



## **APPENDIX C: DEFINITIONS WITHIN THE POLICY**

**Actual Knowledge:** means notice of sexual harassment or allegations of sexual harassment to the University's Title IX Coordinator or any official of the University who has authority to institute corrective measures on behalf of the University, also known as any Official with Authority, as defined below. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. The mere ability or obligation to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the University. Notice includes, but is not limited to, reports, complaints, and formal complaints of sexual misconduct, as defined herein. This standard is not met when the only Official with Authority with actual knowledge is the Respondent.

**Advisor:** An individual who may be, but who is not required to be, an attorney, that is selected by a Party or appointed by the University to aid the Party during the grievance process. Parties are permitted to be accompanied by the Advisor of their choice to any grievance process related meeting or proceeding. At a hearing conducted pursuant to 34 CFR § 106.45, such as a Process A hearing, Advisors are permitted to ask the other Party and any witnesses all relevant questions and follow-up questions, including those challenging credibility, on the Party's behalf, as Parties are not permitted to personally conduct cross-examination. If a Party does not select an Advisor and a hearing pursuant to 34 CFR § 106.45 is required, the University will appoint an Advisor for that Party for the purposes of conducting cross-examination.

**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 the 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.

The following six principles, along with the above definition, will be used to evaluate whether affirmative consent was given:

1. Consent to any sexual act or prior consensual activity between or with any Party does not necessarily constitute consent to any other sexual act.
2. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
3. Consent may be initially given but withdrawn at any time.
4. Consent cannot be given when a person is incapacitated, which 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 by 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.<sup>1</sup>

5. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
6. When consent is withdrawn or can no longer be given, sexual activity must stop.

**Bystander:** means a person who observes a crime, impending crime, conflict, potentially violent or violent behavior or conduct that is in violation of rules or policies of the University.

**Complainant:** means the individual who is alleged to be the victim of conduct that could constitute sexual misconduct or retaliation.

**Coercion:** means unreasonable pressure, including emotionally or physically manipulative actions or statements, or direct or implied threats, in order to compel the person to engage in sexual activity.

**Complaint:** is a Process B document filed by a Complainant (meaning a document or electronic submission (such as electronic mail) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint) or signed by the Title IX Coordinator alleging conduct that may constitute a violation of this Policy, other than Title IX sexual harassment, against a Respondent and requesting that the University investigate the allegation of misconduct. A Complaint initiates the formal Process B grievance process.

**Complainant:** means an individual who is alleged to be the victim of conduct that could constitute sexual misconduct or conduct that could constitute retaliation, as defined herein.

**Confidentiality:** may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with state and federal law, including but not limited to 20 U.S.C. § 1092(f) and 20 U.S.C. § 1681(a). Licensed mental health counselors, medical providers and pastoral counselors are examples of institution employees who may offer confidentiality. Even university offices and employees who cannot guarantee confidentiality will maintain privacy to the greatest extent possible. The information provided to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.

**Covered Non-Employees:** include all applicants for employment, interns, whether paid or unpaid, contractors and persons conducting business with the University. A covered non-employee is someone who is (or is employed by) a contractor, subcontractor, vendor, consultant, or anyone providing services in the workplace. Covered non-employees include persons commonly referred to as independent contractors, "gig" workers, and temporary workers. Also included are persons providing equipment repair, cleaning services, or any other services provided pursuant to a contract with Molloy.

**Dating Violence:** as defined by VAWA at 34 U.S.C. § 12291(a)(10), the term "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 shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of the relationship; and (iii) the frequency of interaction between the persons involved in the relationship.

**Day:** as used in this Policy means business day.

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<sup>1</sup> In New York, a person under the age of seventeen cannot legally consent to sexual activity and is considered incapacitated.

**Deliberately Indifferent:** is defined in 34 C.F.R. § 106.44(a), which states that an institution is deliberately indifferent only if its response to Title IX sexual harassment is clearly unreasonable in light of the known circumstances. Once the University has actual knowledge of Title IX sexual harassment in its education program or activity against a person in the United States, it will respond promptly in a manner that is not deliberately indifferent.

**Determination:** is a written finding by the Hearing Officer or Hearing Panel containing the required information under 34 CFR § 106.45(b)(7), including the result and rationale as to each allegation, including a determination regarding responsibility, any disciplinary sanctions to be imposed on Respondent, and whether remedies will be provided to Complainant.

**Disciplinary Sanction:** is an action taken by the University against a Respondent who has completed either the informal resolution process or formal grievance process of Process A or Process B and was found responsible for a violation of this Policy.

**Domestic Violence:** as defined by VAWA at 34 U.S.C. § 12291(a)(8), the term “domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner 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, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

**Education program or activity:** for purposes of 34 CFR §§ 106.30, 106.44, and 106.45, includes locations, events, or circumstances over which the University exercised substantial control over both the Respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University.

**Final Determination:** means the written determination containing the information required in 34 CFR § 106.45(b)(7), as modified by any appeal by the Parties. A determination becomes a final determination either on the date that the University provides the Parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

**Force:** means using physical violence and/or imposing on someone physically to engage in sexual contact or intercourse. Force can also include threats, intimidation (implied threats), or coercion used to overcome resistance. The use of force to cause someone to engage in sexual activity is, by definition, non-consensual contact, and is prohibited.

**Formal Complaint:** means a Process A document filed by a Complainant (meaning a document or electronic submission (such as electronic mail) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint) or signed by the Title IX Coordinator alleging Title IX sexual harassment against a Respondent and requesting that the University investigate the allegations. A Formal Complaint initiates Process A. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the University’s education program or activity.

**Formal Grievance Process:** means Process A and/or Process B, excluding any informal resolution process that may occur during either grievance process.

**Hearing Officer:** presides over the hearing conducted during Process A and issues a determination as defined herein.

**Hearing Panel:** presides over the hearing conducted during Process B and issues a determination as defined herein.

**Informal Resolution Process:** is an informal grievance process available under certain circumstances as an alternative to completing a formal grievance process. Should a matter be eligible for informal resolution, Parties are permitted to enter the informal resolution process at any point prior to a determination of responsibility being reached. Both Parties must consent to the informal resolution process. Additional information and restrictions can be found in section XVI.

**Intimidation:** means implied threats that reasonably cause another to fear for his/her safety or well-being.

**Investigator:** means the individual(s) appointed by Molloy to investigate the allegations of sexual misconduct and/or retaliation. Investigators are also charged with creating an investigative report that fairly summarizes relevant evidence.

**No Contact Order:** means a directive prohibiting contact between or among designated individuals through any means, direct or indirect, including personal contact, email, telephone, text message, social media, or by means of a third Party. Continued intentional contact would be a violation of University policy subject to additional misconduct and/or retaliation charges.

**Official with Authority (OWA):** means an employee of the University who has the authority to institute corrective measures on behalf of the University. The mere ability or obligation to report sexual misconduct or to inform a student about how to report sexual misconduct, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the University.

**Parties:** refers to all Complainants and Respondents involved in the case. The singular term “Party” refers to any one of these individuals.

**Preponderance of Evidence:** is the standard to determine responsibility under the University’s Policy. This means that it is more likely than not that a violation of the Policy occurred.

**Privacy:** may be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a reporting individual more than necessary to comply with applicable laws or University policy.

**Process A:** means a formal grievance process in accordance with 34 CFR § 106.45 that applies only to conduct that constitutes Title IX sexual harassment, as defined herein. Process A is initiated by the filing of a formal complaint, as defined above.

**Process B:** means a formal grievance Process that applies to all sexual misconduct and related retaliation that does not constitute Title IX sexual harassment. Complaints of sex/gender-based

discrimination and harassment that do not involve Title IX sexual harassment are covered by Process B. Process B is initiated by the filing of a complaint, as defined above.

**Remedies:** are actions taken by the University in favor of a Complainant after the Respondent has been found responsible through either the informal resolution process or a formal grievance process. Remedies are designed to restore or preserve equal access to the University’s education program or activity. Remedies can be the same as supportive measures but need not be non-disciplinary or non-punitive and need not avoid burdening Respondent.

**Report:** means information brought to the attention of the Title IX Coordinator, whether verbal or written, by any person, and which references sexual misconduct, including sexual harassment. Such a report can be made at any time (including non-business hours) in person, by mail, by phone, or by electronic mail to the Title IX Coordinator. A report is not the same as a complaint or formal complaint and will not initiate either Process A or Process B. A Party may make a report and then subsequently file a complaint or formal complaint.

**Reporting Individual:** shall encompass the terms victim, survivor, Complainant, claimant, witness with victim status, and any other term used by the University to reference an individual who brings forth a report of a violation of the Policy. This may or may not be the same as the Complainant, a witness, or a bystander.

**Respondent:** means the individual alleged to have committed acts constituting sexual misconduct or retaliation, as defined herein, regardless of whether such individual has entered into the University’s formal grievance process for responding to complaints or formal complaints of sexual misconduct described herein.

**Responsible Employee:** is a University employee who is required under this Policy to disclose knowledge of incidents of sexual misconduct or related retaliation by employees or students to the Title IX Coordinator. *This definition encompasses virtually every University employee, including all faculty, staff and administrators, except those who are acting as pastoral and professional counselors and non-professional counselors and advocates.*<sup>2</sup>

**Retaliation:** has various definitions under state and federal laws. See Section VII.

**Sex** encompasses sex, gender, sexual orientation, gender identity, and/or gender expression.

**Sexual Activity** includes any “sexual act” or “sexual contact.”

- A “sexual act” means (a) contact between the penis and the vulva or the penis and the anus where penetration occurs, 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 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;

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<sup>2</sup> The University does not have actual knowledge of knowledge and/or reports known only by a Responsible Employee who is not also an Official with Authority.

- “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 intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

**Sexual Assault:** as defined in 20 U.S.C. § 1092(f)(6)(A)(v) means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation (“FBI”).<sup>3</sup> These offenses<sup>4</sup> are defined as follows:

- Sex Offenses<sup>5</sup>: any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
  - Rape – Completed [SRS Definition]: 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 the consent of the victim. This definition includes either gender of victim or offender. Sexual penetration 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, or by a sex-related object. This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the victim to demonstrate lack of consent.
  - Rape (except statutory rape) [NIBRS Definition – to be used only when SRS is retired]<sup>6</sup>: the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
  - Sodomy: oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
  - Sexual Assault with an Object: 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 instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia, e.g., a finger, bottle, handgun, stick.
  - Fondling: the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

<sup>3</sup> The definitions herein are from the most recent Uniform Crime Reporting Program National Incident-Based Reporting System (“NIBRS”) User Manual, dated May 7, 2020, with the exception of Rape, which, in accordance with the Clery Act, is defined pursuant to the FBI’s Uniform Crime Reporting Program Summary Reporting System (“SRS”), dated June 20, 2013. Once SRS is retired, the NIBRS definition of rape shall be used.

<sup>4</sup> The 2020 NIBRS User Manual also includes as a sex offense “Failure to Register as a Sex Offender,” which is defined as “to fail to register or keep current a registration as required by state and federal laws.”

<sup>5</sup> Under the NIBRS User Manual dated 2011, available [here](#), this definition was used to describe “Sex Offenses, Forcible.” The following acts were classified as “Sex Offenses, Forcible”: Forcible Rape (Except Statutory Rape), Forcible Sodomy, Sexual Assault with An Object, and Forcible Fondling.

<sup>6</sup> It is anticipated that the FBI will retire SRS on January 1, 2021.



- Sex Offenses<sup>7</sup>: unlawful sexual intercourse
  - Incest: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - Statutory Rape: sexual intercourse with a person who is under the statutory age of consent. There is no force or coercion used in Statutory Rape; the act is not an attack.

**Sex Discrimination:** involves treating someone unfavorably because of that person’s actual or perceived sex. It occurs when, on the basis of sex, gender, sexual orientation, gender identity, including transgender status and/or gender expression, an individual or group is excluded from participation in, or denied the benefits of, any University program or activity, including admissions and employment.

**Sexual Exploitation:** means abuse or non-consensual use of another person’s sexuality or nudity without consent, for the perpetrator’s own advantage or benefit, or for the benefit or advantage of anyone other than the one being exploited. Specific conduct that constitutes sexual exploitation could, but does not necessarily, constitute Title IX sexual harassment as defined herein. Examples of sexual exploitation include but are not limited to:

- prostituting or causing the prostitution of another individual
- Voyeurism (such as non-consensual observation, photographing or video or audio recording of sexual activity of another individual or of another individual who is in a state of undress, or in a place and time where such person has a reasonable expectation of privacy, such as a bathroom or shower or changing room, without the individual’s consent)
- exceeding the boundaries of consent with another individual (such as permitting third Parties to secretly observe you engaging in sex acts with another individual)
- inducing or attempting to induce incapacitation in another individual for purposes of compromising that individual’s ability to give Affirmative Consent to sexual activity, such as by administering alcohol or drugs (such as “date rape” drugs) to another person without their knowledge or consent for the purpose of sexual activity
- employment of another individual or achievement related inducements
- knowingly exposing another person to a sexually transmitted infection or virus without the other individual’s knowledge
- disseminating, streaming or posting sexual activity of any form on social media or any other public forum without permission from the other individual
- non-consensual texting of sexual activity or images of another individual
- distributing intimate sexual information about another individual

**Sex/Gender-Based Harassment:** means unwelcome conduct based on an individual's actual or perceived sex/gender. It includes slurs, taunts, stereotypes, or name-calling as well as gender-motivated physical threats, attacks, or other hateful conduct. It occurs when one person harasses another person for reasons relating to their gender or the gender with which they identify. The harassment conduct, however, does not need to be based on anything of a sexual or sexual nature.

**Sexual Harassment:** has various definitions under state and federal laws. See Section VI.

**Sexual Misconduct:** is a broad term that encompasses a wide range of prohibited behaviors and a term used to refer to any form of discrimination, including harassment, based on actual or perceived sex,

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<sup>7</sup> Under the NIBRS User Manual dated 2011, available [here](#), the definition of “(except prostitution offenses) unlawful, nonforcible sexual intercourse” was used to describe “Sex Offenses, Nonforcible.” The following acts were classified as “Sex Offenses, Nonforcible”: Incest, Statutory Rape.

gender, sexual orientation, gender identity, and/or gender expression, sexual harassment, sexual assault, dating violence, domestic violence, stalking, sexual exploitation, and any other form of non-consensual sexual activity or related misconduct prohibited by this Policy, as well as retaliation as defined in this Policy.

**Stalking:** as defined by 34 U.S.C. § 12291(a)(30) means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress.

**Student:** means a person who has gained admission to the University.

**Supportive Measures:** means non-disciplinary and non-punitive individualized services provided by the University, free of charge, to Complainants and Respondents before or after the filing of a complaint (Process B) or formal complaint (Process A), or where no complaint or formal complaint has been filed. Supportive measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other Party, including measures designed to protect the safety of all Parties or the University's educational environment, or deter sexual harassment. Supportive measures can include various forms of services as set forth in Section XIII.

**Title IX Coordinator:** means the employee(s) designated and authorized by the University to coordinate its efforts to comply with its responsibilities under Title IX. As used in this Policy, "Title IX Coordinator" also includes any designee of the Title IX Coordinator. The Title IX Coordinator may delegate certain responsibilities under this Policy to designees, who will be appropriately trained.