

# SEX & GENDER-BASED MISCONDUCT RESPONSE & PREVENTION: KEY DEFINITIONS

**"Affirmative consent"** is the affirmative, knowing, conscious, voluntary and mutual agreement to engage in sexual activity. Consent can only exist free from intimidation, force, threat of force or coercion. Under this Policy, "No" always means "No" and "Yes" may not always mean "Yes." Anything but voluntary, conscious, affirmative consent to any sexual activity is equivalent to "no" for purposes of this Policy. It is the responsibility of each person involved in the sexual activity to ensure that they have the affirmative consent of the other or others to engage in the sexual activity. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. While the legal definition of consent is found in the Chamberlain's Annual Disclosure, the following general rules apply when assessing whether consent has been/was given.

- Consent can never be assumed.
- The lack of protest or resistance does not constitute consent, nor does silence.
- Where there is use of threat, force or restraint by the Respondent, the lack of verbal or physical resistance or the submission by the Complainant does not constitute consent.
- The manner of dress of the Complainant does not constitute consent.
- 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.
- Consent to sexual activity with one person does not constitute consent to sexual activity with another person.
- A person who initially consents to sexual contact, including penetration, may withdraw continued consent at any time during the course of that interaction. When consent is withdrawn or can no longer be given, engagement in sexual activity must stop.
- Consent to some form of sexual activity cannot automatically be taken as consent to any other form of sexual activity.
- A person cannot consent to sexual activity if that person is unable to understand the nature of the activity or give knowing consent due to circumstances, including without limitation the following: the person is incapacitated due to use or influence of alcohol or drugs; the person is asleep or unconscious; the person is under age or the person is incapacitated due to a mental disability.
- Consent is required regardless of whether the person initiating sexual activity is under the influence of drugs and/or alcohol.
- A power differential between people engaged in a sexual act presumes the inability to consent for the less powerful person (e.g., the student in a student-colleague interaction; the supervisee in a direct report-supervisor interaction).
- It is not a valid excuse to alleged lack of affirmative consent that the Respondent believed the Complainant consented to sexual activity if the:
  - Respondent's belief arose from the Respondent's own intoxication or recklessness

- Respondent did not take reasonable steps to ascertain whether the Complainant affirmatively consented
- Respondent knew or a reasonable person should have known that the Complainant was unable to consent because the Complainant was asleep, unconscious or incapacitated due to the influence of drugs, alcohol or medication or was unable to communicate due to a mental or physical condition.

**"Colleague"** an employee of Chamberlain University.

**"Colleague Code of Conduct"** refers to the "Adtalem Code of Conduct and Ethics" ([https://www.adtalem.com/sites/g/files/krcnk321/files/migrations/media/Code%20of%20Conduct\\_English%20and%20Portuguese.pdf](https://www.adtalem.com/sites/g/files/krcnk321/files/migrations/media/Code%20of%20Conduct_English%20and%20Portuguese.pdf)), which is applicable to colleagues at all Adtalem Global Education institutions and offices and outlines colleagues' rights and responsibilities.

**"Colleague complaint procedure"** is the vehicle by which colleagues can bring to the administration's attention any complaint relating to their experience with Chamberlain or a member of the Chamberlain community. It is the mechanism for investigating and trying to resolve complaints raised by colleagues and can be found in the Commons ([apps.adtalem.com](https://apps.adtalem.com) > Commons- HR Portal > Policy Central).

**"CRC"** refers to the Coaching Resource Center, which is available to managers to assist in addressing colleague relations concerns, including complaints about colleague or vendor conduct.

**"Member of the Chamberlain community"** includes students, faculty members or staff and any other individuals associated with Chamberlain University. The conduct administrator or complaint administrator shall determine a person's status in a particular situation.

**"Notice"** refers to any information regardless of whether it is direct, indirect, partial or complete received by a colleague that indicates possible sex or gender-based misconduct. When notice is received, colleagues are required to inform the Title IX Coordinator or their supervisor who, in turn, must make a report to the Title IX Coordinator.

**"One-up manager"** is a colleague's manager's manager. It is the person responsible for receiving a colleague's complaint when their direct manager is implicated in that complaint.

**Sexual Harassment:** Conduct on the basis of sex that satisfies one or more of the following:

1. An employee of Chamberlain conditioning educational benefits or participation on an individual's participation in unwelcome sexual conduct (i.e. quid pro quo);
2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive and objectively offensive that it effectively denies a person equal access to Chamberlain's education Program or Activity; or
3. Sexual Assault (as defined in the Clery Act) or Dating Violence, Domestic Violence or Stalking as defined in the Violence Against Women Act (VAWA)<sup>1</sup>:
  - **Sexual Assault**<sup>2</sup>: As defined in 20 U.S.C. 1092(f)(6)(A)(v), means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
  - **Dating Violence:** As defined in 34 U.S.C. 12291(a)(10), means violence committed by a person (A) who is or has been in a social relationship of a romantic or intimate nature with the

victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; and, the frequency of interaction between the persons involved in the relationship.

- **Domestic Violence:** As defined in 34 U.S.C. 12291(a)(8), includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
- **Stalking:** As defined in 34 U.S.C. 12291(a)(30), means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

**Complainant:** An individual who is alleged to be the victim of conduct that could constitute Sexual Harassment, regardless of whether a Formal Complaint has been filed. A Complainant must be the alleged victim unless a parent or legal guardian has a legal right to act on the alleged victim's behalf.

**Respondent:** An individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

**Formal Complaint:** A document (hardcopy or electronic) filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that Chamberlain investigate. A Formal Complaint must be signed (physical or digital) by the Complainant, the Title IX Coordinator or otherwise indicate that the Complainant is the person filing the Formal Complaint. At the time of filing a Formal Complaint, the Complainant must be participating in or attempting to participate in Chamberlain's education Program or Activity with which the Formal Complaint is filed.

**Program or Activity:** On or off campus locations, events or circumstances over which Chamberlain exercises substantial control over both the Respondent and the context in which the Sexual Harassment occurred.

**Mandatory Reporter:** An employee who must report all instances of Sexual Harassment to the Title IX Coordinator. All employees are Mandatory Reporters.

**Clery Geography:** As defined in the Clery Act, includes (A) buildings and property that are part of Chamberlain's campus; (B) Chamberlain's noncampus buildings and property; and (C) public property within or immediately adjacent to and accessible from the campus. A map of Chamberlain's Clery Geography is contained in Chamberlain's ASR.

<sup>1</sup> Please note: In accordance with the Violence Against Women Reauthorization Act of 2013 ("VAWA"), state definitions for Sexual Assault, Dating Violence, Domestic Violence, Stalking and Consent are contained in Chamberlain's Annual Safety and Security Report ("ASR"). VAWA crimes are reported in the ASR based on the definitions above.

<sup>2</sup> The FBI's Uniform Crime Reporting Program (FBI UCR) includes forcible and nonforcible sex offenses such as rape, fondling and statutory rape, which contain elements of "without the consent of the victim."