment as Defined in Title IX Regulations (“Title IX Quid Pro Quo Sexual Harassment”): An employee of the University conditioning the provision of aid, benefit, or service on another individual’s participation in unwelcome sexual conduct.

d. Hostile Environment Sexual Harassment as Defined in Title IX Regulation (“Title IX Hostile Environment Sexual Harassment”): Unwelcome conduct based on sex that would be determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University’s education program or activity.

e. Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. 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. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

f. Domestic Violence: Violence committed by a current or former spouse or intimate partner of the Complainant; a person with whom the Complainant shares a child in common; a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner; a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Virginia; 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 Virginia. 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.

g. Stalking: Engaging in a course of conduct 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. Stalking may include the concept of "cyber-stalking," a particular form of stalking in which a person uses electronic media, such as the internet, social networks, blogs, cell phones, texts, or other similar devices to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion. When allegations of stalking are unrelated to sex and/or gender-based harassment, cases may be referred to the appropriate office and governed by either the Code of Student Conduct or the Staff and Faculty Handbook.

b. Sexual Exploitation: Purposely or knowingly doing one or more of the following without Consent:

- Taking sexual advantage of another person.
- Taking advantage of another's sexuality.
- Exceeding the boundaries of consensual Sexual Contact without the knowledge of the other individual.

Sexual Exploitation may be committed for any purpose, including sexual arousal or gratification, financial gain, or other personal benefit.

Examples include, but are not limited to, purposefully or knowingly:

- Causing the incapacitation of another person through alcohol and/or drugs (or any other means) for the purpose of compromising that person's ability to give Affirmative Consent to sexual activity;
- Allowing third parties to observe private sexual activity from a hidden location (e.g., closet) or through electronic means (e.g., Skype or livestreaming of images) without consent of all parties;
- Engaging in voyeurism (e.g., watching private sexual activity without the consent of the participants or viewing another person's intimate parts (including genitalia, groin, breasts or buttocks) in a place where that person would have a reasonable expectation of privacy);
- Recording or photographing private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts or buttocks) without consent;
- Disseminating or posting images of private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts or buttocks) without consent;
- Maliciously threatening to disclose or disclosing an individual's Sexual Orientation, Gender Identity, or Gender Expression;
- Prostituting another person;

- Possessing, creating, or distributing child pornography;
- Exposing another person to a sexually transmitted infection or virus without the other's knowledge; or
- Failing to use contraception, or deliberately removing or compromising contraception without the other party's knowledge.

c. Complicity: Complicity is any act taken with the purpose of aiding, facilitating, promoting, or encouraging the commission of an act of prohibited conduct under this Policy by another person. Examples of complicity include, but are not limited to, restraining another individual during a sexual assault, encouraging someone to commit dating violence or sexual assault, or intentionally not intervening for the purpose of facilitating another person committing prohibited conduct

C. Retaliation: No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this policy, or because the individual has made a report or complaint, testified, assisted, participated, or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX or this policy.

Consent: Consent means affirmative agreement to engage in conduct. To be affirmative, the agreement must be demonstrated through clear words or actions and must be informed and voluntary. A person who wants to engage in a specific sexual activity is responsible for obtaining Consent for that activity. Lack of protest does not constitute Consent. Lack of resistance does not constitute Consent. Silence and/or passivity also do not constitute Consent.

Consent to one form of sexual activity does not, by itself, constitute Consent to another form of sexual activity. Consent to sexual activity on a prior occasion does not, by itself, constitute Consent to future sexual activity. In cases of prior relationships, the manner and nature of prior communications between the parties and the context of the relationship may have a bearing on the presence of Consent.

Consent may be withdrawn at any time. An individual who seeks to withdraw Consent must communicate, through clear words or actions, a decision to cease the sexual activity. Once Consent is withdrawn, the sexual activity must cease immediately.

Consent cannot be obtained through physical violence, threats, intimidation, or coercion.

a) Physical violence means that a person is exerting control over another person through the use of physical force. Examples of physical violence include hitting, punching, slapping, kicking, restraining, choking, and brandishing or using any weapon.

b) Threats are words or actions that would compel a reasonable person to engage in unwanted sexual activity. Examples include threats to harm a person physically, to reveal private information, to harm a person's reputation, or to cause a person academic or economic harm.

c) Intimidation is an implied threat that menaces or causes reasonable fear in another person. A person's size, alone, does not constitute intimidation; however, a person's size may be used in a way that constitutes intimidation (e.g., blocking access to an exit).

d) Coercion is the use of an unreasonable amount of pressure to gain sexual access. Coercion is more than an effort to persuade, entice, or attract another person to engage in sexual activity. When a person makes clear a decision not to participate in a particular activity, a decision to stop a particular activity, or a decision not to go beyond a certain activity, continued pressure can be coercive. In evaluating whether coercion was used, the University will consider: (i) the frequency of the application of the pressure, (ii) the intensity of the pressure, (iii) the degree of isolation of the person being pressured, and (iv) the duration of the pressure.

Consent also cannot be obtained by taking advantage of the Incapacitation of another, where the person initiating sexual activity knew or reasonably should have known that the other person was Incapacitated. In evaluating Consent in cases of alleged Incapacitation, the University asks two questions: (1) Did the person initiating sexual activity know that the other party was Incapacitated? And if not, (2) Would a sober, reasonable, lay (i.e., non-medical professional) person in the same situation have known that the other party was Incapacitated? If the answer to either of these questions is “YES,” Consent was absent.

Incapacitation: Incapacitation means that a person lacks the ability to make informed, rational judgments about whether or not to engage in an activity. A person may be Incapacitated as a result of the consumption of alcohol and/or other drugs, mental or physical helplessness, sleep, unconsciousness, lack of awareness that an activity is taking place or due to a temporary or permanent physical or mental health condition. Incapacitation as a result of consumption of alcohol and/or drugs is a state beyond drunkenness or intoxication. A person is not necessarily Incapacitated merely as a result of drinking or using drugs.

Evaluating Incapacitation requires an assessment of an individual’s abilities to:

- Communicate a choice
- Understand relevant information
- Reason about choices; and/or
- Appreciate the consequences of a situation.

Potential indicators of Incapacitation include (1) an inability to understand or answer questions such as: “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?; (2) slurred or incomprehensible speech; (3) unsteady gait; (4) combativeness; (5) emotional volatility; (6) vomiting, or (7) incontinence.

Title IX Coordinator: The Title IX Coordinator is the University employee responsible for coordinating the University’s compliance with and enforcement of Title IX and this policy.

Complainant: An individual who is alleged to be the victim of prohibited conduct.

Respondent: An individual who has been reported to be the perpetrator of conduct that could constitute prohibited conduct.

Confidential Employee: Faculty member or formal Academic Advisor

Non-Confidential Employee: Any employee who is not a Confidential Employee. This includes students who are serving as Graduate Teaching Assistants, and all other student-employees, when disclosures are made to any of them in their capacities as employees.

Formal Complaint (Grievance): A document or electronic submission (e.g., email, or online form) filed by a Complainant or the Title IX Coordinator with the Title IX Coordinator alleging prohibited conduct against a Respondent and requesting that the University investigate the allegation of prohibited conduct. A Formal Complaint filed by a Complainant must contain a physical or digital signature or otherwise indicate that the complainant is the person filing the Formal Complaint.

Supportive Measures: Non-disciplinary, non-punitive individualized services offered as appropriate and as reasonably available without fee or charge to a Complainant or Respondent that (1) restore or preserve equal access to the University employment or education programs and activities, without unreasonably burdening the other party, (2) protect the safety of the parties or the University community, or (3) deter prohibited conduct.

The University is required by the Title IX Regulations to use these definitions for sexual harassment under Title IX.