

These selected definitions are taken from the University of Dayton's Nondiscrimination & Anti-Harassment Policy:

- **Bullying** is defined as repeated, severe, and/or aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally on the basis of actual or perceived membership in a protected class. Bullying that falls outside the Nondiscrimination and Anti-Harassment Policy (*i.e.*, is not based on membership in a protected class) may nonetheless violate other University policies.
- **Complainant** is defined as the person or entity bringing the allegations that this policy has been violated.
- **Discriminatory Harassment** for purposes of the Nondiscrimination and Anti-Harassment Policy is harassment based upon an individual's actual or perceived membership in a protected class. Harassing conduct may take various forms, including, name-calling, graphic or written statements (including the use of cell phones or the Internet), or other conduct that may be physically threatening, harmful, or humiliating. Such harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Sex-based harassment includes sexual harassment, which is further defined below, and non-sexual harassment based on stereotypical notions of what is female/feminine vs. male/masculine or a failure to conform to those gender stereotypes. Discriminatory harassment violates this policy when it creates a hostile environment.
- **Effective consent** is granted when a person freely, actively and knowingly agrees at the time to participate in a particular sexual act with a particular person. Effective consent exists when mutually understandable words and/or actions demonstrate a willingness to participate in mutually agreed-upon activity at every stage of that sexual activity. Effective consent has time boundaries. Consent at one time does not imply consent at any other time. The existence of a dating/romantic relationship between the persons involved or the fact of a previous sexual relationship does not automatically establish effective consent for future sexual activity. There is no consent when agreement is only inferred from a person's silence or lack of resistance; there is threat of physical force, harm or intimidation; or there is coercion.

There is no consent when the person is under the age of 16. There is no consent when someone engaging in sexual behavior knew or should have known that the other person was incapacitated. Regardless of the state of the accused, the University will use the perspective of a "sober and reasonable person" in determining whether one should have known about the impact of the use of alcohol,

Definitions (continued)

- drugs, mental illness, etc. on another's ability to give consent. Because incapacitation may be difficult to discern, the person seeking the sexual behavior is strongly encouraged to err on the side of caution; i.e., when in doubt, assume the other person is incapacitated and therefore unable to give effective consent.
- **Coercion** exists when a person engages in threats, sexual pressuring or oppressive behavior that violates the University community's expectation of respect for the dignity of another person by causing another person to engage in unwanted sexual activity. Real or perceived power differentials between the individuals involved may create an atmosphere of coercion. (Coercion can be differentiated from seduction by a repetition of the coercive activity in the face of resistance, the degree of pressure applied or the initiator's knowledge that the pressure is unwanted.)
 - **Incapacitation** exists when a person is unaware, blacked out, unconscious, unable to make rational/reasonable decisions and/or otherwise physically or mentally helpless to give effective consent. Indicators of incapacitation include but are not limited to outrageous/unusual behavior, inability or diminished ability to accurately discern his or her environment (who, what, where, when and/or how), slurred speech, vomiting, severe intoxication, loss of voluntary motor skills, loss of involuntary motor skills, disjointed speech patterns (unable to follow a conversation or verbalize complete thoughts), and/or sleepiness that demonstrates an inability to control one's ability to stay awake.
 - **Equity Compliance Officer** is simply the abbreviation for the "Title IX / 504 Coordinator and Equity Compliance Officer."
 - **Forced Sexual Intercourse** is any sexual penetration (anal, oral or vaginal), by any object or body part, by a man or woman upon a man or woman, that occurs as a result of physical force.
 - **Hazing** is any planned/executed action or activity by or against an active member, associate member, new member, pledge or potential member of an organization or group that inflicts physical or mental harm, distress, anxiety, or which may demean, degrade, embarrass or disgrace any person, regardless of location, consent or intention of participants, is prohibited. Examples of hazing include but are not limited to forced consumption of food, alcohol, drugs or any other substance, forced physical activity, deprivation of food or sleep, and physical acts such as hitting, branding or paddling. Students may not imply that a person be shunned, removed, or unable to join/participate in the maintenance, affiliation or initiation of membership for failing to partake in any form of a hazing activity. Any actions or situations that intentionally or unintentionally endanger a student who is attempting admission into or affiliating with any student organization is prohibited. Hazing is also prohibited under Ohio law. For more information see the Hazing

Definitions (continued)

Policy, Procedure, and Resource Guide in the University of Dayton Student Handbook. Hazing that falls outside the Nondiscrimination and Anti-Harassment Policy (i.e., is not based on membership in a protected class) may nonetheless violate other University policies.

- **Hostile environment discriminatory harassment** exists when harassment based on membership in a protected class:
 - is sufficiently serious (i.e., severe, pervasive, or persistent) and objectively offensive so as to deny or limit a person's ability to participate in or benefit from the University's programs, services, opportunities, or activities ; or
 - when such conduct has the purpose or effect of unreasonably interfering with an individual's employment.

A hostile environment can be created by anyone involved in a University program or activity (e.g., administrators, faculty members, students, and even campus guests). Mere offensiveness is not enough to create a hostile environment. Although repeated incidents increase the likelihood that harassment has created a hostile environment, a serious incident, such as a sexual assault, even if isolated, can be sufficient.

In determining whether harassment has created a hostile environment, consideration will be made not only as to whether the conduct was unwelcome to the person who feels harassed, but also whether a reasonable person in a similar situation would have perceived the conduct as objectively offensive. Also, the following factors will be considered:

- The degree to which the conduct affected one or more students' education or one or more individuals' employment;
 - The nature, scope, frequency, duration, and location of incident or incidents;
 - The identity, number, and relationships of persons involved;
 - Academic freedom.
- **Intimidation** is defined as implied threats or acts that cause an unreasonable fear of harm in another on the basis of actual or perceived membership in a protected class.
 - **Non-Consensual Sexual Contact** is any unwelcome intentional sexual touching. This includes any contact with the breasts, buttocks, groin, genitals, mouth or other bodily orifice of another, as well as the touching of another with any of these body parts, by a man or a woman upon any person, without effective

Definitions (continued)

consent.

- **Non-Consensual Sexual Intercourse** is any sexual penetration (anal, oral or vaginal), however slight, with any object or body part, by a man or a woman upon any person, without effective consent.
- **Protected class** for purposes of the University's Nondiscrimination and Anti-Harassment Policy means age, race, color, creed, religion, ancestry, national or ethnic origin, sex/gender, sexual orientation, disability, genetic information, military status, veteran status, familial status or any other protected category under applicable local, state or federal law, ordinance or regulation.
- **Respondent** is the person or entity accused of violating this policy.
- **Retaliation** for purposes of the University's Nondiscrimination and Anti-Harassment Policy is any adverse action taken against a person who is participating or participated in a protected activity (such as participating in or otherwise assisting with a University investigatory procedure); filing a complaint alleging prohibited discrimination (including harassment); or otherwise objecting to or reporting a practice that he or she reasonably and in good faith believed was in violation of the Nondiscrimination and Anti-Harassment Policy, where such adverse action is taken because of the person's participation in that protected activity. Retaliation involves

intentional adverse action taken by a respondent or allied third party, absent legitimate nondiscriminatory purposes, that harms the individual as reprisal for reporting a violation of the Nondiscrimination and Anti-Harassment policy or participating or otherwise assisting in an investigation of an alleged violation of the policy. Taking intentional adverse action against a respondent where the investigation found that the respondent did not violate this policy also is impermissible.

An adverse action is retaliatory only if it is taken because the person participated in a protected activity. The University maintains the right to take action against an employee or student for other legitimate reasons, even if that employee or student has made a complaint of discrimination or harassment or otherwise participated in a protected activity. For example, an employee's supervisor could still provide an employee a negative performance review or take disciplinary action against an employee who violates a University policy. For students, the University could still sanction a student who violated the Code of Conduct. Note that using the Equity Complaint Process in bad faith, i.e., with deliberately false allegations and/or malicious accusations of harassment, is not protected activity.

Definitions (continued)

- **Sexual exploitation** occurs when a person takes sexual advantage of another for his or her own advantage or benefit, regardless of whether such behavior constitutes one of the other sexual misconduct offenses. Examples include but are not limited to non-consensual recording; stalking with a sexual component; voyeurism; and exposure.
- **Sexual harassment** is a form of discriminatory harassment that can include unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, including sexual assault. Sexual harassment, including sexual assault, can involve persons of the same or opposite sex. Consistent with the law, this policy prohibits two types of sexual harassment:
 1. **Tangible Employment or Educational Action:** This type of sexual harassment occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, living environment or participation in a University activity is conditioned upon, either explicitly or implicitly, submission to or rejection of unwelcome sexual advances or requests for sexual favors, or such submission or rejection is a factor in decisions affecting that individual's employment, education, living environment, or participation in a University program or activity. Generally, perpetrators will be agents or employees with some authority from the University.

Some examples of possible sexual harassment include:*

- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student accedes to the request.
- A student repeatedly sends sexually oriented jokes around on an email list s/he created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.
- Explicit sexual pictures are displayed in a professor's office or on the exterior of a residence hall door
- Two supervisors frequently 'rate' several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus
- Male students take to calling a particular brunette student "Monica" because of her resemblance to Monica Lewinsky. Soon, everyone adopts this nickname for her, and she is the target of relentless remarks about cigars, the president, "sexual relations" and Weight Watchers.
- A student grabbed another student by the hair, then grabbed her breast and put his mouth on it. While this is sexual harassment, it is also a form of sexual violence.

* These examples are taken from the model developed by The NCHERM Group, LLC / ATIXA, which the University of Dayton has a license to use. All other rights reserved. © 2013. The NCHERM Group, LLC/ATIXA.

Definitions (continued)

2. Hostile Environment Sexual Harassment, *i.e.*, sexual harassment that creates a hostile environment.
- **Sexual misconduct** (including its various forms and manifestations) refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving effective consent. Sexual violence could include, but is not limited to: sexual harassment; non-consensual sexual contact; non-consensual sexual intercourse; forced sexual intercourse; sexual exploitation; sexual abuse; and relationship intimidation or violence. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, gender, sexual orientation and/or gender identity of those involved.
 - **Stalking** is a course of conduct directed at a specific person on the basis of actual or perceived membership in a protected class that is unwelcome and would cause a reasonable person to feel fear. Stalking may take many forms, including persistent calling, texting, or posting on a social networking site, as well as physical stalking.