CS 20 UNIVERSITY OF PITTSBURGH POLICY (formerly 06-05-01)

CATEGORY:	HEALTH, SAFETY, AND SEXUAL MISCONDUCT
SECTION:	Sexual Misconduct and Discrimination
SUBJECT:	Sexual Misconduct
EFFECTIVE DATE:	August 14, 2020 Revised
PAGE (S):	5

I. SCOPE

This document establishes policy pertaining to the University's prohibition of sexual misconduct that does not otherwise constitute "Sexual Harassment" as specifically defined in and addressed under Policy CS 27, Title IX.

For information about reporting sexual misconduct, as well as detailed information about complaint and appeals processes, see the related Procedure CS 20, Sexual Misconduct (formerly 06-05-01).

II. POLICY

All members of the University community are expected to conduct themselves in a manner that does not infringe upon the rights of others.

The University does not discriminate on the basis of sex in employment, or in its educational programs or other activities. Sexual misconduct that affects the educational or employment environment is a form of sexual discrimination. Such conduct (to the extent it is not covered by and addressed under Policy CS 27) violates this Policy, and generally also violates federal, state or local laws. The University of Pittsburgh is committed to the maintenance of a community free from sexual misconduct.

Members of the community, guests and visitors have the right to be free from sexual misconduct, a broad term which is defined in Section IV below.

When sexual misconduct occurs, the University will act to end the conduct, prevent its recurrence, and remedy the effects on both individuals and the University community, in accordance with the accompanying Procedure CS 20 as well as related Policy and Procedure CS 27. This Policy and the accompanying Procedure shall serve as the only internal University forum of resolution and appeal of sexual misconduct complaints for members of the University community (except for complaints of Sexual Harassment covered under Policy CS 27 and except as noted in the Procedure CS 20). Discrimination which is not either sexual misconduct under this Policy or Sexual Harassment under Policy CS 27 is subject to and should be analyzed under the University's Nondiscrimination, Equal Opportunity and Affirmative Action Policy and Procedure CS 07 (formerly 07-01-03) or other appropriate policy or procedure.

III. JURISDICTION

This Policy applies to all members of the University community including all students, post-doctoral associates and post-doctoral scholars, research associates, faculty, faculty administrators, staff, staff administrators, Board of Trustee members and other University officials, whether full- or part-time, and guest lecturers, volunteers, advisory board members, and third parties such as contractors, and visitors. Third parties are prohibited from violating this Policy but are not entitled to the process provided to University community members in the accompanying Procedure. This Policy is applicable to a student on the date on which the student pays a deposit or matriculates, whichever is sooner. For faculty and staff, it is applicable when the offer of employment is accepted.

This Policy governs all University-sponsored activities and interactions involving at least one University community member (personal and/or virtual), on campus or off campus, and non-University-sponsored events that occur off University property that do or may impact the work or educational environment at the University.

Sexual misconduct may involve the behavior of a person(s) regardless of the person's gender identity or expression against a person(s) of the same or different gender identity or expression, including but not limited to transgender.

IV. DEFINITIONS

Sexual misconduct that falls within this Policy includes[1]:

A. SEXUAL HARASSMENT

1. Sexual harassment is defined as any unwelcome verbal or non-verbal sexual advances, requests for sexual favors, other verbal, virtual or physical conduct of a sexual nature and/or conduct directed at an individual(s) because of gender or gender stereotypes or identity when:

    a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or student status or participation in a University program or activity; or

    b. Submission to or rejection of such conduct is used as the basis for decisions affecting that individual with regard to employment (raises, job, work assignments, discipline, etc.) or to student status (grades, references, assignments, etc.); or

    c. Such conduct is severe or pervasive and objectively and subjectively has the effect of:
        i. Unreasonably interfering with an individual's work or equal access to education;
        ii. Creating an intimidating, hostile or offensive work or academic environment.

    d. Such conduct, if repeated, is reasonably likely to meet the standard set forth above.

2. Unwelcome behavior is an action that is not solicited or invited and is reasonably perceived as undesirable or offensive to the recipient.

3. While sexual harassment most often takes place where there is a power differential between the persons involved, it also may occur between persons of the same status. It can occur between members of the same gender as well as between members of different genders.

4. Acts that constitute sexual harassment take a variety of forms and may include but are not limited to the following unwelcome actions:

    a. Propositions, invitations, solicitations, and flirtations of a sexual nature.

    b. Threats or insinuations that a person's employment, wages, academic grade, promotional opportunities, classroom or work assignments, or other conditions of employment or academic life may be adversely affected by not submitting to sexual advances.

    c. Spoken, written or virtual expressions of a sexual nature, including sexual communications about a person's body, dress, appearance or sexual activities; the use of sexually degrading language, name calling, sexually suggestive jokes, or innuendoes, and sexually suggestive phone calls.

    d. Nonverbal behavior such as suggestive or insulting gestures, sounds or whistles; display of sexually suggestive objects or written materials, pictures, photographs, cartoons, text messages, videos, or DVD's.

    e. Inappropriate and unwelcome physical contact such as touching, patting, pinching, hugging or other sexually suggestive contact.

    f. Stalking of a sexual, or gender-related, or of a romantic nature. Please also see the definitions on the University's Department of Public Safety webpage (http://www.safety.pitt.edu/crime-report/chart-I-2014.html) and the Sexual Harassment and

[1] As noted in Section I, to the extent any prohibited conduct described herein would otherwise constitute "Sexual Harassment" as specifically defined under Policy CS 27, Title IX, all such conduct will be addressed under Policy CS 27 and its accompanying procedure. Any reference to "sexual harassment" herein is solely related to that term as it is treated under this Policy and Process.

Sexual Response Education (SHARE) webpage (http://www.share.pitt.edu/).

g. Stereotyping or generalizing about a group based on gender, gender stereotypes, or gender expression. These types of comments may constitute sexual harassment when associated with other sexual behavior or comments.

h. Illegal sexual acts such as exhibitionism (indecent exposure), or voyeurism (Peeping Tom).

i. Other acts of sexual misconduct or violence may also constitute sexual harassment.

B. SEXUAL VIOLENCE

Sexual violence is a subset of sexual misconduct. 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 a person's age or use of drugs or alcohol, or because an intellectual or other disability prevents the person 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 such acts of sexual violence are forms of sex discrimination prohibited by this Policy.

Definitions relevant to sexual violence can be found here: https://www.compliance.pitt.edu/civil-rights-compliance/title-ix-and-sexual-misconduct/title-ix-policy-definitions

Where sexual violence is involved, requests for confidentiality will be considered as set forth in Appendix B of the Procedure CS 20 on Sexual Misconduct.

C. OTHER SEXUAL MISCONDUCT

In addition to sexual harassment and sexual violence, other misconduct covered by this Policy includes stalking and sexual exploitation and any other similar form of misconduct prohibited by applicable law. Relevant definitions may be found here: https://www.compliance.pitt.edu/civil-rights-compliance/title-ix-and-sexual-misconduct/title-ix-policy-definitions

D. SEXUAL MISCONDUCT WHEN CONSTITUTIONALLY PROTECTED SPEECH IS IMPLICATED OR IN THE ACADEMIC SETTING

When constitutionally protected speech is concerned, this Policy will be applied only to the extent consistent with the First Amendment. This Policy does not prohibit legitimate academic activities, such as lectures, classroom debates, reading assignments, presentations, coursework and publications, involving content of a sexual or gender-related nature that is reasonably related to the academic topic. For example, a class on human sexuality will involve content of a sexual or gender-related nature. However, there are situations when sexual misconduct or harassment may occur in an academic setting. For example, failing a student for refusing to exchange sexual favors for a better grade would not be protected by the First Amendment and would violate this Policy. The Statement on Academic Freedom of the University's Ad Hoc Committee on Academic Freedom may provide useful guidance in determining whether the conduct at issue is reasonably related to the academic subject matter.

V. RELATIONSHIPS INVOLVING AUTHORITY OR POWER

When individuals are in positions of unequal power at the University, there is the potential for a conflict of interest, favoritism, and exploitation. In an effort to ensure that the University's educational and work environment is based on professional relationships in an atmosphere of mutual respect and trust, the University has a Policy on Consensual Relationships, Policy CS 02, (formerly 07-14-01). All policies and procedures can be found at https://www.policy.pitt.edu/.

VI. RESPONSIBILITY FOR COORDINATION OF UNIVERSITY'S EFFORTS RELATING TO SEXUAL MISCONDUCT

The University' Office of Civil Rights and Title IX in conjunction with the appropriate Responsibility Center Head or designee, is responsible for coordinating the University's response to allegations of

prohibited conduct defined herein.

Contact information for the Office of Civil Rights and Title IX can be found at https://www.wellbeing.pitt.edu/civil-rights-title-ix.

Please refer to Procedure CS 20 for guidance on reporting complaints of sexual misconduct.

VII. RESPONSIBLE EMPLOYEES AND CONFIDENTIALITY

Generally, all Pitt employees are responsible employees unless their job requires professional confidentiality, as in the case of mental health counselors, physicians, nurses, and clergy. A "responsible employee" is a University employee who has the actual or reasonably perceived duty to report or authority to help address incidents of sexual misconduct.

With respect to confidentiality, a responsible employee must report to the Office of Civil Rights and Title IX all relevant details about the alleged sexual violence shared by the survivor – including, if known, the names of the survivor and alleged perpetrator(s), any witnesses, and any other relevant facts, including the date, time, and specific location of the alleged incident.

To the extent possible, information reported to a responsible employee will be shared only with people responsible for handling the University's response to the report. A responsible employee should not share information with law enforcement without the survivor's consent or unless the victim has also reported the incident to law enforcement, or if there is a health or safety emergency. If a responsible employee receives a report of sexual misconduct, the employee shall inform the reporting individual that the employee is required to report the incident to the Office of Civil Rights and Title IX, but that the Office of Civil Rights and Title IX will keep the information confidential to the extent it is permitted to do so by law and ensure that it is only shared with those who have a need to know.

Please visit for additional information on responsible employee role.

VIII. RETALIATION

Retaliation is prohibited and will constitute separate grounds for disciplinary action. Retaliation is the act of taking adverse action against a complainant, a respondent, or any other person involved in the process based on the person's reporting or participation in the process under the Policy or this Procedure. Retaliation includes behavior on the part of the respondent or the complainant and other related persons, including, but not limited to, acquaintances, friends, and family members. Although independent action will be taken against anyone engaging in retaliation, the complainant and the respondent should not encourage such actions and will also be held responsible to the extent of their involvement in the retaliation. An individual who believes they have experienced retaliation should contact the Office of Civil Rights and Title IX, and the University will investigate the complaint. If the University determines that evidence exists to support that retaliation occurred, appropriate action will be taken regardless of the outcome of the underlying sexual misconduct complaint. This usually involves referral of the retaliation concerns to another University process for resolution, unless additional sexual misconduct is involved.

IX. TRAINING AND OTHER RESOURCES

Training and other resources are described on the University's website on Sexual Harassment and Assault Response and Education (SHARE) at http://www.share.pitt.edu.

All staff, faculty, graduate teaching and research assistants, research associates and post-docs at the University of Pittsburgh are required to complete sexual harassment prevention and response training upon hire, and at least once every four years thereafter. Additional training is also available and recommended. For a listing of available educational programs for faculty, staff and students, see http://www.share.pitt.edu/resources/prevention.

University resources include the Sexual Assault Services Wellness Center for students (Nordenberg Hall, 412-648-7930 or 412-648-7856 after 5:00 p.m.), Life Solutions for faculty and staff (http://www.hr.pitt.edu/lifesolutions), and the Office of Civil Rights and Title IX for all faculty, staff and students. For a list of University and community resources available on all University of Pittsburgh campuses, see Appendix A of the associated Procedure on Sexual Misconduct 06-05-01.

X. CHANGES TO THIS POLICY

This Policy and the associated Procedure are subject to change due to changes in the relevant laws, regulations and/or case law. The current versions, which can be found at https://www.policy.pitt.edu/, always apply.

XI. REFERENCES

Procedure CS 20 (formerly 06-05-01), Sexual Misconduct

Policy CS 27, Title IX

Procedure CS 27, Title IX

Policy CS 02 (formerly 02-04-03), Consensual Sexual, Romantic, and Intimate Relationships with Students and Between Employees

Policy CS 07 (formerly 07-01-03), Nondiscrimination, Equal Opportunity, and Affirmative Action

The Statement on Academic Freedom of the Ad Hoc Committee on Academic Freedom at the University of Pittsburgh, http://www.pitt.edu/~provost/afstatement.html