

VII. Definitions

A. Prohibited Conduct Definitions

Prohibited Conduct means one or more categories of prohibited behavior including:

- Discrimination (including Disparate Treatment);
- Discriminatory Harassment;
- Sexual Harassment, including
 - Quid Pro Quo Sexual Harassment,
 - Hostile Environment Sexual Harassment,
 - Sexual Assault,
 - Dating Violence,
 - Domestic Violence,
- Stalking,
- Retaliation, and
- Violation of Protective Measures.

Definitions for each of the types of Prohibited Conduct are provided below.

Discrimination means subjecting an individual or class of individuals to adverse action, including treating an individual or class of individuals differently (“Disparate Treatment”) on the basis of a Protected Class.

Discriminatory Harassment means unwelcome conduct of a verbal, nonverbal, or physical nature, including electronic communication, on the basis of actual or perceived Protected Class, when such conduct

- Based on the totality of the circumstances, evaluated subjectively and objectively, is sufficiently severe or pervasive that it limits or denies a person's ability to participate in or benefit from any University Program or Activity through the creation of a Hostile Environment.

Sexual Harassment means any unwelcome conduct or cues of a sexual nature, whether verbal/aural (sounds), visual/graphic (e.g. pictures and videos), physical, or otherwise, when:

- Submission to such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, education, living environment, or

Discriminatory and Sexual Misconduct Policy (Interim)

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participation in any University Program or Activity (commonly known as Quid Pro Quo);

- o Submission to or rejection of such conduct by an individual is used as the basis for or a factor in decisions affecting that individual's employment, education, living environment, or participation in a University Program or Activity (commonly known as Quid Pro Quo); and/or
- o Such conduct creates a hostile environment. A hostile environment exists when the unwelcome conduct of a sexual nature is sufficiently severe, persistent, or pervasive that it unreasonably interferes with an individual's participation in a university program or activity or creates an intimidating, hostile, offensive, or abusive environment for that individual's participation in a University Program or Activity (commonly known as Hostile Environment).

Examples of conduct that may constitute Sexual Harassment include but are not limited to:

- o Unwanted intentional touching that otherwise does not typically constitute Sexual Assault, defined in this Policy;
- o Unwanted sexual advances, including repeated unwanted requests for dates, or repeated unwanted requests for sexual contact;
- o Unwanted written, verbal, or electronic statements of a sexual nature, including sexually suggestive comments, jokes, videos or innuendos;
- o Exposing one's genitalia, breasts, or buttocks, to another; and/or
- o Touching oneself sexually for others to view.

This definition addresses intentional conduct. It also includes conduct that results in negative effects even though such negative effects were unintended. Unwelcome conduct of a sexual nature constitutes Sexual Harassment if a Reasonable Person would consider it sufficiently severe, persistent, or pervasive as to interfere unreasonably with academic, other educational, or employment performance or participation in a university activity or living environment.

Sexual Assault, Dating Violence, Domestic Violence and Stalking (based on sex) are forms of Sexual Harassment. However, for purposes of this Policy, Sexual Assault, Dating Violence, Domestic Violence and Stalking are treated as separate offenses.

Sexual Exploitation means intentionally or knowingly taking sexual advantage of another person or violating the sexual privacy of another when Consent is not present. Sexual Exploitation is a form of Sexual Harassment and includes, but is not limited to, the following actions (including when they are done via electronic means, methods, or devices):

- o Engaging in sexual voyeurism, including observing or permitting others to witness or observe the sexual or intimate activity (e.g., disrobing, bathing, toileting) of another person without that person's Consent;
- o engaging in indecent exposure, or exposing intimate parts (including genitalia, groin, breasts, and/or buttocks), or causing another to expose intimate parts, when Consent is not present;
- o recording or distributing information, images, or recordings of any person engaged in sexual or intimate activity in a private space without that person's Consent;
- o prostituting another individual;

- o causing Incapacitation of another person (through alcohol, drugs, or other means) for the purpose of compromising that person's ability to give Consent to non-consensual sexual activity; or
- o actively aiding or assisting another person in committing an act of Sexual Harassment, including Sexual Assault, Dating Violence, Domestic Violence, and/or Stalking.

Sexual Assault means a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, which includes the following acts:

- i. **Rape** means the carnal knowledge of a person, without the Consent of the victim, including instances where the person is incapable of giving consent because of their age or temporary or permanent mental or physical incapacity;
- ii. **Sodomy** means oral or anal sexual intercourse with another person, without the Consent of the victim, including instances where the person is incapable of giving consent because of their age or temporary or permanent mental or physical incapacity;
- iii. **Sexual Assault with an Object** means 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 where the person is incapable of giving consent because of their age or temporary or permanent mental or physical incapacity;
- iv. **Fondling** means the touching of the private body parts of another person for the purpose of sexual gratification, without the Consent of the victim, including where the person is incapable of giving consent because of their age or temporary or permanent mental or physical incapacity;
- v. **Incest** means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or
- vi. **Statutory Rape** means nonforcible sexual intercourse with a person who is under the statutory age of Consent in the applicable jurisdiction.

In the Commonwealth of Pennsylvania, the age of Consent for sexual activity is 16. Minors aged 16 years of age or older can legally consent to sexual activity with anyone they choose, as long as the other person does not have authority over them as defined in Pennsylvania's institutional sexual assault statute. Minors under the age of 13 cannot consent to sexual activity. Minors aged 13–15 years old cannot consent to sexual activity with anyone who is 4 or more years older than they are at the time of the activity.

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 victim and where the existence of such a relationship is determined based on a consideration of the length, type, and frequency of interactions between the persons involved in the relationship.

Domestic Violence means a felony or misdemeanor crime committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the state, or by a person similarly situated to a spouse of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; or by any other person against an adult or youth victim who is protected from that person's acts under the family or domestic violence laws of the jurisdiction.

Stalking means engaging in a course of conduct directed at a specific person that would cause a Reasonable Person to fear for their safety or the safety of others or suffer substantial emotional distress. Stalking based on sex is a form of Sexual Harassment.

Retaliation means intimidation, threats, coercion, discrimination or other adverse action against any person by the university, a Student, or an Employee, or another person authorized by the university to provide aid, benefit, or service under the University's Programs or Activities, for the purpose of interfering with any right or privilege secured by applicable federal, state, or local discrimination laws (e.g., Title IX of the Civil Rights Act of 1972, Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Pennsylvania Human Relations Act, etc.), or because the person has reported information to the university, to an external agency, or to law enforcement; made a Complaint; testified, assisted, participated, or refused to participate, in any manner in an investigation, proceeding, hearing, or alternative resolution under this Policy.

Retaliation includes retaliation by peers ("Peer Retaliation"), such as retaliation by a student against another student but also Retaliation by a student against an employee, or by an employee against a student, as well as by an employee against another employee of more or less senior role. An individual need not be a Complainant or Respondent to have committed or been affected by Retaliation. It is not Retaliation for the university to require an employee, or other person authorized by the university to provide aid, benefits, or services as part of University's Programs or Activities to participate as a witness in, or otherwise assist with, any investigation or adjudication under this Policy.

A finding of Retaliation under this Policy is not dependent on a finding that any alleged underlying Prohibited Conduct occurred. Retaliation is also prohibited by the university's Policy Against Retaliation.

Similarly, charging an individual with a code of conduct violation for making an allegedly materially false statement in bad faith in a Report, Complaint, or in the course of a grievance proceeding under this Policy does not constitute prohibited Retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

Violation of Protective Measures

Any violation of an agreement or order that limits an individual's contact or interactions with another individual. Such agreement or order may have been issued under the authority of the university; another institution; or a local, state, or federal government or court.

B. Definitions Relating to Consent

Consent means a knowing and voluntary agreement to engage in sexual activity at the time of the activity. In order to be valid, consent must be knowing, voluntary, active, present, and ongoing. Consent should be demonstrated through mutually understandable words or actions.

- Silence, remaining still or inactive (passive), or not actively resisting sexual activity does not constitute consent.
- Consent to engage in one sexual activity does not mean consent to engage in another sexual activity. Consent must be obtained each time, at each step of sexual activity.

- Prior consent does not mean future consent. Consent must be obtained each time, at each step of sexual activity, even for those in an ongoing sexual relationship.
- Consent can be withdrawn at any time. If one individual withdraws consent through clear words or actions, the other person must cease sexual activity immediately.
- Consent cannot be obtained through Force, Incapacitation, or Coercion (as defined herein).

Consent may be invalid where one party has lied to or knowingly deceived the other party as to the use of internal or external condoms or other single-use devices used to prevent the spread of sexually transmitted infections and/or pregnancy during a sexual encounter.

Force means using physical control (such as restraining a person), physical violence (such as hitting, choking, or displaying a weapon), or threats of either, to cause a person to submit to unwanted sexual activity.

Coercion means using an unreasonable amount of pressure, or threats, that would overcome the will of a Reasonable Person and cause them to submit to unwanted sexual activity.

Coercion requires more than an attempt to persuade someone to engage in sexual activity. Coercion can include threats, such as threats to cause academic, employment, reputational, or economic harm. When one person expresses that they do not consent to sexual activity or are withdrawing consent for sexual activity, applying continued pressure in order to get the person to submit to unwanted sexual activity can be considered Coercion.

Incapacitation means that a person lacks the ability to make informed, deliberate choices about whether or not to engage in sexual activity. A person is Incapacitated — unable to give consent — because they are:

- under the age of consent (*see* definition of Statutory Rape for additional information);
- physically or mentally helpless;
- asleep or unconscious; or
- unaware that sexual activity was requested, suggested, initiated and/or is taking place.

A person may be Incapacitated by the use of alcohol or other drugs. Incapacitation is a state beyond intoxication or drunkenness. A person is not necessarily Incapacitated solely as a result of drinking or using drugs; the level of impairment must be significant enough to render the person unable to give Consent.

For example, a person who is Incapacitated may not be able to answer 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?

A person who is Incapacitated may also demonstrate physical signs including but not limited to:

- o slurred or incomprehensible speech;
- o unsteady manner of walking or inability to walk; and/or
- o vomiting or incontinence (a lack of voluntary control over urination and/or defecation).

If a person under the influence of alcohol or drugs decides to participate in sexual activity that they would not participate in while sober, it does not necessarily mean that the person was Incapacitated or that the Consent was not valid.

Importantly, being impaired by alcohol or other drugs is not a defense to a failure to obtain Consent.

C. Protected Class Definitions

Protected Class

Consistent with the university's Statement of Assurance, "Protected Class" means any legally-protected characteristic, including race, color, national origin, sex, disability, age, sexual orientation, gender identity, pregnancy or related conditions, marital status, parental status, family status, religion, ancestry, veteran status, genetic information or any other class protected from discrimination under federal, state, or local laws or executive orders.

Discrimination or Discriminatory Harassment based on race, color, or national origin includes conduct based on actual or perceived (i) shared ancestry or ethnic characteristics or (ii) citizenship or residency in a country with a dominant religion or distinct religious identity. This could include conduct such as use of ethnic or ancestral slurs; harassment for how a person looks, dresses, or speaks in ways linked to ethnicity or ancestry (e.g. skin color, religious attire, language spoken, tribe, caste, ethnoreligious identity, or any other physical, cultural, linguistic or social characteristics of a group from which a person descends); or stereotypes based on perceived shared ancestral or ethnic characteristics. Examples of such discrimination, include but are not limited to, antisemitic, Islamophobic, anti-Arab, anti-Asian, anti-Israel, anti-Mexican, and other biased conduct where such conduct meets the definition of any category of Prohibited Conduct under this Policy.

The following definitions of specific categories of Protected Classes are provided as a helpful resource. To the extent these definitions are inconsistent with any applicable federal, state, or local law the university will apply the applicable legal definition.

Expressing a political view or a view on world events will not be cause alone for determination that behavior is Prohibited Conduct under this Policy.

Race means the ancestry or physical or cultural characteristics associated with a certain race, such as skin color, certain facial features, or traits historically associated with race, including hair texture and/or protective hairstyles.

Color means a person's pigmentation, complexion, or skin shade or tone.

National Origin means a group of people sharing a common language, culture, ancestry,

race, and/or other social characteristics.

Sex means sex assigned at birth — The assignment and classification of individuals at birth including but not limited to male, female, or intersex and the related physical differences between the sexes, such as pregnancy.

Sexual Orientation means a person's actual or perceived predisposition or inclination toward a particular type of sexual activity or behavior.

Gender Identity means an individual's sense of their gender, which may or may not be different from their sex assigned at birth.

Pregnancy or Related Condition means (1) Pregnancy, childbirth, termination of pregnancy, or lactation; (2) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; (3) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

Note, in some jurisdictions, including the City of Pittsburgh, the "partner" of a person who is pregnant or has a pregnancy related condition is protected from discrimination and may be entitled to certain reasonable accommodations. For more information, please see Human Resource's Pregnancy Support and Accommodations Policy [pdf].

Parental Status means the status of a person who, with respect to another person who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is (1) a biological parent, (2) an adoptive parent, (3) a foster parent, (4) a stepparent, (5) a legal custodian or guardian, (6) in loco parentis with respect to such person, or (7) actively seeking legal custody, guardianship, visitation, or adoption of such person.

Marital Status means the state of being married or not married.

Family Status refers to the configuration of a person's family or their role in a family.

Disability means a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment.

Age

How old a person is.

Religion means all aspects of religious observance, religious practice, religious creed, and religious belief or nonbelief, as defined under Title VII of the Civil Rights Act of 1964 and similar federal, state and local religious discrimination laws. The term "religion" includes head coverings and hairstyles historically associated with religion and/or religious creed.

Ancestry means the common physical, cultural or linguistic characteristics of a person's ancestors.

Veteran Status means status as a person who served in any branch of the U.S. military.

Genetic Information means with respect to any person, information about (i) such person's genetic tests, (ii) the genetic tests of family members of such person, and (iii) the manifestation of a disease or disorder in family members of such person.

D. Policy Definitions

Advisor means an individual who provides support and advice for the Complainant or Respondent. The Complainant and Respondent may have an Advisor of their choice, who may be, but is not required to be, an attorney. It is a non-speaking role.

However, in a live hearing involving an allegation of Federal Rule Sexual Misconduct under Section VI.D.i, the Advisor will have a speaking role, limited to conducting cross-examination on behalf of the party they are advising. If either party does not have an Advisor present at the live hearing, the university will provide, without fee or charge to that party, a substitute Advisor of the university's choice who may be, but is not required to be, an attorney. In this event, the role of the Advisor provided by the university will be limited to the conducting of cross examination on behalf of the party that did not have an Advisor.

Complainant means a Student, Employee, or other person who is alleged to have been subject to conduct that could constitute Prohibited Conduct under this Policy. In some cases, a Complainant may be different from the person who initially reports information to the university. In the event a Complaint is brought by the IEX Office, the individual affected by the alleged Prohibited Conduct that is the subject of the Complaint remains the Complainant, and the Title IX Coordinator does not become the Complainant.

Disciplinary Sanctions

Consequences imposed on a Respondent following a determination that the Respondent is responsible for having committed Prohibited Conduct.

Employee means person who is employed by the university to perform one or more of the following roles: regular instructional faculty, supplemental instructional faculty, research track faculty, visiting faculty, librarians, archivists, curators, graduate student instructors, graduate student staff assistants, graduate student research assistants, postdoctoral research fellows, and all regular and temporary Staff.

Faculty/Faculty Member means all individuals who hold appointments on the tenure-track, research-track, teaching-track, librarian/archivist-track, and special faculty track of the university, as well as individuals holding emeritus faculty status.

Federal Rule Sexual Misconduct is a subset of Prohibited Conduct which meets the definition of Sexual Harassment in the Title IX Regulations at 34 CFR Part 106.30.

Something which meets the definition of category of Prohibited Conduct (defined above) rises to the level of Federal Rule Sexual Misconduct when it meets ALL of the following three conditions:

- o The alleged conduct was perpetrated against a person in the United States;
- o The conduct took place within the University's Programs and Activities;
- o PLUS one or more of the following conditions:
 - o A Faculty member or Staff member conditions the provision of an aid, a benefit, or a service on another Faculty member, Staff member, Student, or third party's participation in unwelcome sexual conduct (commonly known as Quid Pro Quo);
 - o A Faculty member, Staff member, Student or third party engages in unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies another person equal

access to the University's Programs or Activities (commonly known as Sexual Harassment); or

- o A Faculty member, Staff member, Student or third party engages in Sexual Assault, Dating Violence, Domestic Violence or Stalking.

Hostile Environment:

Determining whether conduct has created a Hostile Environment is a fact-specific inquiry which may include many factors such as, but not limited to: the degree to which the conduct affected the Complainant's ability to access a CMU Program or Activity; the type, frequency, and duration of the conduct; the parties' ages, roles, previous interactions, and other factors about each party that may be Relevant to evaluating the effects of the alleged unwelcome conduct; the location and context in which the conduct occurred; and other similar conduct in a CMU Program or Activity.

Other Prohibited Conduct means any Prohibited Conduct that does not meet the definition of Federal Rule Sexual Misconduct.

Complaint means a document — including an electronic submission — filed by a Complainant with a signature or other indication that the Complainant is the person filing the Complaint, or a document signed by the Title IX Coordinator, alleging Prohibited Conduct against a Respondent and requesting initiation of the procedures in this Policy to investigate the allegation(s). It is the policy of the university to confirm a Complainant's request in writing prior to initiating the grievance procedures.

A Complaint can be made by a Complainant¹ or the IEX Office as set forth in Section VI.A. A Complainant must have been enrolled, employed, or otherwise participating or attempting to participate in the university's Programs or Activities at the time the alleged Prohibited Conduct occurred in order to file a Complaint under this Policy, although the Complainant need not be enrolled, employed, or otherwise participating or attempting to participate in the university's Programs or Activities at the time the Complaint is made, although, as discussed above, this may cause a Complaint to be addressed as Other Prohibited Conduct and not Federal Rule Sexual Misconduct (which requires a Complainant to be participating or attempting to participate at the time the Complaint is made).

Preponderance of the Evidence means to prove that something is more likely than not.

Reasonable Person means a person using average care, intelligence, and judgment in the known circumstances.

Relevant

Related to the allegations of Prohibited Conduct at issue and whether or not the alleged Prohibited Conduct occurred. Questions are Relevant if they may aid in showing whether the alleged Prohibited Conduct occurred, and evidence is Relevant if it may aid a decisionmaker in determining whether the alleged Prohibited Conduct occurred. The following evidence is impermissible (and will not be considered Relevant) even if it would otherwise be considered Relevant:

- o evidence protected under a privilege recognized by federal or state law, unless the person holding the privilege has waived it voluntarily;
- o records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of

treatment to a Party or witness, unless the person has voluntarily consented, in writing, to the use of such records in the Grievance Procedures; and/or

- o evidence and questions about the Complainant's sexual interests or prior sexual conduct, unless:
 - o offered to prove that someone other than the Respondent committed the conduct alleged, or
 - o if concerning specific incidents of prior sexual activity with the Respondent which are offered to prove consent.

Such impermissible evidence will not be accessed, considered, disclosed, or used, except to determine whether one of the preceding exceptions applies.

Remedies

Measures provided, as appropriate, to a Complainant or other person whose equal access to the university's Programs and Activities was determined to have been limited or denied by Prohibited Conduct, in order to restore or preserve that person's access.

Report

Any notice of conduct that may constitute Prohibited Conduct. A Report may come from any individual, not just a Complainant. Not every Report is or will result in a Complaint.

Respondent means an individual who is reported to have engaged in Prohibited Conduct. In the event that a Complaint alleges that a university policy or practice discriminates on the basis of Protected Class, the university is not considered a Respondent. In such cases, the university will follow this Policy, including the Grievance Procedures, although the university will, necessarily, not be entitled to certain procedural rights and steps afforded to individual Respondents. In the event a Complaint against an individual Respondent is based on actions the Respondent took in accordance with a university policy or practice, the Complaint may, in the university's sole discretion, be amended to substitute the university as Respondent. This determination will be made after a consideration of factors including, but not limited to, whether the individual was, in fact, following the university policy or practice; what actions the individual took; and whether the individual could be subject to Disciplinary Sanctions.

Staff/Staff Member means all Employees of the university who do not hold faculty appointments. Staff does not include individuals whose primary relationship with the university is as a Student.

Student means a person who gained admission to the university.

University's Programs or Activities

Conduct that takes place in the "University's Programs or Activities" includes locations, events, or circumstances over which the university exercises substantial control over both the Respondent and the context in which the alleged Prohibited Conduct occurred, including any on-campus premises or any buildings or property owned or controlled by a recognized student organization on any of the university's campuses, including Carnegie Mellon University Qatar and Carnegie Mellon University Africa. However, the university will address conduct contributing to a Hostile Environment even if the underlying conduct itself occurred outside the University's Programs or Activities, including if it occurred outside the United States, and including conduct occurring online via computer and internet networks or on digital platforms, including social media sites).

¹A Complaint may also be brought by a parent, guardian, or other authorized legal representative with the legal right to act on behalf of a Complainant, where applicable.

◦ [Articles of Incorporation](#)

◦ [Bylaws of the University](#)

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