

Sexual Misconduct (Title IX) Policy – Violation Elements

Jurisdiction

Regulatory:

1. Occurred in the United States; and
2. Alleged conduct occurred in an Education Program or Activity (as those terms are defined in the policy); and
3. Alleged conduct, if true, would constitute a category of Regulatory Prohibited Conduct (includes Dating Violence, Domestic Violence, Sexual Assault, Regulatory Quid Pro Quo Sexual Harassment, Regulatory Hostile Environment Sexual Harassment, and Stalking)

Nonregulatory:

Conduct that does not meet any of the three criteria, above, but, if true, would constitute covered prohibited conduct

Relevant Definitions

Consent:

1. Knowing and Voluntary agreement;
 - a. Not made as a result of coercion, intimidation, force, or threat of harm;
 - b. Made when an individual is not incapacitated due to alcohol or drug use or sleep or otherwise without capacity; to
2. To engage in specific sexual activity;
3. At the time of the activity and ongoing through the activity;
4. Communicated through clear actions and/or words;
5. Where the communication is mutually understood.

Education Program or Activity:

1. Any activity that occurs in, on, or within:
 - a. Any on-campus premises;
 - b. Any off-campus premises the University has substantial control over (including buildings or property owned or controlled by a recognized student organization or recognized affiliated entity); or
 - c. Computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of the University's programs and activities over which the University has substantial control

Policy Violations

Dating Violence:

1. An act or acts of violence committed against the Complainant by a person who:
 - a. Is or has been in a social relationship of a romantic or intimate nature with the Complainant; or

- b. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - i. Length of the relationship;
 - ii. Type of relationship;
 - iii. Frequency of interaction between persons involved in the relationship;

(Dating Violence can include but is not limited to sexual abuse, physical abuse, or threats of such abuse. Dating Violence does not include acts covered under Domestic Violence.)

Domestic Violence:

1. An act or acts of violence committed against the Complainant;
2. The Violent act was committed by:
 - a. A current or former spouse or intimate partner; or
 - b. A person with whom the Complainant shares a child in common; or
 - c. A person cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner; or
 - d. A person similarly situated to a spouse of the Complainant under PA's domestic or family violence laws; or
 - e. 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 PA.

Retaliation:

1. An action
2. Aimed (directly or through others) to a deter reasonable person or persons from making a report of sexual misconduct or participating in an investigation or hearing
3. That is done in response to reporting or participating in such activities

(Examples of Retaliation can include: intimidation, threats, coercion, or discrimination.)

(A finding for retaliation is not dependent on a finding the underlying sexual misconduct occurred).

Sexual Assault:

1. Sexual act;
2. Directed against the Complainant
3. When Consent is not present.

(Sexual Assault Includes)

Sexual Penetration Without Consent

1. Any penetration of the mouth, sex organs, or anus of the Complainant by any object or part of the body;
2. When Consent is not present.

Sexual Contact Without Consent

1. Knowingly;
2. Touching or fondling a Complainant's genitals, breasts, buttocks, or anus or touching with one's own genitals or breasts; or
 - a. Touching or fondling may be done directly or indirectly through clothing, bodily fluids or with an object

3. Inducing another person to similarly touch or fondle oneself or someone else;
4. When Consent is not present.

Statutory Sexual Assault

1. Any sexual activity;
2. With a person defined by PA law as being unable to give consent due to age, defined as:
 - a. Any minors under the age of 13; or
 - b. Minors 13-15 engaging in sexual activity with individuals 4 years or more than 4 years older than the minor; or
 - c. Minors 16 years of age engaging in sexual activity with individuals who have authority over the minor as defined in PA's institutional sexual assault statute.

Sexual Exploitation:

1. Engaging in sexual behaviors
2. Whether directly, or via electronic means, methods or devices
3. Where sexual behavior is
 - a. Directed towards or involving another person; or
 - b. Uses another person's sexuality;
4. For the purposes of sexual gratification, financial gain, personal gain, or personal advantage;
5. When Consent is not present.

Examples of Sexual Exploitation:

Sexual voyeurism – 1) Permitting others to witness or observe, 2) sexual or other intimate activity of another person, 3) when Consent is not present.

Indecent Exposure – 1) exposing ones private or intimate parts, or 2) inducing others to expose their private or intimate parts, 3) when Consent is not present.

Recording or Distributing – 1) information or 2) images or 3) recordings of 4) any person engaged in sexual or intimate activity, 5) in a private space, 5) when Consent is not present.

Prostituting another individual – 1) induce another person, 2) to engage in sexual activity, 3) for the sake of personal or financial gain

Knowing STD Exposure– 1) Knowingly, 2) exposing another person to and STD or virus, 3) without that person's knowledge.

Inducing Incapacitation – 1) Inducing another person, 2) to become incapacitated, 3) in order to make them vulnerable, 4) to non-consensual sexual activity.

Regulatory Quid Pro Quo Sexual Harassment:

1. An Employee;
2. Conditioning the provision of aid, a benefit, or a service of the University;
3. On the Complainant's participation in unwelcome sexual conduct
4. Regulatory jurisdiction:
 - a. Occurred in the United States

- b. Alleged conduct occurred in an Education Program or Activity (as those terms are defined in the policy)

Quid Pro Quo Sexual Harassment:

1. An Official, Volunteer, or Student;
2. Conditioning the provision of aid, a benefit, or a service of the University;
3. On the Complainant's participation in unwelcome sexual conduct
4. Regulatory jurisdiction:
 - a. Occurred in the United States
 - b. Alleged conduct occurred in an Education Program or Activity (as those terms are defined in the policy)

Regulatory Hostile Environment Sexual Harassment:

1. Unwelcome conduct;
2. On the basis of sex;
3. That a reasonable person would determine is so:
 - a. Severe;
 - b. Pervasive; and
 - c. Objectively offensive
4. That the unwelcome conduct effectively denies a person equal access to the University's Education Program or Activity;
5. Regulatory jurisdiction:
 - a. Occurred in the United States
 - b. Alleged conduct occurred in an Education Program or Activity (as those terms are defined in the policy)

Non-Regulatory Hostile Environment Sexual Harassment:

1. Unwelcome conduct;
2. On the basis of sex;
3. That a reasonable person would determine is sufficiently:
 - a. Severe;
 - b. Pervasive; and
 - c. Objectively offensive
4. That the unwelcome conduct unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from any educational, employment, social, or residential program offered in connection with the University.

Regulatory Stalking:

1. Engaging in two or more acts;
2. Directly, indirectly, or through third parties
3. Directed at the Complainant;
4. Carried out by any action, method, device or means to:
 - a. follow, monitor, observe, survey, threaten, or communicate
 - b. to or about a person
 - c. in a prohibited way, or in a way that interferes with a person's property;
5. That would cause a reasonable person to:
 - a. Fear for their safety or the safety of others;

- b. Suffer substantial emotional distress.
- 6. Regulatory jurisdiction:
 - a. Occurred in the United States
 - b. Alleged conduct occurred in an Education Program or Activity (as those terms are defined in the policy)

Non-Regulatory Stalking

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- 5. That would cause a reasonable person to:
 - a. Fear for their safety or the safety of others;
 - b. Suffer substantial emotional distress.