

Title IX and Other Sexual Prohibited Conduct

Title IX Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) an employee of GCHS conditioning the provision of a GCHS aid, benefit or service on an individual's participation in unwelcome sexual conduct (i.e., *quid pro quo*);
- (2) unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to GCHS's educational program or activity; or
- (3) sexual assault (as defined by the Jeanne Clery Campus Safety Act), or dating violence, domestic violence and stalking (as defined by the Violence Against Women Act).

See *Procedure Section 2(D)* for the definition of education program or activity.

Sex Discrimination: Sex discrimination includes behaviors and actions that deny or limit a person's ability to benefit from, and/or fully participate in, education programs or activities or employment opportunities because of a person's sex. Examples of sexual discrimination prohibited under Title IX include, but are not limited to, Title IX Sexual Harassment, failure to provide equal opportunity in education programs and extracurricular programs, discrimination based on pregnancy and sex-based employment discrimination.

Sexual Misconduct is a form of sex discrimination and includes, among other acts, sexual violence, sexual assault, sexual harassment, stalking, cyber-stalking, dating violence, domestic violence, intimate partner violence, hate crimes based on sex, and sexual harassment prohibited by Title IX ("Title IX Sexual Harassment").

Sexual misconduct is a broad term encompassing any behaviors based on sex that violate the [GCHS Code of Academic and Professional Integrity](#) or the [Geisinger Code of Conduct \(SharePoint - requires login\)](#).

When the following conduct is based on sex it will also be considered to be sexual misconduct:

- Threatening or causing physical harm, extreme verbal abuse or other conduct which threatens or endangers the health or safety of any person;
- Intimidation, defined as implied threats or acts that cause reasonable fear of harm in another;
- Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the GCHS community, when related to the admission, initiation, pledging, joining or any other group-affiliation activity;
- Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally, that is not speech or conduct otherwise protected by the 1st Amendment.

Quid Pro Quo Harassment: Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by a person having power or authority over another constitutes sexual harassment when submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational or employment progress, development or performance. This includes when submission to such conduct would be a condition for access to receiving the benefits of any educational or employment program. For

example, *quid pro quo* harassment occurs if an instructor or other employee conditions an educational decision or benefit on the student's submission to unwelcome sexual conduct.

Sexual Assault: Any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent, that meets the definition of rape, fondling, incest and statutory rape.

Rape: 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, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.

Fondling: The intentional touching of the clothed or unclothed genitals, buttocks, groin, breasts, or other body parts of the Complainant by the Respondent, without the consent of the Complainant, for the purpose of sexual degradation, sexual gratification, or sexual humiliation; or, the intentional touching by the Complainant of the Respondent's clothed or unclothed genitals, buttocks, groin, breasts, or other body parts, without the consent of the Complainant, for the purpose of sexual degradation, sexual gratification, or sexual humiliation.¹

Incest: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law. (Under Pennsylvania law, incest occurs when a person knowingly marries or cohabits or has sexual intercourse with an ancestor or descendant, a brother or sister of the whole or half blood or an uncle, aunt, nephew or niece of the whole blood. 18 Pa. Cons. Stat. § 4302.)

Statutory Rape: sexual intercourse with a person who is under the statutory age of consent. (Under Pennsylvania law, the statutory age of consent is 16 with some exceptions. 18 Pa. Cons. Stat. § 3122.1.)

Dating Violence: 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 complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For purposes of this definition dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

Domestic Violence: A felony or misdemeanor crime of violence committed:

- (a) by a current or former spouse or intimate partner of the victim;
- (b) by a person with whom the victim shares a child in common;
- (c) by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- (d) by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
- (e) 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 in which the crime of violence occurred.

Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (a) fear for the person's safety or the safety of others, or

¹ Contact with private body parts is considered to be done for the purpose of sexual degradation, sexual gratification, or sexual humiliation unless: (1) the contact can be proven inadvertent; (2) the contact is for a legitimate medical (or other privileged) purpose and thus is conduct for which consent should have been sought and obtained by the provider; (3) the contact involves a Respondent who is pre-sexual, based on maturity/age (thus their intent is not sexual); (4) the contact involves a Respondent who cannot developmentally understand sexual contact or that their contact is sexual; or (5) The contact is something like butt-slapping on a team and is both minimal and unlikely to have sexual motivation or purpose, as shown by the context of the act(s).

(b) suffer substantial emotional distress.

For the purposes of this definition:

- (i) course of conduct means 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; and
- (ii) reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

Non-Consensual Sexual Contact: Any intentional sexual touching, however slight, with any object, by a person upon another person, that is without consent and/or by force.

Sexual Touching: Includes intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or any other intentional bodily contact in a sexual manner.

Sexual Exploitation: When one person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to: invasion of sexual privacy; prostituting another person; non-consensual digital, video or audio recording of nudity or sexual activity; unauthorized sharing or distribution of digital, video or audio recording of nudity or sexual activity; engaging in voyeurism; going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you having consensual sex); knowingly exposing or transmitting an STI, STD or HIV to another person; intentionally or recklessly exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals. Sexually based stalking and/or bullying may also be forms of sexual exploitation.

Intimate Partner Violence: Violence or abuse, including psychological abuse, between those in an intimate relationship to each other. Intimate Partner Violence includes dating violence and domestic violence.

Some examples of possible Intimate Partner Violence include:

- A couple is arguing, and it escalates to one shoving the other into a wall.
- A boyfriend refuses to wear a condom and forces his girlfriend to take hormonal birth control, even though it makes her ill, in order to prevent pregnancy.
- Married employees are witnessed in the parking garage, with one slapping and scratching the other in the midst of an argument.

Cyber-Stalking: A particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts and other similar devices or forms of contact are used to pursue, harass or make unwelcomed contact with another person in an unsolicited fashion. Some examples of cyber-stalking include, but are not limited to, unwelcomed/unsolicited emails, instant messages and messages on online bulletin boards. It also includes, but is not limited to, unsolicited communications about a person, their family, friends or co-workers or sending/posting unwelcomed and unsolicited messages with another username.

Hate Crimes based on Sex: A crime, usually violent, motivated by prejudice or intolerance toward an individual based upon that individual's sex.

Consent: Consent is clear and knowing permission for specific sexual activity given through voluntary words or actions. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding willingness to engage

in (and the conditions of) sexual activity. Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity. Previous relationships or prior consent cannot imply consent to future sexual acts. Consent can be withdrawn once given, as long as that withdrawal is clearly communicated. In order to give consent, one must be of legal age. Sexual activity with someone you know to be or should know to be incapacitated is non-consensual and constitutes a violation of this policy. Under Pennsylvania law, consent can never be given by minors under the age of 13. Statutory provisions also prohibit sexual activity with minors under the age of 16 where there are 4 or more years difference in age between the parties.

Incapacitation: Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction). Incapacitation can occur mentally or physically, from developmental or mental disability, by alcohol or other drug use (intentional or not), during sleep, unconsciousness or blackout, or involuntary physical restraint. The question of what the respondent should have known is objectively based on what a reasonable person in the place of the respondent, sober and exercising good judgment, would have known about the condition of the complainant.

Possession, use and/or distribution of any incapacitating drugs known as “date rape drugs”, including Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to a student or employee is a violation of this policy. More information on these drugs can be found at <https://www.womenshealth.gov/a-z-topics/date-rape-drugs>

Force: Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcomes free will or resistance or that produces consent (“Have sex with me or I’ll hit you. Okay, don’t hit me, I’ll do what you want.”).

Coercion: Coercion is unreasonable pressure for sexual activity. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure to go beyond that point can be coercive.

Note: There is no requirement for a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

See **Appendix A** in the policy document for Pennsylvania State Definitions of Crimes of Sexual Violence.

See **Appendix B** in the policy document for New Jersey State Definitions of Crimes of Sexual Violence.

See **Appendix C** in the policy document for New York State Definitions of Crimes of Sexual Violence.