

AP 3540 Sexual Misconduct and Other Assaults on Campus

References:

20 U.S. Code Section 1092(f);
34 Code of Federal Regulations Part 668.46(b)(11);
42 U.S. Code Section 13925(a)
ORS 350.255, ORS 350.257

See also AP 3500 Campus Safety, AP 3510 Workplace Violence,
AP 3515 Reporting of Crimes, and Departmental Procedure on Title IX

Any sexual assault or physical abuse, including, but not limited to, rape, domestic violence, dating violence, sexual assault, or stalking, whether committed by an employee, student, or member of the public, occurring on College property, in connection with all the academic, educational, extracurricular, athletic, and other programs of the College, whether those programs take place in the College's facilities or at another location, or on an off-campus site or facility maintained by the College, or on grounds or facilities maintained by a student organization, is a violation of College policies and regulations, and is subject to all applicable punishment, including criminal procedures and employee or student discipline procedures. (See also AP 5500 Standards of Student Conduct.)

Definitions

The following are the definitions of conduct prohibited by the College's sexual misconduct policy and are consistent with state and federal law.

Domestic Violence

Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

Dating Violence

Dating 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 reporting party's statement with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

Intimate Partner Violence:

Intimate partner violence occurs when a current or former intimate partner uses or threatens physical or sexual violence. It can include dating violence, domestic violence, and other forms of relationship violence and may take the form of a pattern of behavior that seeks to establish power and control by causing fear of physical or sexual violence.

Sexual Assault

Sexual assault is actual or attempted sexual contact with another person without that person's consent. Sexual assault includes, but is not limited to:

- Intentional touching of another person's intimate parts without that person's consent;
- Other intentional sexual contact with another person without that person's consent;
- Coercing, forcing, or attempting to coerce or force a person to touch another person's intimate parts without that person's consent;
- Rape, which is penetration, no matter how slight, of (1) the vagina or anus of a person by any body part of another person or by an object, or (2) the mouth of a person by a sex organ of another person, without that person's consent.
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Stalking

Stalking means engaging in a course of repeated and unwanted conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or to suffer substantial emotional distress. Such conduct includes, but is not limited to, pursuing, following, harassing via telephone or online communications, giving unwanted gifts, surveilling, or interfering with the safety of another.

Sexual Harassment

Sexual harassment is unwelcome sexual, sex-based, and/or gender-based verbal, written, online, and/or physical conduct that either:

- denies or limits an individual's ability to participate in or benefit from the College's educational programs;
- creates a hostile, intimidating, or offensive working environment; or
- submission to or rejection of such conduct is used as a basis for employment, salary, or other benefit changes affecting an employee or academic decisions affecting a student.

Hostile Environment

A hostile environment is created when sexual harassment is:

- Sufficiently severe, or
- Persistent or pervasive, and
- Objectively offensive that it:
 - unreasonably interferes with, denies, or limits someone's ability to participate in or benefit from the institution's educational [and/or employment], social, and/or residential program.

Non-Consensual Sexual Contact

Non-consensual sexual contact is:

- Any intentional sexual touching,
- However slight,
- With any object,
- By a person upon another person,
- That is without consent and/or by force.
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Non-Consensual Sexual Intercourse

Non-consensual sexual intercourse is:

- Any sexual intercourse
- However slight,
- With any object,
- By a person upon another person,
- That is without consent and/or by force.
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Sexual Exploitation

Sexual exploitation occurs when one person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses

Retaliation

Retaliation is any adverse treatment (beyond a slight or annoyance) that is taken because a person engaged in a protected activity (e.g. opposing discriminatory practices, filing a discrimination or discriminatory harassment complaint, or participating in an investigation, conduct process, or an attempt at resolution, etc.) or for the purpose of interfering with a right or privilege granted under anti-discriminatory laws.:

Consent

Consent means knowing, voluntary, and clear permission, through word or action, to engage in mutually agreed upon sexual activity or contact.

Since different people may experience the same interactions differently, each party is responsible for making sure that partners have provided ongoing, clear consent to engaging in any sexual activity or contact. A person may withdraw consent at any time during sexual activity or contact through words or actions. If that happens, the other party must immediately cease the activity or contact. Pressuring another person into sexual activity can constitute coercion, which is also considered to be sexual misconduct.

- Silence or the absence of resistance alone does not constitute consent. A victim is not required to resist or say “no” for an offense to be proven.
- Consent to some forms of sexual activity (e.g., kissing, fondling, etc.) should not be construed as consent for other kinds of sexual activities (e.g., intercourse).

- Being or having been in a dating relationship with the other party does not mean that consent for sexual activity exists.
- Previous consent to sexual activity does not imply consent to sexual activity in the future.
- To legally give consent in Oregon, individuals must be at least 18 years old.

A person is unable to give consent when there is sufficient evidence of force, coercion, or incapacitation. For the purposes of determining consent the following definitions apply:

- **Force**
Force is defined as direct or indirect use of physical violence and/or imposing physically on someone to gain sexual access. Force, unless part of mutually-permissible kink, is a clear demonstration of a lack of consent.
- **Coercion**
Coercion is the improper use of pressure to compel another individual to initiate or continue sexual activity against their will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Coercion includes, but is not limited to: threatening to "out" someone based on sexual orientation, gender identity or gender expression; and threatening to harm oneself if the other party does not engage in the sexual activity.
- **Incapacitation**
Incapacitation is defined as a state in which individuals are unable to make rational, reasonable decisions because they lack the capacity to understand the "who, what, when, where, why, or how" of a situation or interaction. Individuals cannot give sexual consent if they can't understand what is happening, or if they are disoriented, helpless, asleep, or unconscious for any reason. That applies even if it is because they voluntarily consumed alcohol or drugs. Unless consent is "knowing," it is not valid. Those engaging in sexual activity that know or should have known that the other party is incapacitated are engaging in sexual misconduct. The possession, use, distribution, and/or administration of any incapacitating substances are prohibited. The fact that a responding party was intoxicated, and thus did not realize the reporting party was incapacitated, does not excuse sexual misconduct.

These written procedures and protocols are designed to ensure victims of sexual misconduct including domestic violence, dating violence, sexual assault, or stalking receive treatment and information. (For physical assaults/violence, see also AP 3500 Campus Safety, AP 3510 Workplace Violence, and AP 3515 Reporting of Crimes.)

All students, faculty members or staff members who allege they are the victims of sexual misconduct including domestic violence, dating violence, sexual assault or stalking on College property shall be provided with information regarding options and assistance

available to them. Information shall be available from the Title IX Coordinator office, Deputy Title IX Coordinator office, or College Counselor which shall maintain the identity and other information about alleged sexual assault victims as confidential unless and until the Title IX Coordinator, Deputy Title IX Coordinator or College Counselor is authorized to release such information.

The Title IX Coordinator, Deputy Title IX Coordinator or College Counselor shall provide all alleged victims of domestic violence, dating violence, sexual assault, or stalking with the following:

- A copy of the College's policy and procedure regarding domestic violence, dating violence, sexual assault, or stalking;
- Information about the importance of preserving evidence and the identification and location of witnesses;
- A description of available services, and the persons available to provide those services if requested, including:
 - transportation to a hospital, if necessary;
 - counseling by the College Counseling Center or referral to a counseling center;
 - a list of other available campus resources or appropriate off-campus resources;
- The victim's option to:
 - notify proper law enforcement authorities, including on-campus and local police;
 - be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and
 - decline to notify such authorities;
- The rights of victims and the institution's responsibilities regarding orders of protection, no contact orders, or similar lawful orders issued by a court;
- Information about how the College will protect the confidentiality of victims; and
- Written notification of victims about options for, and available assistance in, changing academic, living, transportation, and working situations, if requested and if such accommodations are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.

- A description of each of the following procedures:
 - College disciplinary procedures, both student and employee;
 - modification of class schedules;
 - tutoring, if necessary.

The College will investigate all complaints alleging sexual assault under the procedures for sexual harassment investigations described in AP 3435, regardless of whether a complaint is filed with local law enforcement.

All alleged victims of domestic violence, dating violence, sexual assault, or stalking on College property shall be kept informed, through the Title IX Coordinator or Deputy Title IX Coordinator of any ongoing investigation. Information shall include the status of any student or employee disciplinary proceedings or appeal; alleged victims of domestic violence, dating violence, sexual assault, or stalking are required to maintain any such information in confidence, unless the alleged assailant has waived rights to confidentiality.

A complainant or witness who participates in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for a violation of the College's student conduct policy at or near the time of the incident, unless the College determines that the violation was egregious, including but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic honesty.

The College shall maintain the identity of any alleged victim, witness, or third-party reporter of domestic violence, dating violence, sexual assault, or stalking on College property, as defined above, in confidence unless the alleged victim, witness, or third-party reporter specifically waives that right to confidentiality. All inquiries from reporters or other media representatives about alleged domestic violence, dating violence, sexual assaults, or stalking on College property shall be referred to the College's Director of Communications and Marketing which shall work with the Title IX Coordinator Office or the Deputy Title IX Coordinator to ensure that all confidentiality rights are maintained.

Additionally, the Annual Security Report will include a statement regarding the College's programs to prevent sexual assault, domestic violence, dating violence, and stalking and procedures that should be followed after an incident of domestic violence, dating violence, sexual assault, or stalking has been reported, including a statement of the standard of evidence that will be used during any College proceeding arising from such a report. The statement must include the following:

- A description of educational programs to promote the awareness of rape, acquaintance rape, other forcible and non-forcible sex offenses, domestic violence, dating violence, or stalking;
- Procedures to follow if a domestic violence, dating violence, sex offense, or stalking occurs, including who should be contacted, the importance of preserving evidence to prove a criminal offense, and to whom the alleged offense should be reported;
- Information on a student's right to notify appropriate law enforcement authorities, including on-campus and local police, and a statement that campus personnel will assist the student in notifying these authorities, if the student so requests, and the right to decline to notify these authorities;
- Information about how the College will protect the confidentiality of victims;
- Information for students about existing on- and off-campus counseling, mental health, victim advocacy, legal assistance, or other services for victims;
- Written notification of victims about options for, and available assistance in, changing academic, living, transportation, and working situations, if requested and

if such accommodations are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement;

- Procedures for campus disciplinary action in cases of an alleged domestic violence, dating violence, sexual assault, or stalking including a clear statement that:
 - Such proceedings shall provide a prompt, fair, and impartial resolution;
 - Such proceedings shall be conducted by officials who receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability;
 - The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding; and
 - Both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding resulting from an alleged domestic violence, dating violence, sexual assault, or stalking, the procedures for the accused and victim to appeal the results of the disciplinary proceeding, of any chances to the results that occurs prior to the time that such results become final, and when such results become final. Compliance with this paragraph does not violate the Family Educational Rights and Privacy Act (FERPA). For the purposes of this paragraph, the outcome of a disciplinary proceeding means the final determination with respect to the alleged domestic violence, dating violence, sex offense, or stalking and any sanction that is imposed against the accused.
- A description of the sanctions the campus may impose following a final determination by a campus disciplinary proceeding regarding rape, acquaintance rape, or other forcible or non-forcible sex offenses, domestic violence, dating violence, or stalking.

Education and Prevention Information

The Deputy Title IX Coordinator shall:

- Provide, as part of each campus' established on-campus orientation program, education and prevention information about domestic violence, dating violence, sexual assault, and stalking. The information shall be developed in collaboration with campus-based and community-based victim advocacy organizations, and shall include the College's sexual assault policy and prevention strategies including empowerment programming for victim prevention, awareness raising campaigns, primary prevention, bystander intervention, and risk reduction.
- Post sexual violence prevention and education information on the campus internet website regarding domestic violence, dating violence, sexual assault and stalking.



Approved: September 11, 2018
Last Revised: September 11, 2018

President's Cabinet Adoption Date: _____
College Council Adoption Date: _____