



Rowan College of South Jersey

Policy: 7013
 Title: **SEXUAL MISCONDUCT AND THE RIGHTS OF VICTIMS**
 Area: Human Resources
 Approved: 07/01/19, 06/09/20
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All acts of sexual violence including dating violence, domestic violence, sexual assault, and/or stalking (“sexual violence”) are forms of sex discrimination prohibited by Title IX of the Education Amendments of 1972 and the reauthorized April 4, 2019 Violence Against Women Act, appended to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (known as the Clery Act). These acts of sexual violence have been defined by the federal Clery Act and New Jersey State (2C) Statute and detailed in administrative procedure, *7013 Sexual Misconduct and the Rights of Victims*.

The College will not tolerate sexual misconduct in any of its forms.

Under the direction of the President, the Special Assistant to the President, Diversity and Equity/Title IX Compliance (“Title IX Officer”) shall implement and ensure compliance with this policy.

The College strives to maintain a safe and welcoming environment free from acts of sexual misconduct and relationship violence. It is the intent of the College to provide safety, confidentiality, and support to victims of sexual misconduct. No person should bear the effects of sexual misconduct alone.

Definitions of Prohibited Conduct

The following behaviors constitute sexual misconduct and are prohibited under this policy. All forms of sexual misconduct are serious offenses and will result in disciplinary consequences.

1. Non-Consensual Sexual Intercourse or Penetration (Rape) means 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. Sexual Intercourse includes (a) vaginal penetration by a penis, object, tongue, or finger; (b) anal penetration by a penis, object, tongue, or finger; and (c) any contact, no matter how slight, between the mouth of one person and the genitalia of another person.

2. Non-Consensual Sexual Contact (Fondling) means any intentional sexual touching, however slight, with any body part or any object, without consent. Examples of non-consensual sexual contact may include, but not limited to, genital-genital or oral-genital contact not involving penetration; contact with breasts, buttocks, or genital area, including over clothing; removing the clothing of another person; and kissing.
3. Sexual Exploitation means the 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. Examples of sexual exploitation include, but not limited to:
 - trafficking another person;
 - taking a non-consensual video, photograph, or audio recording of sexual activity without the other's permission; taking a photograph or video of someone's private parts (including genitals, groin, buttocks, or breasts) without permission; the transmission or dissemination (including, but not limited to, distribution via social media) of such video, photograph, or audio recording without permission;
 - allowing third parties to observe private sexual activity from a hidden location (e.g., closet) or through electronic means (e.g., Skype or live-streaming of images);
 - frottage which means the act of obtaining sexual stimulation by rubbing against a person or object;
 - voyeurism or spying on persons where they have a reasonable expectation of privacy;
 - knowingly transmitting a sexually transmitted infection to another person without the other's knowledge; and
 - revenge porn which means the sharing of private, sexual materials, either photos or videos, of another person without their consent and with the purpose of either causing embarrassment or distress.
4. Intimate Partner Violence includes dating and domestic violence.
 - a. Domestic violence means a felony or misdemeanor crime of violence committed:
 - By a current or former spouse or intimate partner of the student or employee;
 - By a person with whom the student or employee shares a child in common;
 - By a person who is cohabitating with, or has cohabitated with, the student or employee as a spouse or intimate partner;
 - By any other person against an adult or youth student or employee who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
 - b. Dating violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the student or employee. The existence of such a relationship shall be determined based on a 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. Dating violence includes, but not limited to, sexual or physical abuse or the threat of such abuse.
5. 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.
 - Course of conduct means two or more acts, including, but not limited to, acts which the stalker 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.
 - Reasonable person means a reasonable person under similar circumstances and with similar identities to the reporting student or employee.
 - Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
 6. Other Sexual Misconduct means inappropriate sexual behaviors not covered previously in this section, for example, sexual activity in public places.
 7. 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 College. Sexual harassment offenses fall into two general categories;
 - a. Hostile Environment which means 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 or employee's) and an objective (reasonable person's) viewpoint. The determination of whether an environment is "hostile" will be based on the circumstances. These circumstances could include, but not limited to:
 - the frequency of the conduct;
 - the nature and severity of the conduct;
 - whether the conduct was physically threatening;
 - whether the conduct was humiliating;
 - whether the conduct was directed at a specific individual or more than one person;
 - whether the conduct arose in the context of other discriminatory conduct;
 - whether the conduct unreasonably interfered with the alleged Complainant's educational or work performance;
 - whether the statement is an utterance of an epithet which offends an employee or student, or offends by discourtesy or rudeness; or
 - whether the speech or conduct is excluded from the protections of free speech or academic freedom.
 - b. Quid Pro Quo ("this for that") means a violation of this type exists when there are:
 - Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature; and

- Submission to unwelcome advances, etc., results in preferential treatment, e.g., promotion, higher grade than earned. Rejection of sexual advances, etc. results in adverse educational access or employment action; e.g., failing grade or employment termination.
8. Retaliation means harassment or adverse action taken against a person because of that person's participation in a complaint or investigation of sexual misconduct. This will be treated as a separate violation of this policy and will result in immediate action by the College to stop the retaliatory behavior, prevent further violations by the perpetrator, and remedy any adverse impact of the violation.
 9. False Reports means intentionally making a report of prohibited conduct to a College official knowing, at the time the report was made, that the prohibited conduct did not occur and the report was false.
 10. Attempted Violations means a person commits an attempted violation when, with intent to commit a specific violation, he/she does any act which constitutes a substantial step toward the commission of that violation. The College will treat attempts to commit any of the violations described in policy or procedure as if those attempts had been completed.

I. Additional Definitions

1. Consent

- a. Consent to sexual activity is informed, knowing, voluntary, and freely given permission to engage in mutually agreed upon sexual activity. The College will apply a reasonable person standard in determining whether or not consent was given, unless otherwise required by law.
 - i. 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 to which they are consenting.
 - ii. 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. Consent can be withdrawn at any time.
 - iii. It is the obligation of the person initiating sexual contact to obtain clear consent for the specific type of sexual contact sought.
 - iv. 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.
 - v. Use of violence, threats, coercion, or intimidation invalidates any consent given.
 - vi. 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 of vaginal sex does not imply consent to anal sex.
 - vii. Past consent does not constitute consent for future sexual activity.
 - viii. Persons who are unable to give valid consent under New Jersey law (i.e., minors, individuals with mental health disabilities) are considered unable to give consent under this policy. See N.J.S.A. 2C: 4-2.

- ix. 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.
 - x. Persons who are incapacitated due to the use of drugs or alcohol cannot give consent.
2. Consent to bodily harm 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.
3. Incapacitation
- a. 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.
 - b. In evaluating whether a person was incapacitated for purposes of evaluating effective consent, the College 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?
 - c. If the answer to either of these questions is 'yes', effective consent was absent.
 - d. For purposes of this policy, incapacitation is a state beyond drunkenness or intoxication. A person is not incapacitated merely because they have been drinking or using drugs. The standard for incapacitation does not rely on technical or medical definitions, but instead focuses on whether a person has the physical and/or mental ability to make informed, rational judgements and decisions.
 - e. A person who initiates sexual activity must look for the common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation. Although every individual may manifest signs of incapacitation differently, typical signs include slurred or incomprehensible speech, unsteady gait, combativeness, emotional volatility, vomiting, or incontinence. A person who is incapacitated may not be able to understand some or all of the following questions, "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?"
 - f. Because the impact of alcohol and other drugs varies from person to person, one should be cautious before engaging in sexual contact or intercourse when either party has been drinking alcohol or using other drugs. The introduction of alcohol or other drugs may create ambiguity for either party as to whether

effective consent has been sought or given. If one has doubt about either party's level of intoxication, the safe thing to do is to forego all sexual activity.

Reporting Sexual Misconduct

Employees and/or students should report sexual violence occurring either on or off campus to the Title IX Officer or a Campus Security Authority, a Clery term for those individuals that include any official with significant responsibility for student and campus activities such as, but not limited to, a dean, department chair, faculty member, staff advisor, or coach. The College recommends that the victim report incidents in a timely manner. Additionally, the College recommends that a victim of sexual violence report the crime to the law enforcement agency for the applicable municipality. The College can facilitate notification on behalf of the victim. However, filing a report will not necessarily obligate a victim to prosecute the crime and victims will have the option to decline to notify and seek assistance from law enforcement and campus authorities, if they so choose. The College will take measures to safeguard the confidentiality of those reporting incidents of sexual violence.

NOTE: Employees of the College, including part-time and volunteers ("Responsible Employees" under Title IX) have a duty to report to the Title IX Officer any and all incidents of harassment, discrimination, and sexual misconduct.

Student and employee victims of sexual misconduct have the right to be free from any pressure from campus personnel to: report crimes if unwilling to do so; report crimes as lesser offenses than the victim perceives the crime to be; refrain from reporting crimes; and refrain from reporting crimes to avoid unwanted personal publicity. Victims of sexual misconduct also have the right to choose voluntary, confidential reporting. *NJ Statute, Title 18A:61E-2- "Campus Sexual Assault Victim's Bill of Rights."* Refer to administrative procedure 7013 *Sexual Misconduct and the Rights of Victims* for confidential reporting resources on campus and off campus.

All publically available record keeping will be maintained without inclusion of personally identifiable information.

Proceedings

Disciplinary proceedings for cases involving sexual violence will be conducted in accordance with administrative procedure, 7013 *Sexual Misconduct and the Rights of Victims*. A finding under this policy will be based on the preponderance of the evidence standard, in other words, a finding will be made if the evidence as a whole shows that it is more likely than not that a violation of the sexual misconduct policy occurred.

The College, at its sole discretion, may utilize an experienced lawyer (who is not a member of the campus community) to serve as hearing officer in cases of sexual misconduct.

While the hearing officer will determine the finding after the case is concluded, the College reserves the right to impose any and all sanctions.

The Respondent (the accused party) and Complainant (the victim) are entitled to the same opportunities to be accompanied by an advisor, counsel, or other representative at his/her own expense.

The Respondent and Complainant will be notified simultaneously in writing of the outcome of the proceeding as well as any applicable appeal procedures, any change to the result before the decision becomes final, and when the result becomes final.

Sanctions Against the Violator

The College will not tolerate acts of sexual violence by any member of the College community including employees, students, and visitors. Any individual charged with sexual violence is subject to prosecution under applicable New Jersey criminal statutes.

Following an investigation, College employees found in violation of this policy are subject to prosecution and disciplinary action under applicable policies, procedures, and/or collective bargaining provisions. Sanctions that the College may impose on an employee following a final determination of responsibility include counseling, written warning, suspension and final warning, and/or termination of employment.

Students found in violation of this policy are subject to prosecution and are also subject to disciplinary action under the College's policy, *8007 Student Code of Conduct*. Sanctions that the College may impose on a student following a final determination of responsibility include warning the student, loss of privileges, restitution, disciplinary probation, suspension, or expulsion.

Confidentiality

The outcome of any proceeding is to remain confidential and will only be shared with the Respondent, Complainant, and those directly involved in the investigation. Any violation of confidentiality will be subject to disciplinary action under applicable policies, procedures, and/or collective bargaining provisions.

Retaliation

No individual will be subject to retaliation, intimidation, or discipline as a result of making a good faith complaint of sexual misconduct or harassment, or providing information in connection with another's complaint (policy, *7011 Harassment and Discrimination* and policy, *7017 Conscientious Employee Protection*).

Additional Information

Employees and/or students who report or are subjected to such incidents will be afforded reasonable accommodations to avoid hostile environments. Accommodations include a change in academic and/or working situations, e.g.; reduced hours, changed assignment, leave of absence, etc.

The College will maintain as confidential any accommodation or protective measures provided to the victim, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the accommodation or protective measures.

All employees and students who report such incidents of sexual violence will be provided with a prepared, standardized, and written notification regarding counseling, health, victim advocacy, legal assistance, mental health, visa and immigration assistance, student financial aid, and other services available both on campus and in the community. This information will include a victim's right to obtain a restraining order, a no contact order, as well as, information regarding the preservation of evidence.

Pursuant to Clery Act Amendments Violence Against Women Act (VAWA), Title IX of the Education Amendments of 1972, Civil Rights Act of 1991, Family Education Rights and Privacy Act (FERPA), and Age Discrimination in Employment Act of 1967, the President will have administrative procedures developed to implement this policy including required training for students and employees, resources and assistance available for victims, rules of confidentiality, reasonable accommodations, and reporting protocols.

References:

Rowan College of South Jersey Board of Trustees Policy Manual, *7011 Harassment and Discrimination*, *7017 Conscientious Employee Protection (Whistleblower)*, and *8007 Student Code of Conduct*

Rowan College of South Jersey Administrative Procedure, *7013 Sexual Misconduct and the Rights of Victims* and *8007 Student Code of Conduct*

Policy: 7013 Sexual Misconduct and The Rights of Victims