

Appendix A: Definitions and Additional Guidance

Definitions of Additional Key Terms

Violence: Violence means, in the context of Dating Violence and Domestic Violence, the use of, or threatened use of, physical force with intent, effect, or reasonable likelihood of causing pain, harm, injury or damage to any person or property.

Course of conduct: Course of conduct means, in the context of Stalking, two or more acts, including but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

Substantial emotional distress: Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Coercion: Coercion means overcoming resistance or unwillingness by actual or threatened violence or undue pressure. The totality of the circumstances of the alleged Coercion will be considered including, but not limited to, the frequency, intensity, and duration of the alleged coercive behavior and whether the Complainant was isolated from others during the alleged incident.

Additional Guidance for Consent and Incapacitation

Consent

In determining whether certain forms of Sexual Harassment violate this Policy, the university must determine whether the acts alleged occurred with the Consent of the Complainant. Important considerations regarding Consent include:

- Consent to one form of sexual activity does not imply or constitute consent to another form of sexual activity.
- Consent on a prior occasion does not constitute consent on a subsequent occasion.
- Consent to an act with one person does not constitute consent to an act with any other person.

- The existence of a prior or current relationship does not, in itself, constitute consent; even in the context of a relationship, there must be real time and mutual consent to sexual activity.
- Consent can be withdrawn or modified at any time, and sexual contact must cease immediately once Consent is withdrawn.
- Consent cannot be inferred from the absence of a “no.”
- Consent cannot be inferred from silence, passivity, or lack of verbal or physical resistance, and relying on nonverbal communication alone may result in a violation of this Policy.

The age of consent in the District of Columbia is 16. Individuals younger than 16 years of age are legally incapable of giving consent to sexual acts by an individual who is four or more years older.

The age of consent in Virginia is 18. Individuals younger than 18 years of age are legally incapable of giving consent to sexual acts, unless all of the individuals engaging in the sexual act are between 15 and 17 years of age.

Incapacitation

Alcohol and other drugs impact each individual differently, and determining whether an individual is incapacitated requires an individualized determination. The university does not expect community members to be medical experts in assessing Incapacitation. Individuals should look for the common and obvious warning signs that show that a person may be incapacitated or approaching Incapacitation. A person’s level of intoxication is not always demonstrated by objective signs; however, some signs that a person may be incapacitated include clumsiness, difficulty walking, poor judgment, difficulty concentrating, slurred speech, vomiting, combativeness or emotional volatility. A person who is incapacitated may not be able to understand 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?”

An individual’s level of intoxication may change over a period of time based on a variety of subjective factors, including the amount of substance intake, speed of intake, body mass, and metabolism. It is especially important, therefore, that anyone engaging in sexual activity is aware of both their own and the other person’s level of intoxication and capacity to give consent.

It is important to remember that the use of alcohol or other drugs can lower inhibitions and create an atmosphere of confusion about whether Consent is effectively sought and freely given. If there is any doubt as to the level or extent of

one's own or the other individual's intoxication or Incapacitation, the safest course of action is to forgo or cease any sexual activity. Even where there is insufficient evidence to establish Incapacitation, a Complainant's level of impairment may still be a relevant factor in establishing whether Consent was sought and freely given.

A Respondent's voluntary impairment is never an excuse for or a defense to Sexual Harassment, and it does not diminish one's responsibility to determine that the other person has given Consent.

Appendix B: Understanding Privacy and Confidentiality

Privacy refers to the discretion that will be exercised by the university, including the Title IX Office, in the course of any process under this Policy. Information related to a report of Sexual Harassment will be handled discreetly and shared with a limited circle of university employees or designees who need to know in order to assist in the assessment, investigation, resolution of the report, and related issues. Individuals will receive training on how to safeguard private information. The university will make reasonable efforts to investigate and address reports of Sexual Harassment under this Policy, and information may be disclosed to participants in the resolution process as necessary to facilitate the thoroughness and integrity of the resolution process. In all such proceedings, the university will maintain the privacy of the parties to the extent reasonably possible. The privacy of student education records will be protected in accordance with the university's [Policy on the Privacy of Student Records](#), the Family Educational Rights and Privacy Act (FERPA), and Title IX. Access to an employee's personnel records is also governed by university policy and by applicable local laws.

Confidentiality refers to the statutory protections provided to individuals who disclose information in legally protected or privileged relationships, including professional mental health counselors, medical professionals, and ordained clergy. These professionals must maintain the confidentiality of communications disclosed within the scope of the provision of professional services and they may not disclose the protected information to any third party without the individual's permission or unless permitted or required consistent with ethical or legal obligations. Similarly, medical and counseling records cannot be released without the individual's permission or unless permitted or required consistent with ethical or legal obligations.

Clery Act Reporting

Pursuant to the Clery Act, the university includes statistics about certain offenses in its annual security report and provides those statistics to the United States Department of Education in a manner that does not include any personally identifying information about individuals involved in an incident. The Clery Act also requires the university to issue timely warnings to the university community about certain crimes that have been reported and may continue to pose a serious or continuing threat to campus safety. Consistent with the Clery Act, the university withholds the names and other personally identifying information of complainants when issuing timely warnings to the university community. Some Confidential Resources (see Appendix

C) are required to submit non-personally identifiable information about Clery-reportable crimes to the George Washington Police Department.

Appendix C: Campus, Community, and Emergency Resources; Confidential Resources

Campus, Community, and Emergency Resources

The university offers resources and assistance to impacted members of the university community regardless of whether the university ultimately determines that Sexual Harassment occurred. The university may also assist those individuals in identifying and contacting external law enforcement agencies and community resources.

For a complete and current list of campus, community, and emergency resources, please visit the university's Title IX website: titleix.gwu.edu.

Confidential Resources

As noted in the Policy, students and employees who wish to discuss Sexual Harassment in a confidential setting may consult with an individual within Confidential Resources. Confidential Resources will not disclose personally identifying information about you to the Title IX Coordinator without your permission. Some Confidential Resources also have the ability to maintain the confidentiality of communications under applicable law as discussed in the Confidentiality section of Appendix B. Speaking with a Confidential Resource about Sexual Harassment will not constitute a report to the university or law enforcement.

Confidential Resources at GW include:

Colonial Health Center (CHC). Students may contact the Colonial Health Center to obtain confidential medical and counseling services. The Colonial Health Center can be reached at 202-994-5300 or general information can be obtained at healthcenter.gwu.edu.

- Information shared with CHC medical and counseling professionals is confidential and will not be disclosed to any third party without your permission or unless required or permitted consistent with ethical or legal obligations.

Employee Assistant Program (EAP). Employees may obtain confidential counseling from the university's [Employee Assistance Program](#), which can be accessed by contacting the Wellbeing Hotline - Resources For Living at 866-522-8509.

- Information shared with EAP counseling professionals is confidential and will not be disclosed to anyone without your permission or unless required or permitted consistent with ethical or legal obligations.

Office of Advocacy and Support. Community members may contact the Office of Advocacy and Support within the Division of Safety and Facilities at 202-994-0443 or oas@gwu.edu.

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When individuals who otherwise are Confidential Resources receive information in a setting other than providing direct services to a potential reporter, the Confidential Resource may be a Designated Reporter that is required to share that information with the Title IX Coordinator. For example, a licensed psychologist in CHC who receives a disclosure in the context of speaking at a prevention program would be required to share the information with the Title IX Coordinator.

Medical Treatment and Preservation of Evidence

Regardless of whether a report is filed with local law enforcement, individuals should preserve all evidence that could be relevant to any criminal charges that may be brought or that might be needed to obtain a protection order. Individuals who have been subjected to sexual assault are encouraged to obtain a physical examination by a Sexual Assault Nurse Examiner (SANE) as soon as possible.

Before obtaining a SANE or SAFE examination, individuals should avoid showering, washing, changing clothes, combing hair, drinking, eating or altering their physical appearance. Even if a SANE exam or SAFE is not sought, all victims of violence should consider obtaining medical attention so that any issues relating to possible injury or disease from the incident may be addressed.

In the District of Columbia, a free SANE exam may be obtained at the Washington Hospital Center (WHC), 202-877-7000. Students at GW's Foggy Bottom and Mount Vernon campuses may contact GWPD at 202-994-6111 for assistance in obtaining transportation to WHC. Alternatively, students may call the DC Victim Hotline at 844-4HELPDC (844-443-5732) to speak with an advocate and obtain a free Uber ride to and from WHC. In addition to speaking with an advocate, individuals can request to speak with a SANE nurse about the exam process. More information about the exam process is available at the DC Forensic Nurse Examiner's website at <https://www.dcfne.org>.

In Northern Virginia, a free SANE exam may be obtained at INOVA Fairfax Hospital, 703-776-4001. More information about the exam process is available at <https://www.inova.org/about-inova/inova-your-community/community-access-care/inova-fact>.

In Montgomery County, Maryland, a free Sexual Assault Forensic Exam (SAFE) may be obtained at Shady Grove Adventist Hospital, 240-826-6000. More information about the exam process is available at <https://www.adventisthealthcare.com/services/emergency/violence-survivors/>.

Students may also seek medical assistance from the Colonial Health Center. This office can be reached at 202-994-6827 or general information can be obtained at studenthealth.gwu.edu.

Appendix D: Balancing Complainant Autonomy with University Responsibility to Investigate

The Title IX Coordinator may proceed with an investigation even if a Complainant specifically requests that the matter not be pursued and declines to file a Formal Complaint. The Title IX Coordinator may decide to sign a Formal Complaint and initiate an investigation of potential violations of this Policy even absent a formal report or identified Complainant or Respondent and even if a report has been withdrawn. In such circumstances, the Title IX Coordinator will take into account a Complainant's articulated concerns, the safety of the campus community, fairness to all individuals involved, and the university's obligations under Title IX.

The Title IX Coordinator will balance a Complainant's request that a matter not be pursued against the following factors in reaching a determination on whether the request can be honored:

- the totality of the known circumstances;
- the nature and scope of the alleged conduct, including whether the reported behavior involves the use of a weapon;
- the respective ages and roles of the Complainant and Respondent;
- the risk posed to any individual or to the campus community by not proceeding, including the risk of additional violence;
- whether there have been other reports of other Sexual Harassment or other misconduct by the Respondent;
- whether the report reveals a pattern of misconduct related to Sexual Harassment (e.g., illicit use of drugs or alcohol) at a given location or by a particular group;
- a Complainant's interest in the university not pursuing an investigation or resolution process and the impact of such actions on the Complainant;
- whether the university possesses other means to obtain relevant evidence;
- fairness considerations for both the Complainant and the Respondent;
- the university's obligation to provide a safe and non-discriminatory environment; and
- any other available and relevant information.

Determination That a Complainant's Request(s) Can be Honored

Where the Title IX Coordinator determines that a Complainant's request(s) that a matter not be pursued can be honored, the university may nevertheless take other appropriate steps to eliminate the reported conduct, prevent its recurrence and remedy its effects on the Complainant and the university community. Those steps may include offering appropriate Supportive Measures, providing targeted training

and prevention programs, and/or providing or imposing other remedies. The Title IX Coordinator may also re-open a Formal Complaint if any new or additional information becomes available, and/or if the Complainant later decides that they would like to file a Formal Complaint. The Title IX Coordinator will also document the decision to not file a Formal Complaint, explaining why the university determined that it did not need to proceed with the resolution process.

Determination That a Complainant's Request(s) Cannot be Honored

In those instances when the Title IX Coordinator determines that the university must proceed with an investigation despite a Complainant's request that it not occur, the Title IX Coordinator will notify the Complainant that the university intends to initiate an investigation. Where a report of Sexual Harassment is involved, the Title IX Coordinator will sign a Formal Complaint to begin the investigative process. The Title IX Coordinator will also document the decision to file a Formal Complaint, explaining why the university determined that it must proceed with the resolution process.

The Complainant is not required to participate in the investigation or in any of the actions taken by the university. However, while the Complainant may choose not to participate in the resolution process initiated by the Title IX Coordinator's signing of a Formal Complaint, the Complainant will still be treated as a party entitled to inspect and review evidence and to receive all notices, including the notice of allegations, the notice of hearing, and the notice of outcome.

The university's ability to investigate and respond fully to a report may be limited if a Complainant declines to participate in an investigation. In all cases, the final decision on whether, how and to what extent the university will conduct an investigation and whether other Supportive Measures will be taken in connection with a report of Sexual Harassment will be made in a manner consistent with this Policy.