Sexual Misconduct Response & Prevention Policy

Definitions

Term	Definition
Affirmative Consent	Is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression. • Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act. • Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol. • Consent may be initially given but withdrawn at any time. • Consent cannot be given when a person is incapacitated, and a reasonable person knows or should have known that such person is incapacitated. Incapacitation occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other

	intoxicants may be incapacitated and therefore unable to consent. • Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm. When consent is withdrawn or can no longer be given, sexual activity must stop.
Dating Violence	Is any act of violence, including physical, sexual, psychological, and verbal violence, committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the victim's statement and with consideration of the type and length of the relationship and the frequency of the interaction between the persons involved in the relationship.
Domestic Violence	A pattern of coercive tactics, which can include physical, psychological, sexual, economic and emotional abuse, perpetrated by one person against an adult intimate partner, with the goal of establishing and maintaining power and control over the victim.
Employee	Shall mean and refer to any person whose primary role with the College community is as a member of the faculty, staff, and/or the Research Foundation for SUNY.
Employer	The State University of New York at Potsdam (the College)
Retaliation	The discharge, suspension, demotion, penalization or discrimination against any employee and/or student or other employment action taken against an employee in the terms and conditions of employment or action taken against a student against their status.
Sexual Activity	Shall have the same meaning as "sexual act" and "sexual contact" (A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight; (B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; (C) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or (D) the intentional touching,

	not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; (3) the term "sexual contact" means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.
Sexual Assault	Is forced, manipulated, or coerced sexual acts, which include, but are not limited to, unwanted touching of an intimate part of another person such as a sexual organ, buttocks, breast, sodomy, oral copulation, and rape by a foreign object. • **Sexual Assault I** is sexual intercourse or any sexual penetration, however slight, of another person's oral, anal, or genital opening with any object (an object includes but is not limited to parts of a person's body) without the active consent of the victim. • **Sexual Assault II** is touching a person's intimate parts (defined as genitalia, groin, breast, or buttocks), whether directly or through clothing, without the active (affirmative) consent of the victim. Sexual Assault II also includes forcing an unwilling person to touch another's intimate parts.
Sexual Discrimination	Is any behaviors and actions that deny or limit a person's ability to benefit from, and/or fully participate in the educational programs or activities or employment opportunities because of a person's sex. This includes, but is not limited to, sexual harassment, sexual assault, sexual violence by employees, students, or third parties.
Sexual Exploitation	Is nonconsensual, abusive sexual behavior that does not otherwise constitute Sexual Assault I, Sexual Assault II or Sexual Harassment. Examples include, but are not limited to, intentional, nonconsensual tampering with or removal of condoms or other methods of birth control and Sexually Transmitted Infection ("STI") prevention prior to or during sexual

	contact in a manner that significantly increases the likelihood of STI contraction and/or pregnancy by the non-consenting party; nonconsensual video or audio taping of sexual activity; allowing others to watch consensual or nonconsensual sexual activity without the consent of a sexual partner; observing others engaged in dressing/undressing or in sexual acts without their knowledge or consent; trafficking people to be sold for sex; and inducing incapacitation with the intent to sexually assault another person.
Sexual Harassment in the Educational Setting	Is any unwelcome conduct of a sexual nature and can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment of a student denies or limits, on the basis of sex, the student's ability to participate in or to receive benefits, services, or opportunities in the educational institution's program.
Sexual Harassment in the Employment Setting	Is any unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature when any of the following occurs: (1) submission to such conduct is made a term or condition of an individual's continued employment, promotion, or other condition of employment; (2) submission to or rejection of such conduct is used as a basis for employment decisions affecting an employee or job applicant; or (3) such conduct is intended to interfere, or results in interference, with an employee's work performance or creates an intimidating, hostile, or offensive work environment.
Sexual Misconduct	Is sexual harassment or sexual violence and encompasses a wide range of behavior for sexual purposes that is against another's will or at the expense of another. Sexual misconduct includes, but is not limited to sexual assault, intimate partner violence, stalking of a sexual nature, or any conduct of a sexual nature that is nonconsensual, or has the effect of threatening or intimidating another.
Stalking	Is intentionally engaging in a course of conduct, directed at a specific person, which is likely to cause a reasonable person to fear for his or her safety or the safety of others or cause that person to suffer substantial emotional damage. Examples include, but are not limited

	to, repeatedly following such person(s), repeatedly commit-ting acts that alarm, cause fear, or seriously annoy such other person(s) and that serve no legitimate purpose, and repeatedly communicating by any means, including electronic means, with such person(s) in a manner likely to intimidate, annoy, or alarm the person.
Vendor	A representative that renders goods or services and includes PACES employees.
Visitor	Also referred to as third party. Shall mean someone that is not an employee, student, or vendor.

Basis for Policy

An atmosphere of mutual respect among members of the academic community is necessary for SUNY Potsdam to function as a center of academic freedom and intellectual advancement. Any violation of mutual trust and any form of intimidation or exploitation damages the institution's educational process by undermining the essential freedoms of inquiry and expression. Students, staff, and faculty must feel personally secure for real learning to take place. As a place of work and study, SUNY Potsdam must be free of discrimination and harassment in all of its forms, including intimidation and exploitation. All students, staff, and faculty must be assured that the College will take action to prevent such misconduct, prevent its recurrence, remedy its discriminatory effects on the victim(s) and others (if appropriate), and ensure that anyone who engages in such behavior may be subject to disciplinary procedures as outlined in the appropriate collective bargaining agreement or the SUNY Potsdam Code of Conduct, "Community Rights & Responsibilities."

Sexual harassment is a form of sex discrimination, which is unlawful in the workplace under Title VII of the Civil Rights Act of 1964, as amended, and the New York State Human Rights Law. Under Title IX of the Educational Amendments of 1972, sexual harassment also is prohibited in the provision of educational services and protects students and employees from sexual harassment.

Policy

Sexual harassment is a form of workplace discrimination and employee misconduct, as well as a form of discrimination in the academic setting. All employees and students have a legal right to a workplace and a campus free from sexual harassment. Employees and students can enforce this right by filing a complaint internally with the College, or with a government agency, or in court under federal or state anti-discrimination laws, as detailed in SUNY's Discrimination and Sexual Harassment Complaint Procedure. The College has implemented measures to address and prevent sexual harassment and is taking additional affirmative steps to increase awareness of, and sensitivity to, all forms of sexual harassment in order to maintain a workplace and learning environment free of its harmful effects.

Sexual harassment is prohibited and will not be tolerated at SUNY Potsdam. In accordance with applicable law, sexual harassment is generally described as unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of employment or academic benefit or quid pro quo; or

- Submission to or rejection of the conduct is used as the basis for an employment or academic decision affecting the person rejecting or submitting to the conduct; or

- The conduct has the purpose or effect of unreasonably interfering with an affected person's work or academic performance, or creating an intimidating, hostile or offensive work or learning environment.

Sexual harassment can include physical touching, verbal comments, non-verbal conduct such as leering or inappropriate written or electronic communications, or a combination of these things. Examples of sexual harassment may include, but are not limited to:

- Seeking sexual favors or a sexual relationship in return for the promise of a favorable grade or academic opportunity;

- Conditioning an employment-related action (such as hiring, promotion, salary increase, or performance appraisal) on a sexual favor or relationship; or

- Intentional and undesired physical contact; sexually explicit language or writing; lewd pictures, social media posts, emails, notes, and other forms of sexually-offensive conduct by individuals in positions of authority, co-workers or student peers, that unreasonably interferes with the ability of a person to perform their employment or academic responsibilities.

- Physical acts of a sexual nature, such as:

    - Touching, massaging, pinching, patting, kissing, hugging, grabbing, brushing against, or poking another person's body;
    - Rape, sexual battery, molestation or attempts to commit these assaults.

- Unwanted sexual advances or propositions, such as:

- Requests for sexual favors accompanied by implied or overt threats concerning a target's job performance evaluation, a promotion or other job benefits or detriments, or an educational benefit or detriment;
- Subtle or obvious pressure for unwelcome sexual activities;
- Repeated requests for a date with someone who is not interested.

- Touching oneself sexually in front of others or using sexually-oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience, which create a hostile environment.

- Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply, because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.

- Sexual or discriminatory displays or publications, such as:

    - Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic. This includes such sexual displays on computers or cell phones and sharing such displays while in the workplace or classroom.

- Hostile actions taken against an individual because of that individual's sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity, and the status of being transgender, such as:

    - Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform his or her employment or academic duties;
    - Sabotaging an individual's work;
    - Bullying, yelling, name-calling.

Such behavior can constitute sexual harassment regardless of the sex, gender, sexual orientation, self-identified or perceived sex, gender expression, status of being transgender, or gender identity of any of the persons involved. Sexual harassment is considered a form of employee and student misconduct which may lead to disciplinary action as outlined in the appropriate collective bargaining agreement or the SUNY Potsdam Code of Conduct, "Community Rights and Responsibilities." Further, supervisors and managers may be subject to disciplinary action for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue.

Reporting Title IX Incidents

Please refer to the Grievance Policy for Addressing Formal Complaints of Sexual Harassment Under Title IX Regulations to report a Title IX incident. You should report the conduct immediately to the Title IX Coordinator, a supervisor, a faculty/staff member, University Police, Human Resources (if accused is an employee), or another reporting resource. If there is a threat or immediate danger, please contact University Police at (315) 267-2222. For more reporting resources, please visit the College's Title IX Webpage.

Retaliation

Retaliation against a person who files a complaint, serves as a witness, or assists or participates in any manner in this procedure, is unlawful, is strictly prohibited and may result in disciplinary action as outlined in the appropriate collective bargaining agreement or the SUNY Potsdam Code of Conduct, "Community Rights & Responsibilities." Retaliation is an adverse action taken against an individual as a result of complaining about or provides information regarding unlawful discrimination or harassment, exercising a legal right, and/or participating in a complaint investigation as a third-party witness. Adverse action includes being discharged, disciplined, discriminated against, or otherwise subject to adverse action because the individual reports an incident of sexual harassment, provides information, or otherwise assists in any investigation of a sexual harassment complaint. Participants who experience retaliation should contact the Title IX Coordinator and may file a complaint pursuant to these procedures.

Change History

Date	Change History
1/1/2019	New Policy Drafted
6/19/2019	Alphabetized definitions; changed retaliatory action to retaliation; added "third party" to visitor definition; added the Code of Conduct to last paragraph under Policy section; spelled out University Police's full phone number for cell phone users under Reporting Title IX Incidents section
8/14/2020	Added language to direct employees to the new Title IX Grievance Policy. Changed name to Sexual Misconduct. Added link to new Title IX Policy.

Effective Date: 7/1/2019

Responsible Party: Title IX Coordinator

Other Related Information:

Grievance Policy for Addressing Formal Complaints of Sexual Harassment Under the Title IX Regulations

SUNY's Discrimination and Sexual Harassment Complaint Procedure:
https://www.suny.edu/sunypp/documents.cfm?doc_id=451

SUNY Potsdam Title IX Webpage: https://www.potsdam.edu/about/safety/title-ix

Equal Employment Opportunity Commission

SUNY Policy Doc. No. 6502, Equal Opportunity: Access, Employment and Fair Treatment in the State University of New York