

## STUDENT SEXUAL MISCONDUCT POLICY- KEY DEFINITIONS

For the complete definitions please view the [policy here](#).

### INVOLVED PERSONS

**Complainant:** Individual reported to have experienced prohibited conduct, regardless of whether the person makes a report or seeks disciplinary action.

**Respondent:** Individual accused of prohibited conduct.

**Witness:** Individual who may have information relevant to a report of sexual misconduct.

**Advisor:** A person who supports a party and provides advice on procedural matters. An advisor may be a family member, an attorney, or any third party. Parties have the right to have an advisor of their choice, their advisor may be present with them at any meetings, interviews or hearings. Parties may consult with their advisor at any time. Advisors do not have speaking privileges at investigatory interviews or adjudicatory hearings.

### PROHIBITED CONDUCT

**Non-Consensual Sexual Intercourse or Penetration (Rape):** the 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 consent.

**Non-Consensual Sexual Contact (Fondling):** intentional sexual touching, however slight, with any body part or any object, without consent.

**Sexual Exploitation:** behavior that takes, or facilitates the taking of, non-consensual sexual advantage of any person to benefit any other person when the behavior does not otherwise constitute a sexual misconduct violation.

**Intimate Partner Violence** means dating and domestic violence.

**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.

**Other Sexual Misconduct** – inappropriate sexual behaviors not otherwise covered in this policy.

**Sexual/Gender-Based Harassment** is unwelcome sexual or gender based verbal or physical conduct that unreasonably interferes with or deprives others of their right to access and benefit from the programs and services of the University.

*Hostile Environment harassment-* harassing conduct that is sufficiently severe, pervasive/persistent and objectively offensive that it substantially interferes with the

conditions of education or employment, from both a subjective (the student's) and an objective (reasonable person's) viewpoint. The determination of whether an environment is "hostile" will be based on all of the circumstances.

*Quid-pro-Quo Harassment*- unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature; and submission to or rejection of such conduct results in adverse educational access or employment action.

**Retaliation:** Any harassment or adverse action taken against a person because of that person's participation in a complaint or investigation of sexual misconduct is treated as a separate violation and will result in immediate action by the University to stop the retaliatory behavior, prevent further violations by the perpetrator, and remedy any adverse impact of the violation.

**False Reports:** Intentionally making a report of prohibited conduct to a University official knowing, at the time the report was made, that the prohibited conduct did not occur and the report was false.

**Attempted Violations:** A person commits an attempted violation, when, with intent to commit a specific violation, he does any act which constitutes a substantial step toward the commission of that violation. The University will treat attempts to commit any of the violations described in this policy as if those attempts had been completed.

### **ADDITIONAL DEFINITIONS**

**Consent to sexual activity** is informed, knowing, voluntarily and freely given permission to engage in mutually agreed upon sexual activity. The University will apply a reasonable person standard in determining whether or not consent was given, unless otherwise required by law.

- The person giving consent must be capable of doing so freely, with the ability to understand what they are doing and the specific details (who, what, when, where, and how) of the sexual contact they are consenting to.
- Consent may be given by words or actions, as long as those words or actions create mutually understandable permission regarding the conditions of sexual activity.
- It is the obligation of the person initiating sexual contact to obtain clear consent for the specific type of sexual contact sought.
- Lack of protest does not constitute consent. Silence or passivity without words or actions that communicate mutually understandable permission cannot be assumed to convey consent.
- Use of violence, threats, coercion or intimidation invalidates any consent given.
- Consent for one form of sexual contact does not imply consent to other forms. For example: consent to vaginal sex does not imply consent to oral sex; consent to vaginal sex does not imply consent to anal sex.
- Past consent does not constitute consent for future sexual activity.

- Persons who are unable to give valid consent under New Jersey law are considered unable to give consent under this policy.
- Consent cannot be given by a person who is unconscious or sleeping. If consent has been given while a person is conscious or awake, and then that person becomes unconscious or falls asleep, consent terminates at that point.
- Persons who are incapacitated due to the use of drugs or alcohol cannot give consent.

**Consent to bodily harm.** When conduct constitutes a violation of this policy because it causes or threatens bodily harm, consent to such conduct or to the infliction of such harm is a defense if: (1) the bodily harm consented to or threatened by the conduct is not serious, or (2) the conduct and the harm are reasonably foreseeable hazards of joint participation in a concerted activity of a kind not forbidden by law.

**Incapacitation** is the physical and/or mental inability to make informed, rational judgements and decisions. States of incapacitation include sleep, unconsciousness, and blackouts. Where alcohol or drugs are involved, incapacitation is determined by how the substance impacts a person's decision-making capacity, awareness of consequences, and ability to make informed judgements. In evaluating whether a person was incapacitated for purposes of evaluating effective consent, the University considers two questions:

- (1) Did the person initiating sexual activity know that their partner was incapacitated? And if not,*
- (2) Should a sober, reasonable person in the same situation have known that their partner was incapacitated?*

If the answer to either of these questions is "yes," effective consent was absent.