

# Glossary: Hampden-Sydney College Sexual Misconduct Policy

(Draft: 3/8/2016)

## Academic freedom

*Academic freedom* is defined by the American Association of University Professor's *1940 Statement of Principles of Academic Freedom and Tenure*. Faculty are entitled to full freedom in research and in the publication of the results. Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject.<sup>1</sup>

## Academic transcript

An *academic transcript* is a student's academic record, including all courses completed, all grades received, all honors received and degrees earned.

## Clery Act

The *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act*, commonly known as the "Clery Act," is a federal statute first passed in 1990. The Clery Act requires, among other things, that all institutions of higher education participating in federal financial aid programs maintain and publicly report information about crime on or near campus.

## Complaint

A *complaint* under this policy is an allegation of sexual misconduct levied against another individual, or individuals, and reported to the College. The complaint resolution process is fully explained in the College's Sexual Misconduct Policy.

## Commonwealth's Attorney

A *commonwealth's attorney* is an elected prosecutor of felony crimes in the Commonwealth of Virginia. A *commonwealth's attorney* is an elected constitutional

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<sup>1</sup> American Association of University Professors, <http://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure>, checked on 12/18/15.

officer who serves as the senior law enforcement official in his or her jurisdiction (i.e., a county or city).

### Consent

*Consent* is voluntary, informed, and actively given using words and/or actions that clearly indicate permission to engage in mutually agreed-upon sexual activity. *Consent* cannot be obtained by force including physical violence, threats, intimidation, or coercion. As a matter of law *consent* may never be given by minors (even if the other participant was unaware of the minor's age), mentally disabled individuals (even if the other participant is unaware of the disability), or individuals who are incapacitated. The individual who initiates sexual activity is responsible for obtaining *consent*. Either party may withdraw consent at any time. Withdrawal of consent should be outwardly communicated by words or actions that clearly indicate a desire to end sexual activity. In order to avoid confusion or ambiguity, participants should talk to each other before engaging in sexual activity. Participants should also stop and clarify mutual willingness to continue any sexual activity if confusion or ambiguity arises. Consent cannot be inferred from silence, passivity, lack of resistance, or lack of an active response alone.

### Criminal complaint

A *criminal complaint* charges a named or unknown person with one or more criminal offenses. Some acts of sexual misconduct under this policy may also constitute criminal behavior. In such cases a victim may choose to pursue a criminal complaint with law enforcement personnel and/or a complaint utilizing the College's Sexual Misconduct Policy.

### Domestic or Dating violence

*Domestic violence* and *dating violence* (also known as *intimate partner violence*), includes any threat or act of violence that occurs between two individuals who are currently or were previously in a sexual, dating, spousal, domestic, or other intimate relationship. *Intimate partner violence* is the willful intimidation, physical assault, battery, sexual assault, and/or other abusive behavior as part of a pattern of power and

control perpetrated by one intimate partner against another. It includes physical violence, sexual violence, psychological violence, and emotional abuse.<sup>2</sup>

### Explanation of benefits (EOB)

An *explanation of benefits* form is a document used by insurance carriers to detail medical services rendered by a health care provider; the cost of services and materials, copays, coinsurance, or deductibles paid by a covered individual; and amounts paid by the insurance company. After an individual seeks medical attention and provides insurance information for billing, an *EOB* is sent to the primary insured person, either by mail or electronically.

### Family Educational Rights and Privacy Act of 1974 (FERPA)

The *Family Educational Rights and Privacy Act* is a federal statute that protects the privacy of student educational records that are maintained by educational institutions that receive funding under a program administered by the U.S. Department of Education. Among other things, FERPA also provides certain access rights to eligible students.

### Final determination and final outcome letter

The *final determination* is the outcome of a sexual misconduct complaint, investigation and adjudication in which responsibility for the charges is determined as well as appropriate sanctions, if applicable. The *final outcome letter* is issued within seven days after the *final determination* is reached and is simultaneously mailed to both the complainant and the respondent. The final outcome letter states the disposition, applicable sanctions, and rights to appeal. If sanctions are imposed, the letter will indicate the disciplinary action taken, the date of the disciplinary action, and its duration.

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<sup>2</sup> See generally The Violence Against Women Act (1994) and its subsequent amendments and reauthorizations, codified in part at 42 U.S.C. § 13701 – 14040; and see 34 C.F.R. § 668.46.

## Gender

*Gender* is a range of characteristics pertaining to, and differentiating between, masculinity and femininity. These characteristics may include gender roles and gender identity.

## Gender identity and gender expression

*Gender identity* is an individual's psychological gender identification. It is not always based on sex assigned at birth. *Gender identity* is distinctly different from sexual orientation. *Gender expression* refers to external characteristics deemed masculine or feminine, such as dress, speech, behavior, grooming, or social interactions.

## Hazing

*Hazing* is recklessly or intentionally endangering the health or safety of a student or students, or inflicting bodily injury on a student or students in connection with or for the purpose of initiation, admission into or affiliation with or as a condition for continued membership in a club, organization, association, fraternity, sorority, or student body regardless of whether the student or students so endangered or injured participated voluntarily in the relevant activity.

## Hearing panel

A *hearing panel* conducts a hearing to interview and question the complainant, respondent, third-party witnesses whose testimonies may be relevant for making a finding, and otherwise to review evidence, when there is a sexual misconduct complaint.

## Heightened confidentiality

*Heightened confidentiality* may be requested by a complainant whose charge(s) have been reported to a responsible employee. If an individual's request for *heightened confidentiality* is granted, the College will only investigate the complaint to the extent possible without sharing information about the charges. Under *heightened confidentiality* information about the charges is not shared with the respondent and

there is no formal or informal complaint process. In such circumstances the College's response to the complaint may be limited.

### **Incapacitation**

*Incapacitation* occurs when an individual is incapable of self-care and consequently cannot make informed, rational judgments about whether or not to engage in sexual activity. An incapacitated individual may be temporarily or permanently mentally or physically helpless, asleep, unconscious, or unaware of his or her surroundings (or that sexual activity is taking place), or otherwise incapable of making informed, rational judgments and decisions. This may or may not be due to alcohol or drug consumption or some other physical or mental health condition. Some signs of incapacitation include, but are not limited to, an individual who is unaware of where he or she is, or is unable to stand up and walk without assistance. A person initiating sexual activity should attempt to discern if his or her desired partner is incapacitated. If a reasonable person, in the respondent's place, could have known, or should have known that the complainant was incapacitated, then regardless of the actions of the complainant, consent cannot be obtained.

### **Interim measures**

*Interim measures* are actions taken by the College to ensure the safety and well-being of an individual subsequent to the receipt of a sexual misconduct complaint, but prior to the final determination. *Interim measures* are designed to ensure that a complainant is not denied equal access to the College's education programs and activities during the complaint resolution process, or to protect the campus community at large. Examples of *interim measures* may include relocating a student to a different residence hall, providing a security escort, barring contact between two or more individuals, or increased security measures on campus.

### **Investigative report**

An *investigative report* is a document written by investigators that details evidence and testimony that is provided by the complainant, respondent, witnesses, and

through the investigators' own discovery or inspections, and which may have a bearing on the charges included in the complaint. The *investigative report* does not draw conclusions or determine if a preponderance of evidence supports the charges.

### **Non-consensual sexual touching**

*Non-consensual sexual touching* is intentional and unwelcome sexual touching (including undressing or sexually exposing another person) without their consent. It also includes coercing or forcing, or attempting to coerce or force another person to touch themselves, or have sexual contact with another individual. Non-consensual sexual touching includes genital-genital or oral-genital contact not involving penetration; contact with the breasts, buttocks, or genital area, including over clothing; removing the clothing of another person; and kissing.

### **Office of Civil Rights (OCR)**

The *Office of Civil Rights (OCR)* is part of the U.S. Department of Education whose mission "is to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights." The *OCR* is responsible for resolving discrimination complaints against educational institutions on the basis of race, color, national origin, sex, disability, or age.

### **Physical Evidence Recovery Kit (PERK)**

A *Physical Evidence Recovery Kit (PERK)* is a term used in the Commonwealth of Virginia to describe a container of materials, instructions, and checklists to collect and package specimens collected during a forensic exam following sexual assault. Ideally this type of forensic exam should be conducted within 72 hours of a sexual assault. The term "rape kit" is commonly used by laypeople to describe a *PERK*. The forensic exam is conducted by a specially trained nurse, known as a Sexual Assault Nurse Examiner (SANE).

### **Personally identifiable information**

*Personally identifiable information* includes (but is not limited to) a student's name, the name of a student's parents or legal guardians, a student's college address, home address, personal identifiers (e.g., social security number, student identification number, etc.), or other information that may be used to identify an individual student.

### **Preponderance of the evidence standard**

The U.S. Department of Education, Office of Civil Rights requires that campus Title IX administrative procedures utilize a *preponderance of the evidence standard* to determine responsibility for charges of sexual misconduct. The *preponderance of the evidence standard* is met when the greater weight of evidence supports the determination at issue; that is, that the determination is "more likely than not" accurate or that the evidence points to at least a 51% probability that one side should prevail.

### **Rape**

*Rape* is an act of completed or attempted sexual intercourse or penetration (i.e., anal, oral, or vaginal), however slight, with any body part or any object, by one person upon another person without consent.

### **Resolution**

A *resolution* to a sexual misconduct case includes the final determination to a charge of sexual misconduct, as well as any sanctions (if applicable), extensions of interim measures beyond the conclusion of the resolution process, and other steps taken by the College to eliminate sexual misconduct, prevent reoccurrences, and remedy the effects of sexual misconduct on the complainant.

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### **Responsible employee**

A *responsible employee* is any College employee who has the authority to take action to redress sexual misconduct, or who an individual student or employee could reasonably believe has this authority. *Responsible employees* include:

- The Title IX Coordinator (or interim Title IX Coordinator) and Deputy Coordinators and every person identified as a Campus Security Authority under the Clery Act
- Residential advisors
- All members of the faculty
- Athletic coaches
- College librarians
- Employees in the Office of Student Affairs, Office of Academic Success, and Office of Human Resources
- Campus police officers
- Dean of Students
- Provost and Dean of Faculty
- Dean of Admissions
- Vice President for Business Affairs and Finance
- Director of Athletics
- Vice President for Strategy, Administration, and Board Affairs
- Vice President for Institutional Advancement
- President of the College

## Retaliation

*Retaliation* occurs when an individual intimidates, threatens, coerces, or in any way discriminates or takes an adverse action against an individual because that individual is in the process of procuring any right or privilege secured by federal and state civil rights laws or has done so in the past. Protections against *retaliation* extend to individuals who bring concerns about possible civil rights problems to the College's attention, including publicly opposing sexual violence or filing a complaint with the College, or any state or federal agency. Protections against *retaliation* also extend to individuals who testify or participate in any manner in a sexual misconduct investigation or proceeding.

## Review Committee



When the College receives a report that an act of sexual violence has been committed against a student, as mandated by Virginia law the Title IX Coordinator will report the charge to the *Review Committee*, which shall meet within 72 hours of receiving a report of an act of sexual violence. The members of the *Review Committee* will include at least a Title IX Coordinator or designee, a representative of Campus Police, and a student affairs representative. If the *Review Committee* determines that disclosure of the information regarding the alleged act of sexual violence is necessary to protect the health and safety of the victim or other individuals, the representative of law enforcement on the *Review Committee* will forward information about the charge, including personally identifiable information, to the law-enforcement agency with jurisdiction for investigation of the alleged act. In other situations the *Review Committee* may make a report, without identifying information, to the appropriate Commonwealth Attorney.

### **Sexual assault**

*Sexual assault* is any actual, attempted, or threatened sexual act with another individual without that person's consent. It includes but is not limited to:

- Intentional and unwelcome sexual touching (non-consensual touching) or coercing or forcing another person to touch themselves, or another individual;
- Any sexual act where force, violence, coercion, or deception is used;
- Any sexual act when a victim is unable to give consent;
- Rape or attempted rape;
- Hazing acts of a sexual nature;
- Sexual intimidation; and
- Non-consensual sexual intercourse.

### **Sexual Assault Nurse Examiner (SANE)**

A *Sexual Assault Nurse Examiner (SANE)* is a registered nurse who is specially trained to provide medical forensic care to a survivor of sexual abuse or sexual assault.

### **Sex discrimination**

*Sex discrimination* (also known as *gender-based discrimination*) is prohibited by federal and state law. *Sex discrimination* occurs when there is adverse treatment of an individual or group of individuals because of sex, including sexual orientation, gender-identity, or gender expression. Sexual harassment (including sexual misconduct) is one type of *sex discrimination* prohibited by law. Employees are protected by civil rights laws from sex discrimination in the terms and conditions of their employment. Students and visitors are protected from sex discrimination that impacts their ability to participate in, or benefit from, the College's educational programs and activities.

## Sexual exploitation

*Sexual exploitation* occurs when a person takes sexual advantage of another person for the benefit of anyone other than that person, without that person's consent.

*Sexual exploitation* includes:

- Attempting to cause, or causing the incapacitation of another individual in order to gain a sexual advantage over such person. This may be done through alcohol, drugs, or any other means with the intent of compromising that individual's ability and agency to give affirmative consent to a sexual activity.
- Recording, videotaping, audiotaping, or photographing a sexual activity and/or an individual's intimate body parts (genitalia, groin, breasts, or buttocks) without consent.
- Disseminating or distributing images or media of private sexual activity and/or an individual's intimate body parts (genitalia, groin, breasts, or buttocks) without consent. This includes, but is not limited to, social media, text messaging, and the internet.
- Voyeurism or exceeding the boundaries of consent by allowing a third-party to observe a sexual act.
- Prostituting another individual.
- Recklessly and knowingly exposing or transmitting a sexual transmitted disease or infection to another individual.

## Sexual harassment

*Sexual harassment* includes a wide variety of behaviors ranging from verbal or visual harassment to unwelcome physical contact. *Sexual harassment* occurs when there is unwelcome conduct of a sexual nature, or unwelcome conduct of a non-sexual nature that is gender-based, and that is reasonably perceived as offensive and objectionable under both a subjective and objective assessment of the conduct. *Sexual harassment* encompasses conduct that is verbal, nonverbal, written, electronic, or physical. Sexual violence is considered a form of *sexual harassment*. *Sexual harassment* is a form of sexual discrimination.

*Quid pro quo harassment* occurs when there is an explicit or implied demand for sexual favors in exchange for some benefit (including a promotion, a raise, a good grade or recommendation) or to avoid some detriment (including termination, demotion, a failing grade, denial of a scholarship) in the workplace or in the classroom. By definition, it can only be perpetrated by someone in a position of power over another.

*Tangible employment action harassment* occurs when there is a significant negative change in an individual's employment status that occurs because of sex. This may include quid pro quo harassment, as well as significant negative changes in employment status enacted by a supervisor, because of an employee's sex, sexual orientation, gender identity, or gender expression.

*Hostile environment sexual harassment* is a particular type of *sexual harassment*. In cases involving employees, *hostile environment sexual harassment* occurs when unwelcome and offensive conduct of a sexual nature is sufficiently severe or pervasive that it creates a work environment that a reasonable person would consider intimidating, hostile, or abusive. Students experience *hostile environment sexual harassment* when they must endure conduct that is sufficiently severe or pervasive that it limits a student's ability to participate in or benefit from the school's educational program. A single, isolated incident of *sexual harassment* alone may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to create a hostile environment, particularly if the harassment is physical.

### **Sexual intimidation**

*Sexual intimidation* occurs when one or more persons threatens or coerces another individual to engage in unwelcome conduct of a sexual nature. *Sexual intimidation* may include threats of a physical or financial nature, as well as threats to "out" a closeted individual.

### **Sexual misconduct**

*Sexual misconduct* is any unwelcome sexual conduct and includes acts perpetrated against another individual without consent. This includes: sexual assault, sexual harassment, non-forcible sex acts, sexual exploitation, domestic violence, stalking, and dating violence. *Sexual misconduct* may occur between strangers or acquaintances and is not gender specific.

### **Sexual orientation**

*Sexual orientation* refers to an individual's physical and/or emotional attraction to either the same or other genders. *Sexual orientation* includes attractions that are heterosexual, homosexual, bisexual, asexual, or pansexual in nature.

### **Sexual stereotyping**

*Sexual stereotyping* refers to the formation or promotion of a fixed idea or image of how men or women should behave, oftentimes conforming to traditional gender roles and behaviors.

### **Sexual violence**

*Sexual violence* refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (e.g., due to the individual's age or use of drugs or alcohol, or because an intellectual or other disability prevents the individual from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. All acts of sexual violence are forms of sex discrimination prohibited by Title IX.

### **Stalking**

*Stalking* is defined as a course of conduct involving more than one instance of unwanted attention, harassment, unwanted physical or verbal contact, use of threatening words and/or conduct, or any other course of conduct directed at an individual that could be reasonably regarded as alarming or likely to place that individual in fear of harm or injury, including physical, emotional, or psychological harm. Examples

include, but are not limited to: following a person; appearing at a person's home, class, or work; continuing to contact a person after receiving requests to stop; leaving written messages, objects, or unwanted gifts; vandalizing a person's property; photographing a person; and other threatening, intimidating, or intrusive behavior. Cyber-stalking may involve the use of electronic media such as the internet, social networks, blogs, cell phones, or text messages.

### **Strict confidentiality**

*Strict confidentiality* is granted for all communications between parties in a sexual misconduct complaint and licensed professional employees in the Wellness Center, the Athletic Trainers Office, and the Chaplains employed by the College, as well as College employees who are supervised by the licensed professionals listed here. These individuals are authorized to receive reports of sexual misconduct and are not required, or permitted to share personally identifiable information with other College personnel, including the Title IX Coordinator, unless the disclosing individual gives his or her consent to the disclosure, or in limited situations as required by law (e.g., in cases of alleged sexual misconduct involving a minor, or under conditions of imminent physical harm to other individuals).

### **Support person or advisor**

A *support person or advisor* may be a friend, relative, mentor, or attorney of either a complainant or respondent in a sexual misconduct investigation and/or proceeding. The *support person* may accompany the person he/she is advising at meetings that are part of the complaint resolution process. The *support person's* role is limited; he or she may not speak on behalf of a complainant or respondent nor ask questions, address a hearing panel, cross-examine witnesses, or make other statements. A disruptive *support person or advisor* will be asked to leave any proceeding and barred from future meetings. The *support person or advisor* is bound by confidentiality.

### Threat assessment

A *threat assessment* occurs within 72 hours after the College's Title IX Coordinator has received a report that an act of sexual violence has been committed against a student. The *threat assessment* is conducted by the Review Committee, which includes the Title IX Coordinator (or a Deputy Title IX Coordinator), a representative from Campus Police, and a representative from the Office of Student Affairs. The purpose of the *threat assessment* is to determine if the alleged act of sexual violence should be reported to the law enforcement agency with jurisdiction for investigation in order to protect the health or safety of the complainant or other individuals.

### Title IX Coordinator

The *Title IX Coordinator* oversees resolution of Title IX complaints, training, and policy implementation at the college. The *Title IX Coordinator* is responsible for addressing systematic problems at the institution involving sexual misconduct and is available to meet with any individual in the community regarding concerns about issues, processes, incidents, patterns, or problems. All reports of sexual misconduct must be directed to the *Title IX Coordinator* or other designated officials as indicated in the policy.

### Title IX of the Education Amendments of 1972

*Title IX of the Education Amendments of 1972*, is a federal civil rights law, 20 U.S.C. § 1681, that prohibits discrimination on the basis of sex in educational institutions that receive federal education funding. The law states, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance." *Title IX* prohibits sex-based discrimination against both men and women students, employees, and visitors. The College has an exemption to Subpart C of *Title IX* with respect to recruitment and admission of students.