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4.607 Sexual Harassment, Sexual Violence and Sex Discrimination

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ANTIOCH UNIVERSITY

Type of Policy <input checked="" type="checkbox"/> University <input type="checkbox"/> Campus <input type="checkbox"/> Department/Unit <input type="checkbox"/> Interim		Sexual Harassment, Sexual Violence and Sex Discrimination Policy 4.607	
Human Resource Policies		Effective date: January 1, 2012	
Policy History:	Approved by:	Resolution #	Date:
Revised	Chancellor	N/A	December 6, 2011
Revised	Chancellor	N/A	October 25, 2012
Revised	Chancellor	N/A	October 15, 2013
Revised	Chancellor	N/A	November 19, 2015
Revised	Office of University Counsel	N/A	November 6, 2017
Revised	Chancellor	N/A	August 14, 2020
Responsible Office:	Responsible Administrator:	Contact information:	Applies to:
Office of Human Resources	Director of University Human Resources	937-769-1375	All employees, students, volunteers, members of the University's Board of Governors, and invitees such as guests, visitors, vendors, contractors, subcontractors, and others who do business with the University.

Notice: In the event of an emergency or threat of imminent harm on campus, the University is required to implement its Emergency Notification and Evacuation procedures, see Emergency Response and Evacuation, Policy 3.305. CALL 911 AND THE PROVOST'S OFFICE IMMEDIATELY TO IMPLEMENT THE EMERGENCY NOTIFICATION PROCEDURES.

I. Introduction

Antioch University (“AU” or the “University”) strives to eliminate discrimination based on sex which creates a hostile work or academic environment, to prevent its recurrence, and to address its affects. While discrimination based on sex can take a wide variety of forms, this policy is directed specifically to sexual harassment, including sexual violence, as defined in Section 5(M) below. The University shall disseminate and post in appropriate locations a brief Title IX Policy statement which conforms to this policy.

Other forms of unlawful harassment, including racial harassment, are addressed in the University’s Affirmative Action and Equal Employment Opportunity Policy 4.115. In addition, other types of sexual misconduct not covered by this policy are addressed in Student Conduct Policy 6.103 and Employee Code of Conduct Policy 4.601.

II. Purpose and Policy Statement

Antioch University recognizes the dignity of all members of the University community and believes that each of us has a responsibility to promote respect for others. The University also seeks to eliminate behaviors that create hostile work or learning environments, to prevent the occurrence of those behaviors, and to address their effects. All members of the University community should be able to pursue work and education in a safe environment, free from sexual harassment, gender-based or sexual violence, sexual misconduct, and sexual coercion or intimidation. We are committed to fostering a safe campus environment where sexual misconduct and violence are not tolerated, and where those who feel they have been harmed receive support and appropriate avenues of redress.

Antioch shall not discriminate on the basis of sex in its education programs and activities, and it is the policy of the University to prohibit all forms of sex discrimination including, but not limited to, gender harassment, sexual harassment, and sexual misconduct, whether by students, employees, or others. Commission of or attempts to commit these acts, supporting others in the commission of these acts, or failure to prevent others over whom an individual exercises control from committing these acts may be treated as violations of this policy. All forms of sex discrimination violate the University’s policies and may also violate the law. Violations will not be tolerated and will result in appropriate discipline, including possible suspension or expulsion from the University as to students, suspension or termination from employment as to employees, and sanctions including possible removal as to members of University governing boards. Volunteers, visitors, guests, vendors, contractors, subcontractors, and others who do business with the University and violate this policy may be prohibited from future participation in University programs or not permitted on campus.

This policy provides a fair and transparent approach to addressing and remedying sexual harassment, including sexual violence, within the University. The University’s grievance procedure is designed to treat complainants equitably by providing remedies where a

respondent is found responsible, and to treat respondents equitably by imposing disciplinary sanctions only upon a finding of responsibility following the grievance process described below.

III. Scope and Application of Policy

A. What Type of Conduct Does this Policy Address?

Examples of prohibited conduct are set forth in Section VI below. Generally, however, this policy is directed to sex discrimination directed at, or otherwise affecting, either students or employees, specifically sexual harassment, which includes misconduct or violence of a sexual nature. This may include relationship violence, stalking, and sexual exploitation. Sexual misconduct can occur between individuals who know each other, have an established relationship, or have previously engaged in consensual sexual activity, as well as between individuals who do not know each other. Sexual misconduct can be committed by persons of any gender identity, and can occur between persons of the same sex and different sex. Antioch's policy shall be interpreted broadly to effectuate the intent and purpose of federal and state law and University policy.

B. To Whom Does this Policy Apply?

This policy applies to all University students and employees in the United States including officers, managers, administrators, faculty, staff, and student employees, as well as to volunteers, including members of the University's Board of Governors. It also applies to vendors, contractors, subcontractors, and others who do business with the University as well as invitees such as guests, visitors or vendors on campus. For example, not only does the policy apply to cases of student-on-student conduct, or employee-on-employee conduct, it also applies to cases of employee-on-student conduct or student-on-employee conduct. Similarly, conduct of an employee or student directed at a volunteer, visitor or guest of the University may violate this policy and vice-versa. In short, employees, students, volunteers, guests and business invitees of the University are all entitled to be free of sexual harassment, including sexual violence, regardless of who the perpetrator may be.

C. Where Does this Policy Apply?

This policy applies to conduct in University-sponsored education programs and activities on University premises and off-campus locations within the United States. Sexual misconduct that occurs outside a University-sponsored education program or activity or outside the United States may be addressed by the University through its other student and employee conduct and discipline policies, including Student Conduct Policy 6.103, Employee Code of Conduct 4.601 and Faculty Professional Ethics 5.321.

D. When Does this Policy Apply?

This policy applies regardless of the length of time since the conduct occurred; however, delays in reporting violations can affect the University's ability to properly investigate the allegations and, ordinarily, disciplinary action can only be taken against an individual while enrolled, employed, or otherwise associated with the University. Should the University receive a complaint in which the misconduct is alleged to have occurred prior to August 14, 2020, the University reserves the right to address the complaint using the University's most recent procedures in effect prior to August 14, 2020.

IV. Relevant Federal Laws

The legal framework of this policy is informed by two separate federal laws, one dealing with employee rights and the other dealing with student rights. They are briefly described below:

A. With Respect to Employees

Title VII of the Civil Rights Act of 1964, ("Title VII"), 42 U.S.C. §§2000e et seq., and its implementing regulations, prohibit discrimination on the basis of sex in employment including, but not limited to, employment decisions related to hiring, promotion, demotion, discipline and termination. Sexual harassment of employees, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title VII. This law is enforced by the federal Equal Employment Opportunity Commission. As discussed below, the University has designated an EEO Officer for the University and Deputy EEO Officers for each campus to coordinate compliance with this law. Title VII is enforced by the federal Equal Employment Opportunity Commission ("EEOC"). If you have any questions related to Title VII, you are encouraged to contact Antioch's EEO Officer or any Deputy EEO Officer, or visit the EEOC website at <http://www.eeoc.gov/contact/> or call 1-800-669-4000.

Title IX of the Education Amendments Act of 1972, ("Title IX"), 20 U.S.C. §§ 1681 et seq., and its implementing regulations, prohibit discrimination on the basis of sex in education programs and activities operated by recipients of federal financial assistance. Sexual harassment of employees, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title IX. Title IX also prohibits intimidation, coercion, or retaliation against individuals for engaging in activities protected by Title IX, including asserting claims of sex discrimination. To the extent that conduct complained of by an employee falls within the definition of sexual harassment set forth in Section V below, the Title IX procedures set forth in this policy will apply.

B. With Respect to Students

Title IX of the Education Amendments Act of 1972, (“Title IX”), 20 U.S.C. §§ 1681 et seq., and its implementing regulations, prohibit discrimination on the basis of sex in education programs and activities operated by recipients of federal financial assistance. Sexual harassment of students, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title IX. Title IX also prohibits intimidation, coercion, or retaliation against individuals for engaging in activities protected by Title IX, including asserting claims of sex discrimination. This law is enforced by the Office of Civil Rights within the U.S. Department of Education. As discussed below, the University has designated a Title IX Coordinator for the University and Deputy Title IX Coordinators for each campus to coordinate compliance with this law. Because these laws significantly overlap, the EEO Officers and Title IX Coordinators are the same individuals. In accordance with Title IX, the University strives to eliminate sexual harassment and violence on campus, prevent its occurrence, and address its effects. If you have any questions related to Title IX, you are encouraged to contact Antioch’s Title IX Coordinator or any Deputy Title IX Coordinator, whose contact information is set forth in Section VIII below. In **addition**, you may contact the US Department of Education’s Office of Civil Rights by calling 1-800-421-3481 or by visiting the OCR website at: <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>

V. Definitions

As used in this policy, the following terms shall have the meaning set forth below:

“Affirmative consent” means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other(s) to engage in sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, is not by itself assumed to be an indicator of consent. Consent for one sexual act does not imply consent for any subsequent sexual activity. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. It shall not be a valid excuse that the accused believed that the complainant affirmatively consented to the sexual activity if the accused knew or reasonably should have known that the complainant was unable to consent to the sexual activity under any of the following circumstances:

- A. The complainant was asleep or unconscious.
- B. The complainant was incapacitated due to the influence of drugs, alcohol, or medication, so that the complainant could not understand the fact, nature, or extent of the sexual activity.

- C. The complainant was unable to communicate due to a mental or physical condition.

In addition, it shall not be a valid excuse to the alleged lack of affirmative consent that the respondent believed that the complainant consented to the sexual activity under either of the following circumstances:

- D. The respondent's belief in affirmative consent arose from the intoxication or recklessness of the accused.
- E. The respondent did not take reasonable steps, in the circumstances known to the respondent at the time, to ascertain whether the complainant affirmatively consented.

"Complainant" refers to an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

"Dating violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. Violence includes, but is not limited to, sexual or physical abuse *or* the threat of such abuse. The existence of a social relationship of a romantic or intimate nature with the victim is determined based on the length of the relationship; the type of the relationship; and the frequency of interaction between the persons involved in the relationship. The term dating violence does not include acts covered under the federal definition of "domestic violence" (see below).¹

"Domestic violence" means a felony or misdemeanor crime of violence committed by any of the following individuals: a current or former spouse of the victim; a person with whom the victim shares a child in common; a person who is cohabitating with or has cohabitated with the victim as a spouse; a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies; or 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.²

"Formal Complaint" means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment.

"Gender harassment" means unwelcome act(s) of verbal, nonverbal, or physical aggression, intimidation, or hostility based on gender or gender stereotyping, even if those acts do not involve conduct of a sexual nature. For example, harassment of individuals based upon sexual

¹ See 42 U.S.C. 13925(a).

² See 42 U.S.C. 13925(a).

orientation or of transsexual individuals is a form of gender harassment based upon gender stereotyping. Such conduct is prohibited by the University and may be addressed under this policy or other University conduct policies, as applicable.

“Incapacitation” is the inability to make informed, rational judgments and decisions. If alcohol or drugs are involved, incapacitation may be measured by evaluating how the substance affects 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, vomiting, emotional volatility, and the inability to maintain eye contact or perform personal tasks such as undressing.

“Intimidation” is conduct, whether physical, verbal, or written, directed toward an individual that reasonably leads that individual to fear for their physical well-being, or to engage in sexual conduct for self-protection, or that is intended to create or may be reasonably determined to have created a hostile environment.

“Respondent” refers to an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

“Responsible Employees” are those employees who are obligated to report incidents of sexual misconduct to the Title IX Coordinator. Antioch considers all employees with actual knowledge to be responsible employees who must fully report in accordance with this policy.

“Retaliation” is any conduct or behavior that interferes with a person’s rights and ability to pursue internal disciplinary processes or charges through external law enforcement authorities, or to participate in those processes. Retaliation includes taking adverse action against an individual in response to the individual’s participation in an internal disciplinary or external law enforcement process. Retaliation may include intimidation, threats, coercion, or adverse employment or educational actions. Retaliation includes taking, or causing third parties to take, any such action.

“Sexual assault” is defined in the Clery Act (20 U.S.C. §1092) as a sexual act directed against another person, without the consent of the victim, including instances when the victim is unable to give consent. Sexual assault includes the following:

- A. **“Rape”** which is 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.
- B. **“Fondling”** which is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

- C. **“Incest”** which is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- D. **“Statutory rape”** which is sexual intercourse with a person who is under the statutory age of consent.

“Sex discrimination” means the unequal and unlawful treatment of a person based solely on that person's sex or gender, sexual orientation or gender identity when the adverse actions affect either that individual's employment or educational opportunities. Gender harassment and sexual harassment, including sexual violence, are forms of sex discrimination prohibited by this policy and federal law.

“Sexual harassment” is defined to include misconduct on the basis of sex that jeopardizes equal access to education.

There are three types of sexual harassment recognized by the U.S. Department of Education:

- A. **“Quid pro quo sexual harassment”** (the Latin term for "this for that") occurs when an employee of the University conditions the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct. For example, a request for sexual favors by a faculty member in exchange for a better student evaluation would be unlawful quid pro quo sexual harassment.
- B. **Unwelcome harassing behavior** that a reasonable person would find so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an educational program or activity; and
- C. **Sexual violence**, meaning any instance of sexual assault (as defined in the Clery Act), dating violence, or stalking as defined in the Violence Against Women Act (VAWA).

“Sexual misconduct” is a broad term that encompasses a range of behaviors, including all forms of sexual harassment, including sexual assault, as well as other forms of misconduct or violence of a sexual nature, including but not limited to relationship violence, stalking, and sexual exploitation. When used in this policy, the term sexual misconduct shall be broadly construed to include sex discrimination, sexual assault, sexual harassment, sexual offenses, sexual violence, gender harassment, dating violence, domestic violence, and stalking. Sexual misconduct can occur between individuals who know each other, have an established relationship, have previously engaged in consensual sexual activity, and between individuals who do not know each other. Sexual misconduct may also include: sexual exploitation or exhibitionism, peeping or voyeurism, prostitution or solicitation of prostitution, and going beyond the scope of consent (e.g., by allowing others to view consensual sex or the non-consensual photographing or videotaping or audiotaping of sexual activity or distribution of

recorded sexual activity).

“Stalking” is defined under federal law as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or to suffer substantial emotional distress.³ For purpose of this definition:

- A. **“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.
- B. **“Substantial emotional distress”** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- C. **“Reasonable person”** means a reasonable person under similar circumstances and with similar identities to the victim.

“Unwelcome” means unwanted and unsolicited. Conduct may legally be unwelcome even if an individual voluntarily submits to it. Submission to the conduct may be based on fear of reprisal. Therefore, the voluntariness of submission is legally irrelevant if the conduct were nonetheless unwelcome.

VI. Examples of Sexual Misconduct

This policy is intended to address a range of sexual misconduct. The University will address conduct that falls within the definition of sexual harassment in section V. above through the procedure set forth in this policy. The University reserves the right to address other types of sexual misconduct through Student Conduct Policy 6.103 or Employee Code of Conduct Policy 4.601 and Employee Corrective Action and Discipline Procedures Policy 4.617, as applicable. The following conduct, if unwelcome, constitutes sexual misconduct within the meaning of this policy:

- A. Telling or distributing sexually explicit jokes or making sexual comments or innuendo;
- B. Using sexually oriented profane or foul language or gestures;
- C. Making repeated requests for dates; Repeatedly presenting unwanted gifts or otherwise pressuring another into a personal relationship;

³ See 42 U.S.C. 13925(a).

- D.** Engaging in oral, written, or electronic communications that are sexual in nature including texts, photos, e-mails or communication through Facebook, Twitter, Instagram or other social media;
- E.** Referring to gender specific traits or anatomy;
- F.** Posting graffiti of a sexual nature;
- G.** Spreading sexually related rumors about an individual;
- H.** Making sexually suggestive sounds, gestures;
- I.** Distributing or displaying sexually related materials such as including sexually oriented magazines, pictures, posters, cartoons, or drawings;
- J.** Making direct or indirect threats concerning sexual favors or the refusal to consent to sexual favors;
- K.** Engaging in sexual leering, uninvited touching, stroking, patting, fondling or sexual gestures such as grabbing oneself in intimate areas for others to see;
- L.** Physically cornering or blocking someone, or stalking or threatening an individual;
- M.** Making unwelcome sexual propositions or requests for sexual favors;
- N.** Massaging or fondling an individual or touching them in intimate or erogenous areas;
- O.** Sexual assault or physical abuse;
- P.** Sexual offenses of any kind including but not limited to rape, coerced sexual intercourse, sexual misconduct, or sexual contact with another while that individual was unable to legally give consent; or
- Q.** Dating violence, domestic violence, and stalking.

The above examples are intended to give students and employees general notice of the nature of prohibited conduct. They are to be interpreted broadly to affect the above-stated purposes and shall not be regarded as an exhaustive list of misconduct for which discipline may be imposed.

VII. Prohibitions

A. Sex Discrimination

It is the policy of Antioch University to prohibit all forms of sex discrimination, including but not limited to sexual misconduct, sexual harassment, gender harassment, dating and domestic violence, and stalking whether by students or employees. Commission of or attempts to commit these acts, supporting others in the commission of these acts, failure to intervene when others commit these acts, and failure to prevent others from committing these acts where there is prior knowledge may be treated as violations of this policy. While harassment must ordinarily be severe and pervasive to give rise to a legal claim for damages under anti-discrimination statutes, it is the intention of the University to prohibit all sexual misconduct. Therefore, it is not necessary to establish that the conduct rises to the level of unlawful conduct in order for it to constitute a violation of University policy. All forms of sex discrimination violate the University's policies, and may be addressed through the process set forth in this policy, or Student Conduct Code 6.103 or Employee Code of Conduct Policy 4.601 and Employee Corrective Action and Discipline Procedures Policy 4.617, as applicable. Violations will not be tolerated and will result in appropriate discipline including possible suspension or expulsion from the University as to students, suspension or termination from employment as to employees, and removal as to members of the University Board of Governors.

B. Retaliation

Antioch has a zero-tolerance policy with respect to retaliation in connection with complaints regarding sexual discrimination or misconduct. The integrity of an investigatory and review process depends on the ability of parties and witnesses, administrators and adjudicators to participate in the process without fear of retaliation of any kind. The University strictly prohibits acts of retaliation against a person who has made an internal or external complaint of a suspected violation of this policy, against a person who has been accused of a policy violation, against a person who has provided support or assistance to either the complainant or respondent, against a person who has provided information in the context of an investigation or disciplinary proceeding pursuant to this policy, or an individual who serves as a hearing officer or decision maker in a disciplinary proceeding pursuant to this policy. Retaliation is a serious violation of Antioch's community values and this policy and should be promptly reported. Individuals found to have engaged in retaliation will be disciplined, up to and including expulsion and termination of employment.

C. Relationships between Those with Differences in Power

Antioch University prohibits consensual sexual or amorous relationships when there is an institutional power difference between the parties involved, for example, between a supervisor and a subordinate employee or between a student and anyone having a grading, advisory or supervisory authority over that student (including faculty, other instructors, teaching assistants and work study supervisors). The fact that the relationship may be consensual is irrelevant. Relationships that occur in the context of educational evaluation or employment supervision are susceptible to exploitation, and they present serious concerns about whether behavior within such relationships is truly consensual or welcome. Furthermore, the possibility of a future amorous relationship may distort the present instructional or advisory relationship. Those who abuse their power in such a context violate their duty to the University community. For a more detailed discussion of the prohibitions as well as possible ways to manage such relationships, see the University's Relationships in the Workplace Policy, 4.615.

VIII. How to Report a Violation

In order for Antioch to investigate an alleged violation of this policy, there must be some report of allegations of sexual misconduct. A complainant has several options for reporting: to the Title IX Coordinator, the Deputy Coordinators, alternative Title IX resources, any Antioch employee; or through Antioch's third-party Compliance Hotline. Specific contacts are described below:

A. Title IX Coordinator/ EEO Officer

To ensure the University's compliance with Title IX, Antioch has appointed one University-wide Title IX Coordinator and EEO Officer, and one Deputy Title IX Coordinator and EEO Officer for each of its campus locations. (Because Title IX and Title VII may be somewhat similar in their protections, the EEO Officers and Title IX Coordinators are the same individuals.)

The University's Associate Vice Chancellor of Academic Affairs shall be the University's Title IX Coordinator, as well as its EEO Officer, and shall have ultimate and overall responsibility for coordinating compliance with this policy and federal laws for the University. The Associate Vice Chancellor of Academic Affairs and Student Services shall also be the Title IX Coordinator for all other University offices and programs including but not limited to the University System Administration offices, the PhD in Leadership and Change Program and Antioch University Connected. The University's Title IX Coordinator's contact information is as follows:

University Title IX Coordinator	Name	Telephone Number	Mailing Address	E-mail Address
University-wide	Melissa Kirk, Associate VC for Academic Affairs	937-769-1800	Antioch University 900 Dayton Street Yellow Springs, OH 45387	mkirk@antioch.edu

B. Deputy Title IX Coordinators and EEO Officers

The contact information for each Deputy Title IX Coordinator is below:

Deputy Title IX Coordinators / EEO Officers	Name	Telephone Number	Mailing Address	E-mail Address
AU Los Angeles; and AU Santa Barbara	Sandy Lee	310-578-1080 x 447	Antioch University Los Angeles 400 Corporate Pointe, Los Angeles, CA 90230-7615	slee2@antioch.edu
AU Midwest; GSLC (Graduate School of Leadership & Change); and AU Online	Karen Crist	937-769-1335	Antioch University Midwest 900 Dayton Street Yellow Springs, OH 45387	kcrist@antioch.edu
AU New England	Will Dooley	603-283-2362	Antioch University New England 40 Avon Street Keene, New Hampshire 03431	wdooley@antioch.edu
AU Seattle	Erica Holmes	206-304-3301 (cell) 206-268-4422 (office)	Antioch University Seattle 2400 3rd Avenue, Suite 200 Seattle, WA 98121	eholmes4@antioch.edu

C. Role of Title IX Coordinator and Deputy Title IX Coordinators

The Title IX Coordinator is responsible for coordinating the University's efforts to comply with and carry out its responsibilities under Title IX. The Title IX Coordinator and Deputy Title IX Coordinators oversee the University's response to complaints of sexual harassment, sexual misconduct, sexual assault, and stalking, and relationship violence. The Title IX Coordinator and Deputy Title IX Coordinators' functions and responsibilities include:

1. Coordinating training for students, staff, and faculty;
2. Overseeing investigation and resolution of reports of sexual harassment and misconduct;
3. Taking steps to ensure equal access to University programs and resources;
4. Offering and implementing supportive measures to protect safety and well-being of complainants and respondents;
5. Taking appropriate measures to identify any patterns or system problems that may contribute to a hostile environment; and
6. Coordinating or participating in the assessment of any climate checks, tracking, and monitoring to ensure ongoing compliance with Title IX.

The Title IX Coordinator and Deputy Title IX Coordinators are able to provide assistance and support to those affected by sexual misconduct or a report of sexual misconduct, including providing access to and options for medical and mental health treatment, reporting an offense to law enforcement, filing a complaint, and obtaining support services and resources, including interim measures. Antioch encourages students and employees who have been subjected to any form of sexual assault or harassment to report the matter to the Title IX Coordinator or Deputy Title IX Coordinator for the applicable campus or University-wide program. When a matter involves allegations of sexual misconduct that may also constitute a crime, Antioch encourages the reporting person to consider filing a report with applicable law enforcement authorities, and the Title IX Coordinator and Deputy Title IX Coordinators can provide assistance in this regard.

D. Alternative University Title IX Resources

Sometimes it isn't practical to report a violation to the Title IX Coordinator or Deputy Title IX Coordinator when the complainant is on a different campus, the alleged

incident involves that administrator, or it is perceived that the administrator may not be impartial or would have a conflict of interest. Regardless of the reason, a student or employee may alternatively report a violation of this policy to the individual named below:

University-Wide Alternative Resource	Name	Telephone Number	Mailing Address	E-mail address
General Counsel	Rebecca Todd	603-283-2436	Antioch University 900 Dayton Street Yellow Springs, OH 45387	rtodd@antioch.edu
Director of Human Resources	Suzette Castonguay	937-769-1375	Antioch University Midwest 900 Dayton Street Yellow Springs, OH 45387	scastonguay@antioch.edu
Alertline Compliance Hotline		Phone: 1.866.606.4026		https://antiochuniversity.alertline.com/gcs/welcome

E. Duty of Employees to Report Violations and Criminal Behavior

Responsible employees are those who are obligated to report incidents of sexual misconduct to the Title IX Coordinator. Antioch considers all employees to be responsible employees who must fully report in accordance with this policy. That is, all administrators, managers, faculty and staff who observe or become aware of conduct which violates this policy are required to immediately report the conduct. Furthermore, the Title IX Coordinator, Deputy Title IX Coordinator, or designee may report any observed conduct or report of conduct which, if true, would constitute a criminal sexual offense to local law enforcement officials. The Title IX Coordinator, Deputy Title IX Coordinator, or designee shall report immediately any observed or reported conduct toward a minor on campus which may constitute child abuse to local law enforcement and the appropriate child protective services agency. Failure to timely report such conduct will be grounds for disciplinary action including possible termination from employment.

IX. Criminal Conduct and Police Investigations

A. Crime Definitions. Some of the conduct prohibited by this policy may also violate

federal or state law, in addition to or beyond the scope of this policy and Antioch's disciplinary measures. There are differences between federal and state laws regarding how crimes are treated and defined. In 2013, federal law began requiring colleges and universities to publish state law definitions of certain crimes referenced in the federal law. Criminal definitions under state law for some of the conduct described under this policy, such as relationship violence (including dating and domestic violence) and stalking, can be found in the Appendix for each state in which Antioch has a campus:

Appendix A: State of California;

Appendix B: State of New Hampshire;

Appendix C: State of Ohio;

Appendix D: State of Washington.

- B.** Sexual violence and sexual assaults committed against or by an Antioch University student, employee, or agent may be pursued by the complainant through this policy, through local law enforcement for a criminal investigation, or both. For example, a complainant may pursue a University disciplinary process at the same time as pursuing a criminal complaint with the local law enforcement agency. Note that while a disciplinary complaint and a criminal charge may be pursued at the same time, a University complaint may be pursued without the complainant also pursuing criminal charges. An initial choice to use one of these avenues does not preclude a later decision to use the other or both.
- C.** The University strongly encourages students and/or employees to report all incidents of sexual violence to the police. The University does not maintain a campus police department. Therefore, students and employees should report such violations to the local law enforcement authority for the jurisdiction in which the crime was committed. All concerned individuals are encouraged to contact the resources identified in Appendices A – D to discuss options for safe and positive intervention on behalf of a complainant.
- D.** Incidents of sexual misconduct that are reported to the University will result in an administrative investigation, as described more fully below. This administrative investigation conducted by the Title IX Coordinator, Deputy Title IX Coordinator or designee is distinct from a criminal investigation and flows from the University's obligation under Title IX and Title VII to ensure that it is providing a safe environment for all students and employees. If a complainant wishes to pursue a criminal complaint exclusively, the complainant may request to temporarily defer the administrative investigation and/or disciplinary process by making a formal written request to the Title IX Coordinator, Deputy Title IX Coordinator or designee. Such a request may unreasonably delay the administrative investigation and the University's ability to respond. Therefore, the University will ordinarily continue its

administrative investigation when it has reason to believe that the respondent may be an imminent threat to the safety of the complainant and/or other students or employees. If the University does defer its investigation, the complainant may rescind that deferral by making a formal written request to the Title IX Coordinator, Deputy Title IX Coordinator or designee that elects to resume the administrative investigation and/or disciplinary process. The University will maintain documentation of the date of deferral. Information obtained through the criminal investigation may be used by the University in the University disciplinary process.

X. Resources for Medical and Counseling Care

- A. Reporting Options.** The University strongly encourages individuals who have experienced an incident of sexual misconduct, including rape or sexual assault, to seek assistance from a medical provider and/or law enforcement as soon as possible after the incident. This is the best option for establishing immediate safety and beginning effective medical care, the preservation of evidence, and a timely investigation. Antioch does not maintain a campus police department; therefore, an individual wishing to report a matter to law enforcement must do so by contacting the local law enforcement jurisdiction for the location in which the crime occurred. However, at an individual's request, Antioch will assist the individual in making such a report.
- B. Medical Care.** Medical assistance following an assault is critical. A medical provider can provide emergency and/or follow-up medical services, and has the ability to discuss any health care concerns related to the incident in a confidential medical setting. The purposes of a medical examination are twofold: first, to diagnose and treat the full extent of any injury or physical effect (including sexually transmitted diseases or pregnancy); and second, to properly collect and preserve evidence. There is a limited window of time to preserve physical and other forms of evidence following an assault. Taking the step to gather evidence immediately does not commit an individual to any course of action, but it is a confidential means to secure evidence for the possible pursuit of civil or criminal charges at some future time.
- C. Psychological Services.** Many of the University campuses have psychological counseling centers which offer services to both currently enrolled students and employees. Such services are confidential. In addition, the University has outside counseling services available through its Employee Assistance Program (EAP). Staff and students should consult with the Title IX Coordinator or the HR office on their campus regarding the availability of such services and for referrals to outside crisis centers in each community in which the University operates. The Appendices also set forth resources and related contact information Antioch community members may consult following an incident of sexual misconduct.

- D. Supportive Measures.** Students whose academic performance is adversely affected by a violation of this policy should consult with the Title Coordinator about possible supportive measures. For example, a complainant who misses class due to fear of confronting a respondent may be given additional time to complete course work or granted other academic adjustments to ameliorate the effects of the alleged sexual misconduct. Supportive measures may also be available to respondents.

XI. Antioch University Complaint Procedure and Administrative Investigation

A. General Provisions

- 1. Rights of Parties.** Antioch seeks to investigate and adjudicate formal complaints of sexual misconduct in a prompt, thorough, and equitable manner. Accordingly, complainants and respondents are afforded certain rights during the course of an investigation and adjudication, including but not limited to those described herein. A respondent is presumed not responsible for alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- 2. Training of University Title IX Personnel.** The procedures associated with review of allegations will be conducted by individuals who receive regular training on the definition of sexual harassment set forth in this policy; the scope of the school's education program or activity; issues related to sexual discrimination and misconduct; how to conduct investigations, hearings, appeals and informal resolutions that protect the parties and promote accountability; and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

B. Pre-Investigation

- 1. Consultation with Complainant.** When the University receives notice of an allegation of sexual misconduct, the Title IX Coordinator or Deputy Title IX Coordinator ("Coordinator") will promptly contact the complainant confidentially to:
 - a. Provide assistance to the complainant, including written information concerning the following: the importance of getting medical and mental health care; the importance of preserving evidence, including the location of witnesses; confidentiality; options for notifying law enforcement and campus authorities (including the option to decline to notify law enforcement); and the availability of, and contact information for, on- and off-campus resources and services;

- b. Inform the complainant of the availability of supportive measures, which are individualized services that are non-punitive, non-disciplinary, and designed to ensure equal educational access, protect safety, or deter sexual harassment. Examples of supportive measures include extensions of deadlines or other course-related adjustments, modifications of work schedules, campus escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Supportive measures must be reasonably available, not unreasonably burdensome to the respondent, and must remain confidential as practicable.
- c. Explain the process for filing a formal complaint, which is a request that the University investigate the allegation.

- 2. Formal Complaint.** A complainant may choose whether to file a formal complaint. Generally, the University will respect a complainant's wishes with respect to whether the school investigates the allegation. However, the Coordinator may elect to proceed with an investigation by signing a formal complaint where the Coordinator determines that investigating over the wishes of the complainant is not clearly unreasonable in light of the known circumstances. For example, the Coordinator may determine that it is necessary to investigate multiple complaints against an individual or conduct that would put the University community at risk. If the Coordinator signs a formal complaint, the Coordinator is not a party to the complaint.

At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the University. A formal complaint must contain the complainant's physical or digital signature, or otherwise indicate that the complainant is the person filing the formal complaint. A formal complaint may be filed with a Coordinator by mail, in person or via email.

- 3. Review of Formal Complaint.** The University will evaluate all formal complaints to determine whether:
- a. The complaint was filed by an individual participating or attempting to participate in an educational activity of the University;
 - b. The allegation meets the definition of sexual harassment set forth in this policy;
 - c. The alleged conduct occurred in the school's education program or activity;

and

- d. The alleged conduct occurred against a person in the United States.

If the University determines that one of these factors is not present, the University will dismiss the complaint for purposes of Title IX and this policy. However, the University reserves the right to address the allegation under the University's student and employee conduct and discipline policies.

C. Investigation Procedure

- 1. Investigator.** A Coordinator may investigate or may assign another University employee to investigate. The Coordinator shall ensure that the investigator is free from conflicts of interest or bias for or against the specific individuals involved, or complainants or respondents generally.

In some cases, it may be appropriate for the investigation to be conducted by an independent outside investigator. This may be the case, for example, where the potential for a conflict of interest exists on the part of the Title IX Coordinator because the respondent is a superior or a member of a governing board of the University. The decision to delegate the investigation to an outside investigator shall be within the sole discretion of the Title IX Coordinator.

- 2. Notification of Rights.** The University will notify the complainant and respondent of the investigation and provide the parties an explanation of the complainant's, respondent's and University's rights and responsibilities under this policy including:
 - a. Notice of the allegations of sexual harassment as defined in § 106.30, including sufficient details known at the time and with sufficient time for respondent to prepare a response before any initial interview.
 - b. The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
 - c. The steps, anticipated timelines, and decision-making process for the disciplinary proceeding;
 - d. A description of the standard of proof (i.e. preponderance of evidence) that will be used during any disciplinary proceeding;
 - e. A listing of possible sanctions that the University may impose following a

disciplinary proceeding; and

- f. Availability of supportive measures to complainant and respondent following receipt of an allegation.
- g. Written notice of any investigative interviews, meetings, or hearings that are being scheduled where the party must be present;
- h. Both the complainant and respondent may be accompanied to any meeting regarding sexual misconduct complaints by one advisor, who may, but need not be, an attorney.
- i. The right of the parties to an opportunity to inspect and review evidence;
- j. Neither the University and its employees, nor the complainant or respondent may retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual for exercising rights to these procedures; and
- k. The University's prohibition on knowingly making false statements in a University disciplinary action.

3. Content of Investigation. Ordinarily, an investigation will include receipt of a written statement from the complainant which provides the factual details of the alleged violation, an interview with the respondent, interviews with any witnesses as appropriate and review of relevant documentary evidence. Both the respondent and the complainant shall be allowed to provide evidence and information in support of their positions in the investigation. However, the burden of gathering evidence and burden of proof remains on the University, not on the parties. The investigator will not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. The investigator shall conduct an objective evaluation of all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on a person's status as a complainant, respondent, or witness.

4. Investigation Report. Once the investigation is complete the investigator shall prepare a report that will include:

- a. Findings of fact;
- b. Conclusions as to whether a violation of University policy has occurred;
- c. Recommendations for disciplinary action against the respondent, if any;

however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent;

- d. Remedies for the complainant, if any. Remedies must be designed to maintain the complainant's equal access to education and may include individualized services as supportive measure

The investigative report shall be disseminated for further action as provided in Section XV, below. The report should ordinarily be completed within 60 days of the receipt of the formal complaint by the complainant. Additional time may be required in cases with complex investigations, difficulty scheduling witness interviews, document unavailability, or other issues.

XII. Disciplinary Proceedings and Burden of Proof

A. Disciplinary Proceedings

If after the administrative investigation, the Coordinator or designee determines by a preponderance of the evidence that a policy violation has occurred (*i.e.*, that it is more likely than not that a policy violation has occurred) and that discipline should be imposed, the matter shall be referred for further disciplinary proceedings.

- 1. Student Respondent.** If the respondent is a student, the investigation report will be referred by the Coordinator or designee to the Chief Student Conduct Officer ("CSCO") for the campus or entity in which the respondent is enrolled. Thereafter, the CSCO will proceed with a formal hearing proceeding generally in accordance with the Student Code of Conduct Policy 6.103, except as set forth below.

Information obtained through the administrative investigation may be used by the CSCO in the University disciplinary process, with or without the cooperation of the complainant and/or respondent. The CSCO and other administrators will consider, but are not bound by the disciplinary recommendations of the investigator. Both the respondent and the complainant shall be advised of the outcome of the disciplinary proceedings simultaneously in a manner that does not violate the FERPA rights of the other.

- 2. Employee Respondent.** If the respondent is an employee, the investigative report will be referred by the Coordinator or designee to the Human Resources Office ("HRO") for the campus or entity at which the respondent is employed and to the employee's immediate supervisor. When the HRO and/or supervisor are implicated in the allegations, the Coordinator will make the referral to other appropriate administrator(s). Thereafter, the HRO and supervisor, or other administrator(s), will proceed with disciplinary proceedings in accordance with the provisions of the Employee Code of Conduct Policy 4.601 and the Employee

Corrective Action and Discipline Procedures Policy 4.617, except as set forth below. Information obtained through the administrative investigation may be used by the University in the disciplinary process, with or without the cooperation of the complainant and/or respondent. While the supervisor and HRO must give deference to the findings of fact and conclusions of the investigator, they are not bound by the disciplinary recommendations of the investigator and may modify the discipline as they in their discretion feel is reasonable and appropriate. Both the respondent and the complainant shall be advised of the outcome of the disciplinary proceedings.

- 3. Member of Governing Board Respondent.** If the respondent is a member of the Board of Governors the investigative report will be referred by the Coordinator or designee to the Chair of the Board of Governors with a copy to the Chair of the Governance Committee. Thereafter, the respective board or committee will conduct a prompt and thorough review of the investigative report, conduct any further investigation they deem appropriate, and proceed with any appropriate disciplinary proceedings in accordance with the Bylaws of the University and its Board, except as set forth below. The governing board will consider, but is not bound by the disciplinary recommendations of the investigator. Both the respondent and the complainant shall be advised of the outcome of the disciplinary proceedings.
- 4. Third Party Respondents.** If the respondent is a third party such as a vendor, independent contractor, a guest, or invitee the Coordinator or designee may take appropriate measures to ensure that the conduct ceases and that the effects of the misconduct are ameliorated. This may include, for example, termination of the contractual relationship with the vendor or barring the visitor/guest from campus. Information obtained through the administrative investigation may be used by the Coordinator in the University disciplinary process, with or without the cooperation of the complainant and/or respondent.

B. Exceptions and Additions to Disciplinary Policies

The following exceptions to the Student Conduct Policy 6.103 and Employee Corrective Action and Discipline Procedures Policy 4.617 shall apply in cases brought under this policy:

1. Parties must have the opportunity to select an advisor of the party's choice who may be, but need not be, an attorney. An advisor may not obstruct, impede or delay any proceeding under this policy, and may not engage in discourse or conduct that is disrespectful or abusive. The investigator, hearing officer or adjudicator has discretion to limit the advisor's participation in response to such behaviors.

2. The University must send written notice to parties of any investigative interviews, meetings, or hearings where the party must be present;
3. The parties may agree to an informal resolution process that does not involve a full investigation and adjudication, provided that the University:
 - a. Provides to the parties a written notice disclosing: the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
 - b. Obtains the parties' voluntary, written consent to the informal resolution process; and
 - c. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.
4. The University must send the parties, and their advisors, evidence directly related to the allegations, in electronic format or hard copy, with at least 10 days for the parties to inspect, review, and respond to the evidence;
5. The University must send the parties, and their advisors, an investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least 10 days for the parties to respond;
6. A party's medical, psychological, and similar treatment records may not be accessed or used without the party's voluntary, written consent to do so;
7. A respondent may not be held responsible without a live hearing;
8. At the University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants to see and hear each other;
9. At the request of either party, the recipient must provide for the entire live hearing (including cross-examination) to occur with the parties located in separate rooms with technology enabling the parties to see and hear each other;

10. At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility;
11. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally;
12. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The basic test for relevance is:
 - a) Whether the question posed is probative of the question of responsibility (*i.e.*, whether it has any tendency to make a fact more or less probable than it would be without the evidence; and
 - b) The fact is of consequence in determining responsibility.
13. If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions;
14. If a party does not have an advisor present at the live hearing, the school must provide, without fee or charge to that party, an advisor of the school's choice who may be, but is not required to be, an attorney to conduct cross-examination on behalf of that party;
15. Questions and evidence about a complainant's prior sexual behavior will be deemed irrelevant, unless offered to prove that someone other than the respondent committed the alleged misconduct.
16. The University reserves the right to appoint a University employee or to hire an external hearing officer or decision-maker to conduct hearings brought pursuant to this policy;
17. The decision-maker (who cannot be the same person as the Title IX Coordinator or the investigator) must issue a written determination regarding responsibility with findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed

on the respondent, and whether remedies will be provided to the complainant.

18. The written determination must be sent simultaneously to the parties along with information about how to file an appeal.
19. The University must supply an audio or audiovisual recording, or transcript, of any live hearing for inspection by the parties;
20. A party may appeal on the following grounds:
 - a. Procedural irregularity that affected the outcome of the matter;
 - b. Newly discovered evidence that could affect the outcome of the matter; or
 - c. Conflict of interest or bias that affected the outcome of the matter.

C. Burden of Proof

In determining whether a violation of this policy has occurred, the University uses a “preponderance of the evidence” standard. In other words, if, based upon all of the reliable and probative evidence, it is more likely than not that the conduct occurred, then a violation will be established and appropriate disciplinary action will be taken.

XIII. Effect of Outcomes in Criminal Proceedings on this Process

The standard for criminal investigations and prosecutions is proof beyond a reasonable doubt, a standard which is higher than the preponderance of evidence standard required by this policy. Thus, the outcome of a criminal proceeding may not be determinative of whether the alleged conduct violates this policy. Conduct may constitute unlawful discrimination or harassment under this policy and Title IX or Title VII even if the police and prosecutor do not have sufficient evidence of a criminal violation. Therefore, neither a decision by a prosecutor to voluntarily dismiss a criminal charge nor a verdict of not guilty at the criminal trial is determinative of the University proceedings.

XIV. Confidentiality

- A. Confidentiality of Reporting.** The nature of sexual misconduct or assault, particularly by an acquaintance, date, or partner, makes it difficult for many to report their experiences. Understandably, many who are considering making a report inquire about confidentiality. Complainants should be aware that the University’s ability to respond may be very limited if it is unable to disclose the name of the complainant or other identifiable information to the respondent or witnesses. If a complainant requests confidentiality or asks that the complaint not be pursued, the University

will generally respect a complainant's wishes. However, situations may exist in which the Coordinator elects to proceed with an investigation by signing a formal complaint where the Coordinator determines that investigating over the wishes of the complainant is not clearly unreasonable in light of the known circumstances. If a complainant requests confidentiality or asks that the complaint not be pursued, the Title IX Coordinator or designee will weigh the request against the University's obligation to provide a safe, non-discriminatory environment for all students and employees, including the complainant. A range of factors may be considered in making this assessment, including but not limited to whether the respondent is likely to engage in additional misconduct, whether the act was committed with a weapon, if the complainant is a minor, whether the University can obtain relevant evidence of the alleged misconduct through some other means, or whether the report reveals a pattern of behavior for example at a given location or by or against a particular group. The presence of one or more of these factors could lead the University to investigate and, if appropriate, pursue action against the respondent. If none of these factors are present, the University will likely respect the complainant's request for confidentiality.

- B. Identity of Parties.** Personally identifiable information about complainants will not be included in any publicly available record-keeping, including the reporting and disclosure of crime statistics. Where circumstances exist that are deemed a danger to the University community at large, pertinent details about sexual misconduct may be publicly released. Further, the Clery Act mandates the annual disclosure of statistics of sexual assaults known to have occurred within certain geographical areas and reported to campus security authorities or local law enforcement.⁴
- C. Non-retaliation Policy.** The Title IX Coordinator will inform the complainant and respondent of the University's prohibitions against retaliation and it will take steps to prevent such retaliation as well as steps to discipline those who retaliate. In serious cases in which the University determines that it is appropriate to pursue a full investigation, for example where the safety of others is jeopardized, it may proceed with the investigation irrespective of a request for confidentiality. If the University deems disclosure of the respondent's identity to the respondent to be necessary and appropriate, the University will advise the complainant of that decision. The University will coordinate prudent protective administrative measures in all circumstances where warranted.
- D. FERPA.** Student information will be protected pursuant to the Family Educational Rights and Privacy Act (FERPA) whenever appropriate.

⁴ The statistical disclosure requirements of Clery do not compel disclosure of the reporting person's identity or any identifying facts concerning the incident.

- E. **Medical Information.** Medical information, if any, will be protected pursuant to the Health Information Portability and Accountability Act (HIPAA) whenever appropriate.

XV. Anonymous Complaints

Anonymous complaints will be accepted, however, Antioch University may be limited in its options for investigating or resolving anonymous complaints because of the unique challenges they present. There is no way to assess the complainant's veracity and no ability to obtain additional information if the complaint is unclear or confusing or is denied by the respondent. The Title IX Coordinator, Deputy Title IX Coordinator or designee will keep records of all complaints, including anonymous complaints, and:

- A. If the anonymous complaint contains sufficiently detailed information about conduct that, if true, would constitute a crime, then the complaint may be forwarded to appropriate law enforcement agencies.
- B. If the anonymous complaint contains sufficiently detailed information about conduct that, if true, would constitute a violation of this policy, the complaint will be investigated to the best of the University's ability given the anonymous nature of the complaint. Disciplinary action may only be possible if there is independent evidence of the allegations beyond the anonymous statement.

XVI. Non-retaliation Policy

Retaliation is any conduct or behavior that interferes with a person's rights or ability to pursue or to participate in disciplinary processes through Antioch or charges through law enforcement authorities. Retaliation also includes taking adverse action against an individual in response to the individual's participation in an internal disciplinary or external law enforcement process. Retaliation may include intimidation, threats, coercion, adverse employment or educational actions and includes causing third parties to take any such retaliatory action. Retaliation includes any action which negatively affects the complainant, the respondent, or those participating in the complaint, including but not limited to witnesses, administrators, decision-makers or those who are assisting or supporting the complainant or respondent.

Antioch University has a zero-tolerance policy for retaliation. Any actual or threatened retaliation will result in serious disciplinary sanctions, up to and including termination from employment or dismissal of a student. Individuals should immediately report retaliation concerns to the Title IX Coordinator, Deputy Title IX Coordinator, or designee.

XVII. Sexual Violence Awareness and Prevention Programming

It is an unfortunate reality that incidents of gender discrimination, sexual assault, domestic violence, dating violence and stalking occur at colleges and universities, regardless of their location. However, Antioch will not tolerate sexual assault, domestic violence, dating violence, stalking, or any other hostile conduct on the basis of sex. The University regularly and actively endeavors to promote awareness and prevention of sexual misconduct, domestic violence, dating violence and stalking through coordinated efforts of the University Department of Human Resources and the Vice Chancellor of Academic Affairs in conjunction with other relevant departments, including the Office of General Counsel.

XVIII. Public Visibility of this Policy

This policy shall be brought to the attention of all current and intended future employees and students at Antioch University and is available online, including through the University website at www.antioch.edu/policies.

Attachments:

- Appendix A: State of California Resources and Definitions**
- Appendix B: State of New Hampshire Resources and Definitions**
- Appendix C: State of Ohio Resources and Definitions**
- Appendix D: State of Washington Resources and Definitions**

Policy Cross References

Emergency Notification and Evacuation Procedures	Policy #.3.305
Affirmative Action and Equal Employment Opportunity	Policy # 4.005
Relationships in the Workplace	Policy # 4.615
Employee Code of Conduct	Policy # 4.601
Employee Corrective Action and Discipline	Policy # 4.617
Student Code of Conduct	Policy # 6.103

Form Cross Reference

Complaint Form – Sexual Harassment, Sexual Violence and Sex Discrimination	Form # 4.607:01
Title IX Policy Statement	Form # 4.607:02

Appendix A: State of California Resources and Definitions

California Legal Definitions

The following is a summary of the definitions applicable to Title IX offenses (sexual assault, dating violence, domestic violence, and stalking) under California state law.

“Affirmative Consent”

” “Affirmative consent” means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent. [...] Nothing in this section shall affect the admissibility of evidence or the burden of proof on the issue of consent.” Cal. Penal Code § 261.6.

“Sexual Assault”

The California Penal Code establishes three categories of sexual assault and related offenses: rape, spousal rape, statutory rape, and sexual battery.

“Rape”

Rape is defined under section 261⁵ of the California Penal Code as an act of sexual intercourse under certain, enumerated circumstances, including:

where a person is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the accused;

- where the accused uses force, violence, duress, menace, or fear of immediate and unlawful bodily injury;
- where any intoxicating or anesthetic substance, or any controlled substance, prevents the accuser from resisting, and this condition was known, or reasonably should have been known by the accused;
- where the accuser is at the time unconscious of the nature of the act, and this is known to the accused;
- where the accuser submits under the belief that the accused is someone known to the accuser other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief;
- where the accused threatens to retaliate physically in the future against the accuser or any other person, and there is a reasonable possibility that the accused will execute the threat; and

⁵ The complete texts of sections 261, 261.5, and 262 of the California Penal Code are available at <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=00001-01000&file=261-269>.

- where the accused threatens to use the authority of a public official to incarcerate, arrest, or deport the accuser or another, and the accuser has a reasonable belief that the accused is a public official.

“Spousal Rape”

The definition of spousal rape under section 262 of the California Penal Code generally tracks the definition of rape, except that the accused is the spouse of the accuser.

“Statutory Rape”

Section 261.5 of the California Penal Code refers to statutory rape as “unlawful sexual intercourse.” The term means an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is under eighteen years old. The crime is either a misdemeanor or a felony depending on whether the age difference between the accused and accuser is greater or less than three years.

“Sexual Battery”

Under section 243.4 of the California Penal Code,⁶ sexual battery is defined, in part, as touching the intimate part of the accused against his or her will for the purpose of sexual arousal while the accuser is either: (1) unlawfully restrained by the accused or an accomplice; (2) institutionalized for medical treatment and seriously disabled or medically incapacitated; or (3) under the impression, due to the accused’s fraudulent representations, that the touching served a professional purpose.

“Domestic Violence”

Section 243(e) of the California Penal Code defines “domestic battery” to mean willful and unlawful touching that is committed against: (1) the accused’s spouse or former spouse; (2) the accused’s cohabitant or former cohabitant; (3) the parent of the accused’s child; (4) the accused’s fiancé or fiancée, either former or current; or (5) someone with whom the accused has, or has had, a dating relationship (*i.e.* frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations). In addition, section 273.5⁷ of the California Penal Code prohibits the willful infliction of corporal injury resulting in a traumatic condition upon an accuser who meets these same five categories.

“Dating Violence”

California law has no criminal law that exclusively addresses dating violence. However, California domestic battery and corporal injury laws, both set forth above, encompass acts

⁶ The complete text of section 243 of the California Penal Code is available at <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=00001-01000&file=240-248>.

⁷ The complete text of section 646.9 of the California Penal Code is available at <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=00001-01000&file=639-653.2>.

committed within the context of dating relationships.

“Stalking”

Under section 646.9 of the California Penal Code, stalking is defined as willfully, maliciously, and repeatedly following or harassing the accuser and making a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family.

Appendix B: State of New Hampshire Resources and Definitions

The following is a summary of the definitions applicable to Title IX offenses (sexual assault, dating violence, domestic violence, and stalking) under New Hampshire state law.

“Consent”: A defendant may raise consent as a defense to certain sexual offenses. R.S.A. §§ 632-A:2, 626:6. The question is “whether a reasonable person in the circumstances would have understood that the victim did not consent.” *State v. Ramos*, 149 N.H. 272, 275 (2003).

“Consent is no defense if it is given by a person legally incompetent to authorize the conduct or by one who, by reason of immaturity, insanity, intoxication or use of drugs is unable and known by the actor to be unable to exercise a reasonable judgment as to the harm involved.” N.H. Rev. Stat. Ann. § 626:6.

“Sexual Assault”: New Hampshire RSA 632-A establishes three categories of sexual assault and related offenses: Aggravated Felonious Sexual Assault, Felonious Sexual Assault, and Sexual Assault.⁵

“Aggravated Felonious Sexual Assault” is defined as engaging in “sexual penetration” of another person under circumstances including:

- the application of physical force, violence, or superior physical strength;
- a victim who is physically helpless to resist;
- a victim who is less than 13 years of age (or less than 18 or 16 in certain circumstances);
- coercion of the victim to submit by threatened use of physical violence or physical strength;
- coercion of the victim to submit by threatening to retaliate;
- submission by the victim under circumstances involving false imprisonment, kidnapping, or extortion;
- the administration to the victim of an intoxicating substance which mentally incapacitates the victim, without the victim’s prior knowledge or consent;
- the provision of therapy, medical treatment, or examination to the victim in the course of a therapeutic relationship under certain circumstances, or within one year of termination of treatment;
- In certain circumstances where the victim is incapable of choosing independently due to disability;
- pattern of sexual assault of a victim under 16 years of age;
- use of concealment or surprise, such that victim is unable to flee or resist. See NH RSA 632-A:2(I).

“Felonious Sexual Assault” means, in part, “sexual contact” (*i.e.* intentional touching, reasonably construed as being for purposes of sexual arousal or gratification) when the accused:

- I. Subjects a person to sexual contact and causes serious personal injury to the victim

under any of the circumstances named in RSA 632-A:2; or

- II. Engages in sexual penetration with a person, other than his legal spouse, who is 13 years of age or older and under 16 years of age where the age difference between the actor and the other person is 4 years or more; or
- III. Engages in sexual contact with a person other than his legal spouse who is under 13 years of age; or
- IV. (a) Engages in sexual contact with the person, or causes the person to engage in sexual contact on himself or herself in the presence of the actor, when the actor is in a position of authority over the person and uses that authority to coerce the victim to submit under any of the following circumstances:
 - (1) When the actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile detention facility where the actor is employed; or
 - (2) When the actor is a probation or parole officer or a juvenile probation and parole officer who has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation.

(b) Consent of the victim under any of the circumstances set forth in this paragraph shall not be considered a defense.

(c) For the purpose of this paragraph, "sexual contact" means the intentional touching of the person's sexual or intimate parts, including genitalia, anus, breasts, and buttocks, where such contact, or that

- causes serious personal injury to the victim;
- engages in sexual penetration with a person between the ages of 13 and 16, where the age difference is three years or more;
- engages in sexual contact with a person under the age of 13; or
- engages in sexual contact with a person when the actor is in a position of authority over the person and uses that authority to coerce the victim. See NH RSA 632-A:3(I)-(IV).

"Sexual Assault" means, in part, "sexual contact" with a person 13 years of age or older under the circumstances described regarding aggravated felonious sexual assault and/or sexual penetration with a person between the ages of 13 and 16 where the age difference between the actor and the other person is three years or less. See NH RSA 623-A:4.

"Domestic Violence" New Hampshire RSA 631:2-b defines "domestic violence" to encompass various acts against a family member or household member or intimate partner, including:

- knowingly causing bodily injury or unprivileged physical contact by use of physical force;

- recklessly causing bodily injury by use of physical force;
- negligently causing bodily injury by means of a deadly weapon;
- using physical force or physically threatening to use a deadly weapon for the purpose of placing another in fear of imminent bodily injury;
- threatening to use a deadly weapon against another person for the purpose of terrorizing that person;
- coercing or forcing another to submit to sexual contact by using physical force or physical violence;
- threatening to use physical force, physical violence, or a deadly weapon to cause another to submit to sexual contact, and the victim believes the actor has the present ability to execute the threat;
- confining another unlawfully by means of physical force or the threatened use of a deadly weapon, so as to interfere substantially with his or her physical movement;
- knowingly violating a term of a protective order by means of the use or attempted use of physical force or the threatened use of a deadly weapon; or
- using physical force or the threatened use of a deadly weapon against another to block that person's access to any cell phone, telephone, or electronic communication device with the purpose of preventing, obstructing, or interfering with a criminal report or request for medical assistance. See NH RSA 631:2-b

As used in New Hampshire RSA 631:2-b, the phrase *"family member or household member"* is defined to encompass: the accused's spouse or former spouse; a person with whom the accused either cohabitates or has cohabitated as a spouse, parent, or guardian; an adult with whom the accused is related by blood or marriage; or a person with whom the accused shares a child in common. The term *"intimate partner"* means a person with whom the accused is currently or was formerly involved in a romantic relationship, regardless of whether or not the relationship was sexually consummated.

"Dating Violence" New Hampshire law has no criminal law that specifically addresses dating violence. However, New Hampshire's domestic violence law, set forth above, may encompass dating violence in some instances.

"Stalking" New Hampshire RSA 633:3-a⁶ defines criminal *"stalking"* as knowingly or recklessly engaging in a course of conduct targeted at a specific person which either: (1) would cause a reasonable person to fear for his or her personal safety or the safety of a member of that person's immediate family, and the person is actually placed in such fear; or (2) the accused knows will place that individual in fear for his or her personal safety or the safety of a member of that individual's immediate family. In the absence of a course of conduct, a single act that violates a protective order may also constitute stalking under New Hampshire RSA 633:3.

⁵ The complete text of New Hampshire RSA 632-A is available at <http://www.gencourt.state.nh.us/rsa> .

⁶ The complete text of New Hampshire RSA 633:3-a is available at <http://www.gencourt.state.nh.us/rsa/html/lxii/633/633-3-a.htm>.

Appendix C: State of Ohio Resources and Definitions

The following is a summary of the definitions applicable to Title IX offenses (sexual assault, dating violence, domestic violence, and stalking) under Ohio law.

“Consent”

Ohio law does not expressly define consent with respect to sexual conduct. However, Ohio law holds that consent is absent in the following situations:

- the victim’s judgment or control is substantially impaired as a result of an accused’s administration of a drug, intoxicant, or controlled substance to the victim, whether surreptitiously, by force, or by threat of force or deception;
- the victim lacks the ability to assess the nature of or to control her or his own conduct;
- the victim is coerced;
- the offender uses force or threat of force;
- the victim is unaware that the alleged act is being committed (*e.g.* the victim is unconscious at the time); or
- the victim’s ability to consent is substantially impaired because of a mental or physical condition or due to advanced age.⁸

“Sexual Assault”

Ohio state law does not define the term “sexual assault.” However, the following are examples of specific offenses under Ohio law that may fall under the broader categories of “sex assault”:

“Rape” is defined as engaging in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when any of the following apply:

- the offender substantially impairs the other person’s judgment or control by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception;
- the other person is less than thirteen years of age, whether or not the offender knows the age of the other person;
- the other person’s ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the other person’s ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age;⁹ or
- the offender purposely compels the other person to submit by force or threat of force.¹⁰

⁸ This is not an exhaustive list, but rather is offered as an example of some situations in which Ohio law states that consent cannot be granted as a legal matter.

⁹ The complete text of Ohio Revised Code, §2907.02(A)(1) is available at <http://codes.ohio.gov/orc/2907.02>.

¹⁰ The complete text of Ohio Revised Code, §2907.02(A)(2) is available at <http://codes.ohio.gov/orc/2907.02>.

“Sexual Battery” is defined as engaging in sexual conduct with another not the spouse of the offender when any of the following apply:

- the offender knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution;
- the offender knows that the other person’s ability to appraise the nature of or control the other person’s own conduct is substantially impaired;
- the offender knows that the other person submits because the other person is unaware that the act is being committed;
- the offender knows that the other person submits because the other person mistakenly identifies the offender as the other person’s spouse;
- the offender is the other person’s natural or adoptive parent, or a stepparent, or guardian, custodian, or person *in loco parentis* of the other person;
- the other person is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the person;
- the offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code, the other person is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school;
- the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the other person is a minor who is enrolled in or attends that institution;
- the other person is a minor, and the offender is the other person’s athletic or other type of coach, is the other person’s instructor, is the leader of a scouting troop of which the other person is a member, or is a person with temporary or occasional disciplinary control over the other person;
- the offender is a mental health professional, the other person is a mental health client or patient of the offender, and the offender induces the other person to submit by falsely representing to the other person that the sexual conduct is necessary for mental health treatment purposes;
- the other person is confined in a detention facility, and the offender is an employee of that detention facility;
- the other person is a minor, the offender is a cleric, and the other person is a member of, or attends, the church or congregation served by the cleric; or
- the other person is a minor, the offender is a peace officer, and the offender is more than two years older than the other person.¹¹

“Unlawful Sexual Conduct with a Minor” is defined as engaging in sexual conduct with another person who is not the spouse of the offender when the offender knows the other person is thirteen years of age or older, but less than sixteen years of age, or the offender is reckless in that regard.¹²

¹¹ The complete text of Ohio Revised Code, §2907.03 is available at <http://codes.ohio.gov/orc/2907.03>.

¹² The complete text of Ohio Revised Code, §2907.04 is available at <http://codes.ohio.gov/orc/2907.04>.

“Gross Sexual Imposition” is defined as having sexual contact with another not the spouse of the offender; causing another person who is not the spouse of the offender to have sexual contact with the offender; or causing two or more other persons to have sexual contact when any of the following applies:

- the offender purposely compels the other person, or one of the other persons, to submit by force or threat of force;
- for the purpose of preventing resistance, the offender substantially impairs the judgment or control of the other person or of one of the other persons by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception;
- the offender knows that the judgment or control of the other person or of one of the other persons is substantially impaired as a result of the influence of any drug or intoxicant administered to the other person with the other person’s consent for the purpose of any kind of medical or dental examination, treatment, or surgery;
- the other person, or one of the other persons, is less than thirteen years of age, whether or not the offender knows the age of that person;
- the ability of the other person to resist or consent or the ability of one of the other persons to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the ability to resist or consent of the other person or of one of the other persons is substantially impaired because of a mental or physical condition or because of advanced age; or
- knowingly touching the genitalia of another when the touching is not through clothing and the other person is less than twelve years of age, whether or not the offender knows the age of that person, and the touching is done with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.¹³

“Sexual Imposition” is defined as having sexual contact with another not the spouse of the offender; causing another not the spouse of the offender to have sexual contact with the offender; or causing two or more other persons to have sexual contact when any of the following applies:

- the offender purposely compels the other person, or one of the other persons, to submit by force or threat of force;
- for the purpose of preventing resistance, the offender substantially impairs the judgment or control of the other person or of one of the other persons by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception;
- the offender knows that the judgment or control of the other person or of one of the other persons is substantially impaired as a result of the influence of any drug or intoxicant administered to the other person with the other person’s consent for the purpose of any

¹³ The complete text of Ohio Revised Code, §2907.05 is available at <http://codes.ohio.gov/orc/2907.05>.

kind of medical or dental examination, treatment, or surgery;

- the other person, or one of the other persons, is less than thirteen years of age, whether or not the offender knows the age of that person;
- the ability of the other person to resist or consent or the ability of one of the other persons to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the ability to resist or consent of the other person or of one of the other persons is substantially impaired because of a mental or physical condition or because of advanced age; or
- the knowing touching of the genitalia of another when the touching is not through clothing and the other person is less than twelve years of age, whether or not the offender knows the age of that person, and the touching is done with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.¹⁴

“Domestic Violence”

“Domestic Violence” is defined as knowingly or recklessly causing or attempting to cause physical harm to a family or household member; or by threat of force, knowingly causing a family or household member to believe that the offender will cause imminent physical harm to the family or household member.¹⁵

For purposes of this definition, the term “family or household member” means any of the following: “Family or household member” means any of the following when such person is residing with or has resided with the offender: a spouse, a person living as a spouse, or a former spouse of the offender; a parent, a foster parent, or a child of the offender, or another person related by consanguinity or affinity to the offender; a parent or a child of a spouse, person living as a spouse, or former spouse of the offender, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the offender; or the natural parent of any child of whom the offender is the other natural parent or is the putative other natural parent. For purposes of this definition, the term “person living as a spouse” means a person who is living or has lived with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender within five years prior to the date of the alleged commission of the act in question.

“Dating Violence”

Ohio state law does not specifically address “dating violence” outside the context of public secondary education mandates not applicable to Antioch University. However the following definitions of assault-related crimes are provided as a resource to the Antioch community. “Felony Assault” is defined as knowingly causing serious physical harm to another or to another's unborn; causing or attempting to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance; knowingly engaging in sexual conduct with another person where the offender has knowledge that they have testified positive as a carrier of

¹⁴ The complete text of Ohio Revised Code, §2907.06 is available at <http://codes.ohio.gov/orc/2907.06>.

¹⁵ The complete text of Ohio Revised Code § 2919.25 is available at <http://codes.ohio.gov/orc/2919.25>.

a virus that causes acquired immunodeficiency syndrome without disclosing that knowledge to the other person; engaging in sexual conduct with a person whom the offender knows or has reasonable cause to believe lacks the mental capacity to appreciate the significance of the knowledge that the offender has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome; or engaging in sexual conduct with a person under eighteen years of age who is not the spouse of the offender.¹⁶

“Aggravated Assault” is defined as knowingly causing, while under the influence of sudden passion or in a sudden fit of rage brought on by serious provocation occasioned by a victim that is reasonably sufficient to incite the person into using deadly force, serious physical harm to another or to another’s unborn; or causing or attempting to cause physical harm to another or to another’s unborn by means of a deadly weapon or dangerous ordnance.¹⁷

“Assault” is defined as knowingly causing or attempting to cause physical harm to another or to another’s unborn; or recklessly causing serious physical harm to another or to another’s unborn.¹⁸ **“Negligent Assault”** is defined as negligently, by means of a deadly weapon or dangerous ordnance as defined in section 2923.11 of the Revised Code, causing physical harm to another or to another’s unborn.¹⁹

“Stalking”

Ohio state law does not contain a statutory definition of the term “stalking.” However, it does prohibit “menacing by stalking” and provides as follows:²⁰

- No person, by engaging in a pattern of conduct, shall knowingly cause another person to
- believe that the offender will cause physical harm to the other person or cause mental
- distress to the other person.
- No person, through the use of any electronic method of remotely transferring information, including, but not limited to, any computer, computer network, computer program, or computer system, shall post a message with purpose to urge or incite another to engage in the behavior prohibited above.
- No person, with a sexual motivation, shall engage in any of the conduct described in the foregoing paragraphs.

¹⁶ The complete text of Ohio Revised Code §2903.11 is available at <http://codes.ohio.gov/orc/2903.11>.

¹⁷ The complete text of Ohio Revised Code §2903.12 is available at <http://codes.ohio.gov/orc/2903.12>.

¹⁸ The complete text of Ohio Revised Code §2903.13 is available at <http://codes.ohio.gov/orc/2903.13>.

¹⁹ The complete text of Ohio Revised Code §2903.14 is available at <http://codes.ohio.gov/orc/2903.14>.

²⁰ The complete text of Ohio Revised Code, §2903.211 is available at <http://codes.ohio.gov/orc/2903.211>.

Appendix D: State of Washington Resources and Definitions

The following is a summary of the definitions applicable to Title IX offenses (sexual assault, dating violence, domestic violence, and stalking) under the laws of Washington State.

“Consent”

“Consent means that at the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.” Wash. Rev. Code § 9A.33.010(7).

“Sexual Assault”

Washington RCW 9A.44.040-.060²¹ refers to sexual assault as “rape” and divides the law into three degrees. “First Degree Rape” is defined as engaging in sexual intercourse by forcible compulsion where the accuser or an accessory either:

- uses or threatens to use a deadly weapon or what appears to be a deadly weapon;
- kidnaps the accuser;
- inflicts serious physical injury, including but not limited to physical injury which renders the accuser unconscious; or
- feloniously enters into the building or vehicle where the accuser is situated.

“Second Degree Rape” is defined, in part, as engaging in sexual intercourse with the accuser under circumstances including:

- by forcible compulsion;
- when the accuser is incapable of consent by reason of being physically helpless or mentally incapacitated;
- when the accuser is a person with a developmental disability and the accused is a person who is not married to the victim and who supervises or transports the accuser;
- when the accused is a health care provider, the victim is a client or patient, and the sexual intercourse occurs during a treatment session, consultation, interview, or examination;
- when the accuser is a resident of a facility for persons with a mental disorder or chemical dependency, the accused supervises the accuser, and the accused and accuser are not married; or
- when the accuser is a frail elder or vulnerable adult and the accused is a person who is not married to the victim and who has a significant relationship with the accuser or transports him or her for compensation.

“Third Degree Rape” means, in part, sexual intercourse where the accuser clearly expresses his or her lack of consent by words or conduct or where there is a threat of substantial unlawful harm to the property rights of the accuser.

²¹ The complete text of Washington RCW 9A.44.040 is available at <http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44>.

In addition to these definitions of rape, Washington State also has several child molestation and rape statutes, which generally prohibit sexual intercourse and contact with and between minors, subject to certain carve-outs where the age differential between the accuser and accused is proximate. See Washington RCW 9A.44.073-096.

“Domestic Violence”

Washington State law does not contain a criminal definition of domestic violence. Washington RCW 26.50.010²² governing civil protective orders, however, defines domestic violence to mean physical harm, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking when perpetrated against a family or household member. See Washington RCW 9A.44.073-096. “Family or household member,” in turn, is defined as spouses, domestic partners, former spouses, former domestic partners, persons who have a child in common, adult persons related by blood or marriage, adult persons who presently reside together or formerly resided together, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship,²³ persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship.

“Dating Violence”

Washington State has no criminal law that specifically addresses dating violence. However, Washington State’s domestic violence law, set forth above, may encompass dating violence in *some instances*.

“Stalking”

Washington RCW 9A.46.110²⁴ defines stalking to encompass, in part, the intentional and repeated harassment of the accused that would cause a reasonable person under the circumstances to fear that the accuser intends to injure him or her, that in fact does cause the accuser to fear injury, and that the accused either intended, or reasonably should have known, that the accuser feel afraid, intimidated, or harassed.

²² The complete text for Washington RCW 26.50.010 is available at <http://apps.leg.wa.gov/rcw/default.aspx?cite=26.50.010>.

²³ “Dating relationship” means a social relationship of a romantic nature.

²⁴ The complete text for Washington RCW 9A.46.110 is available at <http://app.leg.wa.gov/RCW/default.aspx?cite=9A.46.110>.