

Definitions of Sexual Misconduct

Sexual Harassment is conduct on the basis of sex that satisfies one or more of the following:

- Unwelcome, gender-based verbal or physical conduct that is, conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that effectively interferes with, denies, or limits someone's ability to participate in or benefit from the College's educational program and/or activities, or
- A College employee conditioning an educational benefit or service upon a person's participation in unwelcome sexual conduct (often **called "quid pro quo"** harassment) that creates a hostile environment, or retaliation
- Harassment based on gender, sexual orientation, gender identity, or gender expression, parental, family or marital status; and/or pregnancy or related conditions. This can be in the form of verbal, nonverbal, or physical acts of aggression, intimidation or hostility based on sex/gender stereotyping. The acts themselves do not have to involve conduct of a sexual nature.
- Sexual Assault (as defined in the Clery Act), or Dating Violence, Domestic Violence or Stalking as defined in the Violence Against Women Act (VAWA) (collectively referred to as "Sexual Violence"):

- **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. It is actual or attempted sexual contact with another person, includes vaginal or anal penetration with a body part, without that person's consent by the use or threat of force. This includes but not limited to, physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to use of drugs and/or alcohol or to an intellectual or other disability.

- **Dating violence** (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act), which includes any violence (physical, emotional, psychological or sexual abuse) committed by a person:

(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) 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 relationship.

(iii) The frequency of interaction between the people involved in the relationship.

• **Domestic violence** (as defined in the VAWA amendments to the Clery Act), which includes any felony or misdemeanor crimes of violence (physical, emotional, psychological or sexual abuse) 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 Pennsylvania domestic or family violence laws 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 Pennsylvania.

Stalking

A person engages in behavior or commits acts against another person, including following the person or watching the person, stalking them on electronic social media sites, texts the person, calls them repeatedly, makes repeated threats or takes other action that causes the person to be fearful for their physical safety, their emotional well being for the purpose of pursuing, harassing or making unwelcome contact with another person.

Sexual Exploitation

A person who takes non-consensual or abusive sexual advantage of another for their own benefit. Some examples of sexual exploitation include, but are not limited to:

- Prostituting another person
- Non-consensual video or audiotaping of sexual activity
- Engaging in voyeurism
- Knowingly transmitting as STI/D or HIV to another
- Exposing one's genitals in non-consensual circumstances or encouraging another person to expose their genitals

Complainant means any individual who has reported being or is alleged to be the victim of conduct that could constitute Sexual Harassment as defined under this policy, regardless of whether a Formal Complaint has been filed. A Complainant must be the alleged victim unless a parent or legal guardian has a legal right to act on the alleged victim's behalf.

Respondent means any individual who has been reported to be the perpetrator of conduct that could constitute covered Sexual Harassment as defined under this policy.

Consent is an affirmative decision to engage willingly in mutually acceptable sexual activity given by clear words or actions. Consent must be informed, voluntary, and mutual, and can be withdrawn at any time. Consent must be given from the beginning to end of each instance of sexual activity and each form of sexual contact. The individual must have affirmatively demonstrated their willingness to participate in the sexual activity. A person can communicate that they no longer consent to continued sexual activity and the sexual activity must cease immediately. There is no consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress is used. Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent. Silence or absence of resistance does not imply consent. Consent is an active state, and it is not passive. Past consent to sexual activity with another person does not imply ongoing future consent with that person or consent to that same sexual activity with another person. A person who is not of legal age, cannot give consent.

The FBI's Uniform Crime Reporting Program (FBI UCR) includes forcible and nonforcible sex offenses such as rape, fondling, and statutory rape, which contain elements of "without the consent of the victim." October 2021 Rosemont College Title IX Sexual Harassment Policy. If a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact, nature, or extent of the sexual situation, there is no consent; this includes impairment or incapacitation due to alcohol or drug consumption that meets this standard or being asleep or unconscious.

Education Program or Activity is any Rosemont College educational program or activity on any on-campus premises, any off-campus premises that Rosemont College has substantial control over. This includes buildings or property owned or controlled by a recognized student organization and/or an activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of Rosemont College's programs and activities over which the College has substantial control.

Fondling is defined as the intentional touching of the private parts of another person for the purposes 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 incapacity.

Incapacitation is the inability to make informed, rational judgments and decisions. It may be a temporary condition or a permanent inability of a person to consent to sexual activity. If alcohol or drugs are involved, incapacitation may be assessed by evaluating how the substance has affected a person's decision-making capacity, awareness, and ability to make informed judgments. The impact of alcohol and drugs varies from person

to person; however, warning signs of possible incapacitation include slurred speech, unsteady gait, impaired coordination, inability to perform personal tasks such as undressing, inability to maintain eye contact, vomiting, and emotional volatility. The perspective of a reasonable person will be considered in the College's determination of whether a person knew, or reasonably should have known under the circumstances, whether the other party was incapacitated. Being intoxicated or incapacitated does not diminish one's responsibility to obtain consent and will not be an excuse for sexual misconduct.

Incest is defined as sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Rape is defined as 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, without the consent of the victim.

Statutory Rape is defined a sexual intercourse with a person who is under the statutory age of consent.

Formal Complaint for the purposes of this Title IX Grievance Policy, "formal 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 formal complaint, or signed by the Title IX Coordinator(s), alleging sexual harassment against a respondent about conduct within Rosemont College's education program or activity and requesting initiation of the procedures consistent with the Title IX Sexual Harassment Policy to investigate the allegation of sexual harassment. At the time of filing a Formal Complaint, the Complainant must be participating in or attempting to participate in the College's education Program or Activity with which the Formal Complaint is filed.

Preponderance of the evidence standard means that a decision of responsibility for a policy violation will be made on whether it is more likely than not that the respondent violated the policy on the totality of information gathered during the investigation.

Relevant evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true. "Relevant" evidence and questions do not include the following types of evidence and questions, which are deemed "irrelevant" at all stages of the Title IX Grievance Process:

- Evidence and questions about the complainant's sexual predisposition or prior sexual behavior unless:

- o They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or

o They concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. 34 C.F.R. § 106.45(6)(i).

• Evidence and questions that constitute, or seek disclosure of, information protected under a legally recognized privilege. • Any party's medical, psychological, and similar records unless the party has given voluntary, written consent. 85 Fed. Reg. 30026, 30294 (May 19, 2020).