

PHAGANS SALON ACADEMY

**SEXUAL MISCONDUCT POLICY
&
PROCEDURES FOR RESPONDING TO SEXUAL MISCONDUCT**

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PHAGANS SALON ACADEMY CAMPUS SEXUAL MISCONDUCT POLICIES

1. Introduction

Phagans Salon Academy is committed to providing a working and educational environment for all students, faculty and staff that is free from sex discrimination, including sexual misconduct. Every member of the Academy community should be aware that the school is strongly opposed to sexual misconduct, and that such behavior is prohibited by state and federal laws.

As part of the Academy's commitment to providing a working and learning environment free from sexual misconduct, this Policy shall be disseminated widely to the school community through publications, the school website, new employee orientations, student orientations, and other appropriate channels of communication. The Academy provides training to key staff members to enable the school to handle any allegations of sexual misconduct promptly and effectively. The Academy will respond quickly to all reports of sexual harassment, and will take appropriate action to prevent, to correct, and if necessary, to discipline behavior that violates this policy.

2. Scope of the Policy

This Policy governs sexual misconduct involving students that occurs on any Academy property or in connection with any school-sponsored program or event. This Policy applies to all students, employees, and third parties conducting business with the Academy, regardless of the person's gender, gender identity, sexual orientation, age, race, nationality, class status, ability, religion or other protected status. The Academy encourages victims of sexual violence to talk to somebody about what happened – so victims can get the support they need, and so the school can respond appropriately. As further described in this Policy, the Academy will seek to respect a victim's request for confidentiality to the extent possible, while remaining ever mindful of the victim's well-being.

3. Prohibited Conduct

Sexual misconduct comprises a broad range of behaviors focused on sex that may or may not be sexual in nature. Any intercourse or other intentional sexual touching or activity without the other person's consent is sexual assault, which is a form of sexual misconduct under this Policy. Sexual harassment and sexual exploitation, stalking, domestic violence, and dating violence are also forms of sexual misconduct. Intimidation for one of these purposes is sexual misconduct, as is retaliation following an incident of alleged sexual misconduct or attempted sexual misconduct. The definitions for specific acts of sexual misconduct can be found in the Definitions of Key Terms at the end of this Policy statement.

Misconduct can occur between strangers or acquaintances, or people who know each other well, including between people involved in an intimate or sexual relationship, can be committed by anyone regardless of gender identity, and can occur between people of the same or different sex or gender. **This Policy prohibits all forms of sexual misconduct.**

4. Options for Assistance Following an Incident of Sexual Misconduct

The Academy strongly encourages any victim of sexual misconduct to seek immediate assistance. Seeking prompt assistance may be important to ensure a victim's physical safety or to obtain medical care. The Academy strongly advocates that a victim of sexual assault report the incident in a timely manner. Time is a critical factor for evidence collection and preservation.

Reporting Incidents of Sexual Misconduct.

Victims of sexual misconduct may file a report with the Tigard Police Department. Victims may also file a report with the school's Title IX Coordinator. More information about reporting an incident of sexual misconduct can be found in Section 6 of this Policy, below.

The victim of the sexual assault may choose for the investigation to be pursued through the criminal justice system and the Academy's disciplinary procedures. The school and the criminal justice system work independently from each other. Law enforcement officers do not determine whether a violation of this Policy has occurred. The Title IX Coordinator will guide the victim through the available options and support the victim in his or her decision.

Support Services Available.

Counseling, advocacy and support services are available for victims of sexual misconduct, whether or not a victim chooses to make an official report or participate in the school's disciplinary or criminal process. The Academy does not provide counseling or health care services. Personal counseling offered by the Academy will be limited to initial crisis assessment and referral.

Sexual misconduct crisis and counseling options are available locally and nationally through a number of agencies, including:

National Resources:

National Sexual Assault Hotline - 800-656-4673
National Domestic Violence Hotline - 800-799-7233

Local Resources:

Hands of Hope, Portland, OR - 800-434-8973 / 503-775-2553
Crisis Services of Washington County – 503-291-9111
Legacy Meridian Park Hospital 503-692-7447
Tigard Police Department 503-639-6168

The Title IX Coordinator will work with all students affected by sexual misconduct to ensure their safety and support their wellbeing. This assistance may include providing accommodations to support or protect a student after an incident of sexual misconduct and while an investigation or disciplinary proceeding is pending. Such accommodations may include the ability to alter class schedules, withdraw from/retake a class without penalty, and access academic support (e.g., tutoring). The Academy may be able to provide additional interim measures to victims while an investigation is pending, such as no contact orders and changing the alleged perpetrator's class schedule.

5. Title IX Coordinator

The Title IX Coordinator is responsible for monitoring and overseeing the Academy's compliance with Title IX and the prevention of sex harassment, sexual misconduct and discrimination. The Title IX Coordinator is:

- Knowledgeable and trained in the Academy's policies and procedures and relevant state and federal laws;
- Available to advise any individual, including a complainant, respondent, or a third party, about Academy and community resources and reporting options;
- Available to provide assistance to any Academy employee regarding how to respond appropriately to a report of Title IX-related prohibited conduct and related retaliation;

- Participates in ensuring the effective implementation of this Policy, including monitoring compliance with all procedural requirements, record keeping, and timeframes; and
- Responsible for overseeing training, prevention, and education efforts and annual reviews of climate and culture.

Inquiries or concerns about Title IX may be referred to the school's Title IX Coordinator:

Ms. Heather Block
 8820 SW Center Street
 Portland, OR 97223
 Phone: (503) 639-6106
 email: hblock@phagansacademy.com

6. Reporting Policies and Protocols

The Academy strongly encourages all members of the school community to report information about any incident of sexual misconduct as soon as possible, whether the incident occurred on or off campus. Reports can be made either to the school and/or to law enforcement.

Reporting to the School

An incident of sexual misconduct may be reported directly to the Title IX Coordinator. If the Title IX Coordinator is the alleged perpetrator of the sexual misconduct, the report should be submitted to the Academy's President. Filing a report with a school official will not obligate the victim to prosecute, nor will it subject the victim to scrutiny or judgmental opinions from officers.

An individual who has experienced an incident of sexual misconduct may report the incident at any time, regardless of how much time has elapsed since the incident occurred. The Academy is committed to supporting the rights of a person reporting an incident of sexual misconduct to make an informed choice among options and services available.

The Academy will respond to all reports in a manner that treats each individual with dignity and respect and will take prompt responsive action to end any misconduct, prevent its recurrence, and address its effects.

Reporting to Law Enforcement

An incident of sexual misconduct can be reported to law enforcement at any time, 24 hours a day/7 days a week, by calling 911. At the complainant's request, the Academy will assist the complainant in contacting law enforcement. If the complainant decides to pursue the criminal process, the school will cooperate with law enforcement agencies to the extent permitted by law. A complainant has the option to decide whether or not to participate in any investigation conducted by law enforcement. Filing a police report will:

- Ensure that a victim of sexual assault receives the necessary medical treatment and tests
- Provide the opportunity for collection of evidence helpful in prosecution, which cannot be obtained later (ideally a victim of sexual assault should not wash, douche, use the toilet, or change clothing prior to a medical/legal exam)
- Assure the victim has a referral to confidential counseling from counselors specifically trained in the area of sexual assault

Reporting of Crimes & Annual Security Reports

Campus safety and security are important issues at the Academy. Our goal is to provide students with a safe environment in which to learn and to keep students, parents, and

employees well informed about campus security. The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, or Clery Act, requires institutions of higher education to record and report certain information about campus safety, including the number of incidents of certain crimes on or near campus, some of which constitute sexual misconduct under this Policy.

Each year the Academy prepares this report to comply with the Clery Act. The full text of this report can be located on the school's web site at www.phagansacademy.com. This report is prepared in cooperation with the local law enforcement agencies around our campus. Each year notification is made to all enrolled students and employees that provides the web site to access this report. Copies of the report may also be obtained in person from the Director or by calling (503) 639-6106. All prospective employees may obtain a copy from the Director.

Timely Warnings

In the event that a situation arises, either on or off campus, that, in the judgment of the Director constitutes an ongoing or continuing threat, a campus wide "timely warning" will be issued. The warning will be issued through the most effective and efficient means available and may include instant messaging to students and Academy employees. Notices may also be posted in the common areas throughout the school. Anyone with information warranting a timely warning should report the circumstances to the Director by phone at (503) 639-6106 or in person at the school.

Third-Party and Anonymous Reporting

In cases where sexual misconduct is reported to the Title IX Coordinator by someone other than the complainant (by an instructor, classmate or friend, for example), the Title IX Coordinator will promptly notify the complainant that a report has been received. This Policy and the Procedures will apply in the same manner as if the complainant had made the initial report. The Title IX Coordinator will make every effort to meet with the complainant to discuss available options and resources. Reports from an anonymous source will be treated in a similar fashion.

No Retaliation

The Academy prohibits retaliation against those who file a complaint or third-party report, or otherwise participate in the investigative and/or disciplinary process (e.g., as a witness). The school will take strong responsive action if retaliation occurs. Any incident of retaliation should be promptly reported to the Title IX Coordinator or the Academy's President.

Coordination With Drug Free School Policy

Students may be reluctant to report instances of sexual misconduct because they fear being disciplined pursuant to the Academy's alcohol or drug policies. The Academy encourages students to report all instances of sexual misconduct and will take into consideration the importance of reporting sexual misconduct in addressing violations of the school's alcohol and drug policies. This means that, whenever possible, the Academy will respond educationally rather than punitively to student alcohol or drug policy violations associated with reported sexual misconduct.

7. School Policy on Confidentiality

The Academy encourages victims of sexual misconduct to talk to somebody about what happened – so victims can get the support they need, and so the school can respond appropriately.

This policy is intended to make students aware of the various reporting and confidential disclosure options available to them – so they can make informed choices about where to turn should they become a victim of sexual misconduct. The Academy encourages victims to talk to someone identified in one or more of these groups.

Privileged and Confidential Communications – Professional & Pastoral Counselors

Professional, licensed counselors and pastoral counselors who provide mental-health counseling to members of the community (and including those who act in that role under the supervision of a licensed counselor) are not required to report any information about an incident to the Title IX coordinator without a victim's permission. The Academy does not provide professional or pastoral counseling, but can assist a victim of sexual misconduct in obtaining support services from these groups or agencies. Contact information for these support organizations is listed in Section 4 of this Policy.

A victim who at first requests confidentiality may later decide to file a complaint with the Academy or report the incident to local law enforcement, and thus have the incident fully investigated.

NOTE: While these professional and pastoral counselors and advocates may maintain a victim's confidentiality vis-à-vis the Academy, they may have reporting or other obligations under state law.

ALSO NOTE: If the Academy determines that the alleged perpetrator(s) pose a serious and immediate threat to the school community, the Director may be called upon to issue a timely warning to the community. Any such warning should not include any information that identifies the victim.

Reporting to Title IX Coordinator

When a victim tells the Title IX Coordinator about an incident of sexual misconduct, the victim has the right to expect the Academy to take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably.

To the extent possible, information reported to the Title IX Coordinator will be shared only with people responsible for handling the school's response to the report. The Title IX Coordinator should not share information with law enforcement without the victim's consent or unless the victim has also reported the incident to law enforcement.

Before a victim reveals any information to the Title IX Coordinator, the Coordinator should ensure that the victim understands the Coordinator's reporting obligations – and, if the victim wants to maintain confidentiality, direct the victim to confidential resources. If the victim wants to tell the Title IX Coordinator what happened but also maintain confidentiality, the Coordinator should tell the victim that the Academy will consider the request, but cannot guarantee that the school will be able to honor it.

The Title IX Coordinator will not pressure a victim to request confidentiality, but will honor and support the victim's wishes, including for the Academy to fully investigate an incident. By the same token, the Title IX Coordinator will not pressure a victim to make a full report if the victim is not ready to.

Requesting Confidentiality: How the School Will Weigh the Request and Respond.

If a victim discloses an incident to the Title IX Coordinator but wishes to maintain confidentiality or requests that no investigation into a particular incident be conducted or disciplinary action taken, the Academy must weigh that request against the school's obligation to provide a safe, non-discriminatory environment for all students, including the victim.

If the Academy honors the request for confidentiality, a victim must understand that the school's ability to meaningfully investigate the incident and pursue disciplinary action against the alleged perpetrator(s) may be limited.

Although rare, there are times when the Academy may not be able to honor a victim's request in order to provide a safe, non-discriminatory environment for all students.

The Title IX Coordinator will evaluate requests for confidentiality. When weighing a victim's request for confidentiality or that no investigation or discipline be pursued, the Title IX Coordinator will consider a range of factors, including the following:

- The increased risk that the alleged perpetrator will commit additional acts of sexual misconduct or other violence, such as:
 - whether there have been other sexual misconduct complaints about the same alleged perpetrator;
 - whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence;
 - whether the alleged perpetrator threatened further sexual misconduct or other violence against the victim or others;
 - whether the sexual misconduct was committed by multiple perpetrators;
- Whether the sexual misconduct was perpetrated with a weapon;
- Whether the victim is a minor;
- Whether the Academy possesses other means to obtain relevant evidence of the sexual misconduct (e.g., security cameras or personnel, physical evidence);
- Whether the victim's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.

The presence of one or more of these factors could lead the Academy to investigate and, if appropriate, pursue disciplinary action. If none of these factors is present, the school will likely respect the victim's request for confidentiality.

If the Academy determines that it cannot maintain a victim's confidentiality, the school will inform the victim prior to starting an investigation and will, to the extent possible, only share information with people responsible for handling the school's response. The Academy will remain ever mindful of the victim's well being, and will take ongoing steps to protect the victim from retaliation or harm and work with the victim to create a safety plan. Retaliation against the victim, whether by students or school employees, will not be tolerated. The Academy will also:

- assist the victim in accessing other available victim advocacy, academic support, counseling, disability, health or mental health services, and legal assistance;
- provide other security and support, which could include issuing a no-contact order, helping arrange a change of course schedules (including for the alleged perpetrator pending the outcome of an investigation) or adjustments for assignments or tests; and
- inform the victim of the right to report a crime to local law enforcement – and

provide the victim with assistance if the victim wishes to do so.

The Academy may not require a victim to participate in any investigation or disciplinary proceeding.

Because the Academy is under a continuing obligation to address the issue of sexual violence campus-wide, reports of sexual violence (including non-identifying reports) will also prompt the school to consider broader remedial action – such as increased monitoring, supervision or security at locations where the reported sexual violence occurred; increasing education and prevention efforts, including to targeted population groups; conducting climate assessments/victimization surveys; and/or revisiting its policies and practices.

If the Academy determines that it can respect a victim’s request for confidentiality, the school will also take immediate action as necessary to protect and assist the victim.

Miscellaneous

Take Back the Night and other public awareness events. Public awareness events such as “Take Back the Night,” the Clothesline Project, candlelight vigils, protests, “survivor speak outs” or other forums in which students disclose incidents of sexual violence, are not considered notice to the Academy of sexual misconduct for purposes of triggering its obligation to investigate any particular incident(s). Such events may, however, inform the need for campus-wide education and prevention efforts.

Off-campus Counselors and Advocates. Off-campus counselors, advocates, and health care providers will also generally maintain confidentiality and not share information with the Academy unless the victim requests the disclosure and signs a consent or waiver form. Contact information for these off-campus resources can be found in Section 4 of this Policy.

8. Investigation Procedures and Protocols

The Title IX Coordinator oversees the Academy’s investigation, response to, and resolution of all reports of prohibited sexual misconduct, and of related retaliation, involving students, faculty, and staff. The Title IX Coordinator will designate a specially trained investigator (or team of investigators) to interview the complainant, respondent and any witnesses. The investigator will also gather pertinent documentary materials (if any) and other information.

Notice of Investigation

The Title IX Coordinator will inform the complainant before starting an investigation. The complainant may request that an investigation not be undertaken. The Title IX Coordinator will consider such a request in light of the Academy’s commitment to provide a safe and non-discriminatory environment for all students. If the Title IX Coordinator determines not to investigate, she will notify the complainant in writing, including that the determination was made at the complainant’s request. At the complainant’s request, the Title IX Coordinator will also notify the respondent in writing, including that the complainant asked the Academy not to investigate.

The investigator will direct the complainant, respondent, witnesses and other interested individuals to preserve any relevant evidence.

If an investigation proceeds, the Academy will notify the respondent in writing that a report has been filed. The notice will describe the allegations in the report. The complainant and

respondent will be given the opportunity to meet separately with the Title IX Coordinator to review the Policy and these Procedures.

Investigation Process

The Academy's process for responding to, investigating and adjudicating sexual misconduct reports will continue during any law enforcement proceeding. The investigator may need to temporarily delay an investigation while the police are gathering evidence but will resume the investigation after learning that the police department has completed its evidence-gathering and will generally not wait for the conclusion of any related criminal proceeding.

The investigator will interview the complainant, respondent and any witnesses. They will also gather pertinent documentary materials (if any) and other information.

Investigation Report

The investigator will prepare a report detailing the relevant content from the interviews and the documentation gathered. The report will include the assessment of individual credibility and recommended findings of responsibility.

The respondent and complainant will each have the opportunity to review a copy of the investigative report and any other information that will be used during the disciplinary proceedings. The names and other identifying information of other students will be redacted from such materials in accordance with the Family Educational Rights and Privacy Act (FERPA), except to the extent that doing so would interfere with the purpose of Title IX to eliminate sex-based discrimination. The Title IX Coordinator will supervise this review and ensure that reasonable time is afforded for review prior to the hearing.

Time Frame for Investigation

Consistent with the goal to maximize educational opportunities and minimize the disruptive nature of the investigation and resolution, the Title IX Coordinator seeks to resolve all reports in a timely manner. In general, an investigation may last up to 30 days, from receipt of written notice from the complainant of the intent to proceed with an investigation. Adjudication will generally take up to 30 days from the date the investigative report is provided to both the complainant and the respondent. The Title IX Coordinator may set reasonable time frames for required actions under the Policy. Those time frames may be extended for good cause as necessary to ensure the integrity and completeness of the investigation, comply with a request by external law enforcement, accommodate the availability of witnesses, accommodate delays by the parties, account for school breaks or vacations, or address other legitimate reasons, including the complexity of the investigation (including the number of witnesses and volume of information provided by the parties) and the severity and extent of the alleged conduct. Any extension of the timeframes, and the reason for the extension, will be shared with the parties in writing. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

Where necessary, the Academy will take immediate steps to protect complainants pending the final outcome of an investigation, including academic accommodations and other interim measures. These steps may include the ability to change class schedules; withdraw from/retake a class without penalty; access academic support such as tutoring; issue no contact orders; and change the alleged perpetrator's class schedule.

Impact of Victim's Confidentiality Request

A victim's request for confidentiality will likely limit the Academy's ability to investigate a

particular matter. The school may take steps to limit the effects of the alleged sexual misconduct and prevent its recurrence without initiating formal action against the alleged perpetrator or revealing the identity of the student complainant. Examples include: providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred; providing training and education materials for students and employees; revising and publicizing the Academy's policies on sexual misconduct; and conducting climate surveys regarding sexual misconduct.

Voluntary Resolution

Voluntary resolution, when selected by the complainant and deemed appropriate by the Title IX Coordinator, is a path designed to eliminate the conduct at issue, prevent its recurrence, and remedy its effects in a manner that meets the expressed preference of the complainant and the safety and welfare of the Academy community. Voluntary resolution is not appropriate for all forms of conduct under the Policy.

The Academy retains the discretion to determine, when selected by the complainant, which cases are appropriate for voluntary resolution. If a complainant requests voluntary resolution, and the Title IX Coordinator concludes that voluntary resolution is appropriate, then the Title IX Coordinator will take appropriate action by imposing remedies designed to maximize the complainant's access to all employment, educational, and extracurricular opportunities and benefits at the school and to eliminate a potential hostile environment. A complainant may request and decide to pursue voluntary resolution at any time. In those cases in which the voluntary resolution involves either the notification to or participation by the respondent, it is the respondent's decision whether to accept voluntary resolution.

Voluntary resolution may include: conducting targeted or broad-based educational programming or training for relevant individuals or groups; providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred; facilitating a meeting with the respondent with the complainant present (in cases that do not involve sexual assault); and any other remedy that can be tailored to the involved individuals to achieve the goals of the Policy. In some forms of voluntary resolution, the remedies imposed will focus on supporting the complainant with no participation or involvement by the respondent. In other forms of voluntary resolution, the respondent may agree to participate. Depending on the type of remedy used, it may be possible for a complainant to maintain anonymity.

Voluntary resolution may also include restorative principles that are designed to allow a respondent to accept responsibility for misconduct and acknowledge harm to the complainant or to the Academy community. Restorative models will be used only with the consent of both parties, and following a determination by the Title IX Coordinator that the matter is appropriate for a restorative approach.

The Academy will not compel a complainant to engage in mediation, to confront directly the respondent, or to participate in any particular form of informal resolution. Mediation, even if voluntary, is never appropriate in sexual assault cases and will not be used in such cases. As the title implies, participation in voluntary resolution is a choice, and either party can request to end this manner of resolution and pursue an investigation and adjudication at any time, including if voluntary resolution is unsuccessful at resolving the report. Similarly, a complainant can request to end an investigation and pursue voluntary resolution at any time.

The time frame for completion of voluntary resolution may vary, but the Academy will seek to complete the process within 15 days of the complainant's request.

9. Grievance/Adjudication Procedures

Hearing Panel

If voluntary resolution is not available, the Academy will convene a hearing panel following the end of the investigation. The hearing panel determines whether the respondent is responsible or not responsible for a violation of the Policy. If the respondent is determined to be responsible, the matter proceeds to the sanctions stage.

The hearing panel will generally include the Title IX Coordinator and two additional members who will be individuals associated with the Academy. These additional hearing panel members may include administrators, officers, lawyers or other individuals with relevant experience and special training. Panel members may participate remotely so long as the hearing room is equipped with telephone equipment that allows the panel member to hear all the participants and to be heard by all the participants throughout the hearing proceedings. All panelists will receive training from experts in the field at least once a year. In addition to training on how the adjudicatory process works, the training will include specific instruction about how to approach students about sensitive issues that may arise in the context of sexual misconduct. The complainant and respondent will be informed of the panel's membership before the hearing process begins.

Advisors

Both the complainant and the respondent are entitled to be accompanied to any meeting or proceeding relating to the allegation of sexual misconduct by an advisor or support person of their choice, provided the involvement of such advisor or support person does not result in the postponement or delay of such meeting as scheduled.

Written Submissions

Both the complainant and respondent will have the opportunity to submit written responses to the investigation report and other relevant information to the hearing panel. Each of the complainant and respondent will have the opportunity to review any written submissions by the other. The hearing panel may set reasonable parameters for these written submissions. The hearing panel will review the investigation report and written submissions.

Hearing Procedures

The Title IX Coordinator will, whenever possible, give the complainant and respondent at least five days' advance notice of the hearing. The Title IX Coordinator will arrange to hold the hearing at an off-campus location. The hearing is a closed proceeding, meaning that no one other than the panel members, the complainant and respondent, their respective advisors, witnesses (when called), and necessary Academy personnel may be present during the proceeding. The Director will work with school staff so that any student whose presence is required may participate in the hearing.

In general, hearings will proceed as follows:

- The Title IX Coordinator may set reasonable time limits for any part of the hearing. Each of the complainant and respondent will have the opportunity to present witnesses and other information consistent with the Policy and these Procedures. The panel may determine the relevance of, place restrictions on, or exclude any witnesses or information. When the complainant and respondent are not able to be present for the hearing panel, arrangements will be made for participation via alternate means.
- In cases where either the complainant or respondent opts not to participate in the hearing, the panel may still hear from the other.

- Additional hearing rules include:
 - Questioning. Only the panel may ask questions of the complainant and respondent and any witnesses. Both the complainant and respondent will have the opportunity to suggest questions of the other and of witnesses by submitting suggested questions to the panel in writing. The panel may revise or not ask any or all submitted questions.
 - Information Regarding Romantic or Sexual History. The panel will not consider the romantic or sexual history of either the complainant or respondent in cases involving allegations of sexual misconduct, except for testimony offered by one or the other about the complainant's and respondent's shared sexual history that the panel deems relevant. If such information is offered by the complainant or respondent, the other has the right to respond. The existence of a prior consensual dating or sexual relationship between the complainant and respondent by itself does not support an inference of consent to alleged sexual misconduct.
 - Prior Conduct Violations. The hearing panel will not consider the respondent's prior conduct violations, unless the investigator provided that information to the hearing panel because the respondent was previously found to be responsible, and the previous incident was substantially similar to the present allegation(s) and/or the information indicates a pattern of behavior by the respondent.

The Academy will keep an audio recording of the hearing for the use of the panel, for sanctioning, and for purposes of appeal. The panelists may request a transcript of the recording.

Cell phones and recording devices may not be used in the hearing room(s) unless approved by the panel in advance.

Panel Determinations/Standard of Proof

The panel will use "preponderance of the evidence" as the standard of proof to determine whether a violation of the Policy occurred. Preponderance of the evidence means that a panel must be convinced based on the information it considers that the respondent was more likely than not to have engaged in the conduct at issue in order to find the respondent responsible for violating the Policy. The panel will find a student responsible, or not responsible, based on a majority vote. The panel will generally render a decision within 10 days after the conclusion of a hearing. The panel's decision will include an explanation of the basis for the decision. If the panel finds the respondent responsible, the matter will proceed to the sanctions stage.

10. Sanctions and Other Remedies

The Title IX Coordinator, with the advice and counsel of the other hearing panel members, shall be responsible for imposing sanctions that are:

- Fair and appropriate given the facts of the particular case;
- Consistent with the Academy's handling of similar cases;
- Adequate to protect the safety of the campus community; and
- Reflective of the seriousness of sexual misconduct.

The Title IX Coordinator will consider relevant factors, including if applicable: (1) the specific sexual misconduct at issue (such as penetration, touching under clothing, touching over clothing, unauthorized recording, etc.); (2) the circumstances accompanying the lack of consent (such as force, threat, coercion, intentional incapacitation, etc.); (3) the respondent's state of mind (intentional, knowing, bias-motivated, reckless, negligent, etc.); (4) the impact of the offense on the complainant; (5) the respondent's prior disciplinary history; (6) the safety of the

Academy community; and (7) the respondent's conduct during the disciplinary process.

The Title IX Coordinator will render a sanctioning decision within three days following the receipt of the panel's determination. The sanctioning decision will be communicated in writing to the complainant and the respondent.

The Academy may impose any one or more of the following sanctions on a student determined to have violated the Policy:

- Reprimand/warning
- Changing the respondent's academic schedule
- Disciplinary probation
- Restricting access to Academy facilities or activities
- Community service
- Issuing a "no contact" order to the respondent or requiring that such an order remain in place
- Dismissal or restriction from Academy employment
- Suspension (limited time or indefinite)
- Expulsion

In addition to any other sanction (except where the sanction is expulsion), the Academy will require any student determined to be responsible for a violation of the Policy to receive appropriate education and/or training related to the sexual misconduct violation at issue. The Academy may also recommend counseling or other support services for the student.

Whatever the outcome of the hearing process, a complainant may request ongoing or additional accommodations and the Title IX Coordinator will determine whether such measures are appropriate. Potential ongoing accommodations include:

- Providing an escort for the complainant
- Changing the complainant's academic schedule
- Allowing the complainant to withdraw from or retake a class without penalty
- Providing access to tutoring or other academic support, such as extra time to complete or re-take a class

The Academy may also determine that additional measures are appropriate to respond to the effects of the incident on the school community. Additional responses for the benefit of the Academy community may include:

- Increased monitoring, supervision, or security at locations or activities where the misconduct occurred
- Additional training and educational materials for students and employees
- Revision of the Academy's policies relating to sexual misconduct
- Climate surveys regarding sexual misconduct

11. Appeals

Either the respondent or the complainant or both may appeal the determination of the hearing panel and/or the sanctions. Appeals are decided by the President of the Academy. The three grounds for appeal are:

1. A procedural error affecting the determination or sanction;
2. New information that was not available at the time of the investigation or hearing and that may change the determination or sanction; and
3. Excessiveness or insufficiency of the sanction.

Disagreement with the finding or sanctions is not, by itself, grounds for appeals.

The appealing student must submit the appeal in writing to the President of the Academy within five days after receiving the sanctioning notice. If either the complainant or respondent submits an appeal, the Title IX Coordinator will notify the other that an appeal has been filed and the grounds of the appeal. The non-appealing student may submit a written response within five days after notice of an appeal.

If the President concludes that a change in the hearing panel's determination is warranted, the President may enter a revised determination, reconvene the panel to reconsider the determination, or return the matter for additional investigation. After consultation with the Title IX Coordinator, the President may also change the sanction. If both the complainant and respondent appeal, the appeals will be considered concurrently.

The President will notify the complainant and respondent of the final decision in writing. Appeals decisions will be rendered within 10 days after the receipt of the written appeal. All appeal decisions are final.

12. Records Disclosure

Disciplinary proceedings conducted by the Academy are subject to the Family Educational Records and Privacy Act (FERPA), a federal law governing the privacy of student information. FERPA generally limits disclosure of student information outside the Academy without the student's consent, but it does provide for release of student disciplinary information without a student's consent in certain circumstances.

Any information gathered in the course of an investigation may be subpoenaed by law enforcement authorities as part of a parallel investigation into the same conduct, or required to be produced through other compulsory legal process.

Additional information about FERPA can be found on the Academy's website at www.phagansacademy.com.

13. Education and Prevention Programs

As set forth in Section 3 of this Policy statement, Sexual Assault, Sexual Harassment, Sexual Exploitation, Dating Violence, Domestic Violence, and Stalking are all forms of Prohibited Conduct.

The Academy is committed to offering educational programs to promote awareness and prevention of Prohibited Conduct. Educational programs include an overview of the Academy's policies and procedures; relevant definitions, including prohibited conduct; discussion of the impact of alcohol and illegal drug use; consent; safe and positive options for bystander intervention; review of resources and reporting options available for students, faculty, and staff; and information about risk reduction. Incoming students and new employees will receive primary prevention and awareness programming as part of their orientation. The Title IX Coordinator maintains an education and prevention calendar and tailors programming to campus needs and climate.

As part of the Academy's commitment to provide an educational and work environment free from Prohibited Conduct, this Policy will be disseminated widely to the school community through e-mail communication, publications, websites, new employee orientations, student orientations, and other appropriate channels of communication.

The Title IX Coordinator, hearing panel members, and anyone else who is involved in responding to, investigating, or adjudicating sexual misconduct will receive annual training from experts in the field. In addition to training on how the adjudicatory process works, the training will include specific instruction about how to approach students about sensitive issues that may arise in the context of sexual misconduct.

Definitions of Sexual Misconduct under Oregon Law

Sexual Assault is any unwanted physical contact of a sexual nature that occurs either without the consent of each participant or when a participant is unable to give consent freely. Sexual assault can occur either forcibly and/or against a person's will, or when a person is unable to give consent freely. Non-consensual sexual intercourse is any form of sexual intercourse (vaginal, anal or oral) with any object without consent. Non-consensual sexual contact is any intentional sexual touching, however slight, with any object without a person's consent.

The Oregon Law, provides the following definitions with respect to incidents of sexual assault:

135.230¹ Definitions for ORS 135.230 to 135.290

As used in ORS [135.230 \(Definitions for ORS 135.230 to 135.290\)](#) to [135.290 \(Punishment by contempt of court\)](#), unless the context requires otherwise:

(1) Abuse means:

- (a) Attempting to cause or intentionally, knowingly or recklessly causing physical injury;
- (b) Intentionally, knowingly or recklessly placing another in fear of imminent serious physical injury; or
- (c) Committing sexual abuse in any degree as defined in ORS [163.415 \(Sexual abuse in the third degree\)](#), [163.425 \(Sexual abuse in the second degree\)](#) and [163.427 \(Sexual abuse in the first degree\)](#).

(2) Conditional release means a nonsecurity release which imposes regulations on the activities and associations of the defendant.

(3) Domestic violence means abuse between family or household members.

(4) Family or household members means any of the following:

- (a) Spouses.
- (b) Former spouses.
- (c) Adult persons related by blood or marriage.
- (d) Persons cohabiting with each other.
- (e) Persons who have cohabited with each other or who have been involved in a sexually intimate relationship.
- (f) Unmarried parents of a minor child.

(5) Magistrate has the meaning provided for this term in ORS [133.030 \(Who are magistrates\)](#).

(6) Personal recognizance means the release of a defendant upon the promise of the defendant to appear in court at all appropriate times.

(7) Primary release criteria includes the following:

- (a) The reasonable protection of the victim or public;
- (b) The nature of the current charge;
- (c) The defendants prior criminal record, if any, and, if the defendant previously has been released pending trial, whether the defendant appeared as required;
- (d) Any facts indicating the possibility of violations of law if the defendant is released without regulations; and

(e) Any other facts tending to indicate that the defendant is likely to appear.

(8) Release means temporary or partial freedom of a defendant from lawful custody before judgment of conviction or after judgment of conviction if defendant has appealed.

(9) Release agreement means a sworn writing by the defendant stating the terms of the release and, if applicable, the amount of security.

(10) Release decision means a determination by a magistrate, using primary and secondary release criteria, which establishes the form of the release most likely to ensure the safety of the public and the victim, the defendant's court appearance and that the defendant does not engage in domestic violence while on release.

(11) Secondary release criteria includes the following:

- (a) The defendant's employment status and history and financial condition;
- (b) The nature and extent of the family relationships of the defendant;
- (c) The past and present residences of the defendant;
- (d) Names of persons who agree to assist the defendant in attending court at the proper time; and
- (e) Any facts tending to indicate that the defendant has strong ties to the community.

(12) Security release means a release conditioned on a promise to appear in court at all appropriate times which is secured by cash, stocks, bonds or real property.

(13) Surety is one who executes a security release and binds oneself to pay the security amount if the defendant fails to comply with the release agreement.

147.450¹ Definitions

As used in ORS [147.450 \(Definitions\)](#) to [147.471 \(Advisory council\)](#):

(1) Domestic violence has the meaning given that term in ORS [135.230 \(Definitions for ORS 135.230 to 135.290\)](#) and includes teen dating violence.

(2) Sexual assault means any unwanted sexual contact as defined in ORS [163.305 \(Definitions\)](#).

(3) Teen dating violence means:

(a) A pattern of behavior in which a person uses or threatens to use physical, mental or emotional abuse to control another person who is in a dating relationship with the person, where one or both persons are 13 to 19 years of age; or

(b) Behavior by which a person uses or threatens to use sexual violence against another person who is in a dating relationship with the person, where one or both persons are 13 to 19 years of age.

163.305 Definitions

(1) Deviate sexual intercourse means sexual conduct between persons consisting of contact between the sex organs of one person and the mouth or anus of another.

(2) Forcible compulsion means to compel by:

(a) Physical force; or

(b) A threat, express or implied, that places a person in fear of immediate or future death or physical injury to self or another person, or in fear that the person or another person will immediately or in the future be kidnapped.

(3) Mentally defective means that a person suffers from a mental disease or defect that renders the person incapable of appraising the nature of the conduct of the person.

(4) Mentally incapacitated means that a person is rendered incapable of appraising or controlling the conduct of the person at the time of the alleged offense.

(5) Physically helpless means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(6) Sexual contact means any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(7) Sexual intercourse has its ordinary meaning and occurs upon any penetration, however slight; emission is not required.

163.315 Incapacity to consent - effect of lack of resistance

(1) A person is considered incapable of consenting to a sexual act if the person is:

(a) Under 18 years of age;

(b) Mentally defective;

(c) Mentally incapacitated; or

(d) Physically helpless.

(2) A lack of verbal or physical resistance does not, by itself, constitute consent but may be considered by the trier of fact along with all other relevant evidence.

163.325¹ Ignorance or mistake as a defense

(1) In any prosecution under ORS [163.355 \(Rape in the third degree\)](#) to [163.445 \(Sexual misconduct\)](#) in which the criminality of conduct depends on a child's being under the age of 16, it is no defense that the defendant did not know the child's age or that the defendant reasonably believed the child to be older than the age of 16.

(2) When criminality depends on the child being under a specified age other than 16, it is an affirmative defense for the defendant to prove that the defendant reasonably believed the child to be above the specified age at the time of the alleged offense.

(3) In any prosecution under ORS [163.355 \(Rape in the third degree\)](#) to [163.445 \(Sexual misconduct\)](#) in which the victim's lack of consent is based solely upon the incapacity of the victim to consent because the victim is mentally defective, mentally incapacitated or physically helpless, it is an affirmative defense for the defendant to prove that at the time of the alleged offense the defendant did not know of the facts or conditions responsible for the victim's incapacity to consent.

163.345¹ Age as a defense in certain cases

(1) In any prosecution under ORS [163.355 \(Rape in the third degree\)](#), [163.365 \(Rape in the second degree\)](#), [163.385 \(Sodomy in the third degree\)](#), [163.395 \(Sodomy in the second degree\)](#), [163.415 \(Sexual abuse in the third degree\)](#), [163.425 \(Sexual abuse in the second degree\)](#), [163.427 \(Sexual abuse in the first degree\)](#) or [163.435 \(Contributing to the sexual delinquency of a minor\)](#) in which the victim's lack of consent was due solely to incapacity to consent by reason of being less than a specified age, it is a defense that the actor was less than three years older than the victim at the time of the alleged offense.

(2) In any prosecution under ORS [163.408 \(Unlawful sexual penetration in the second degree\)](#), when the object used to commit the unlawful sexual penetration was the hand or any part thereof of the actor and in which the victim's lack of consent was due solely to incapacity to consent by reason of being less than a specified age, it is a defense that the actor was less than three years older than the victim at the time of the alleged offense.

(3) In any prosecution under ORS [163.445 \(Sexual misconduct\)](#) in which the victim's lack of consent was due solely to incapacity to consent by reason of being less than a specified age, it is a defense that the actor was less than three years older than the victim at the time of the alleged offense if the victim was at least 15 years of age at the time of the alleged offense.

163.355¹ Rape in the third degree

(1) A person commits the crime of rape in the third degree if the person has sexual intercourse with another person under 16 years of age.

(2) Rape in the third degree is a Class C felony.

163.365¹ Rape in the second degree

(1) A person who has sexual intercourse with another person commits the crime of rape in the second degree if the other person is under 14 years of age.

(2) Rape in the second degree is a Class B felony.

163.375¹ Rape in the first degree

(1) A person who has sexual intercourse with another person commits the crime of rape in the first degree if:

(a) The victim is subjected to forcible compulsion by the person;

(b) The victim is under 12 years of age;

(c) The victim is under 16 years of age and is the person's sibling, of the whole or half blood, the person's child or the person's spouse's child; or

(d) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.

(2) Rape in the first degree is a Class A felony.

163.385¹ Sodomy in the third degree

(1) A person commits the crime of sodomy in the third degree if the person engages in deviate sexual intercourse with another person under 16 years of age or causes that person to engage in deviate sexual intercourse.

(2) Sodomy in the third degree is a Class C felony.

163.395¹ Sodomy in the second degree

(1) A person who engages in deviate sexual intercourse with another person or causes another to engage in deviate sexual intercourse commits the crime of sodomy in the second degree if the victim is under 14 years of age.

(2) Sodomy in the second degree is a Class B felony.

163.405¹ Sodomy in the first degree

(1) A person who engages in deviate sexual intercourse with another person or causes another to engage in deviate sexual intercourse commits the crime of sodomy in the first degree if:

(a) The victim is subjected to forcible compulsion by the actor;

(b) The victim is under 12 years of age;

(c) The victim is under 16 years of age and is the actor's brother or sister, of the whole or half blood, the son or daughter of the actor or the son or daughter of the actor's spouse; or

(d) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.

(2) Sodomy in the first degree is a Class A felony.

163.408¹ Unlawful sexual penetration in the second degree

(1) Except as permitted under ORS [163.412 \(Exceptions to unlawful sexual penetration prohibition\)](#), a person commits the crime of unlawful sexual penetration in the second degree if the person penetrates the vagina, anus or penis of another with any object other than the penis or mouth of the actor and the victim is under 14 years of age.

(2) Unlawful sexual penetration in the second degree is a Class B felony.

163.411¹ Unlawful sexual penetration in the first degree

(1) Except as permitted under ORS [163.412 \(Exceptions to unlawful sexual penetration prohibition\)](#), a person commits the crime of unlawful sexual penetration in the first degree if the person penetrates the vagina, anus or penis of another with any object other than the penis or mouth of the actor and:

- (a) The victim is subjected to forcible compulsion;
- (b) The victim is under 12 years of age; or
- (c) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.

(2) Unlawful sexual penetration in the first degree is a Class A felony.

163.412¹ Exceptions to unlawful sexual penetration prohibition

Nothing in ORS [163.408 \(Unlawful sexual penetration in the second degree\)](#), [163.411 \(Unlawful sexual penetration in the first degree\)](#) or [163.452 \(Custodial sexual misconduct in the first degree\)](#) prohibits a penetration described in those sections when:

- (1) The penetration is part of a medically recognized treatment or diagnostic procedure; or
- (2) The penetration is accomplished by a peace officer or a corrections officer acting in official capacity, or by medical personnel at the request of such an officer, in order to search for weapons, contraband or evidence of crime.

163.413¹ Purchasing sex with a minor

(1) A person commits the crime of purchasing sex with a minor if the person pays, or offers or agrees to pay, a fee to engage in sexual intercourse or sexual contact with a minor.

(2)(a) If the person does not have a prior conviction under this section at the time of the offense, purchasing sex with a minor is a Class C felony and the person may use a defense described in ORS [163.325 \(Ignorance or mistake as a defense\)](#) only if the minor was at least 16 years of age.

(b) If the person has one or more prior convictions under this section at the time of the offense, purchasing sex with a minor is a Class B felony, the state need not prove that the person knew the minor was under 18 years of age and the person may not use a defense described in ORS [163.325 \(Ignorance or mistake as a defense\)](#).

(3)(a) When a person is convicted under this section, in addition to any other sentence that may be imposed, the court shall impose and may not suspend the sentence described in paragraph (b) of this subsection.

(b) The mandatory minimum sentences that apply to paragraph (a) of this subsection are as follows:

(A) For a persons first conviction, a fine in the amount of \$10,000, a term of incarceration of at least 30 days and completion of a john school program.

(B) For a persons second or subsequent conviction, a fine in the amount of \$20,000 and the court shall designate the offense as a sex crime under ORS [181.805 \(Definitions for 181.800 to 181.845\)](#).

(c) Notwithstanding paragraphs (a) and (b) of this subsection, if the court determines that the person is unable to pay the full amount of the mandatory minimum fine, the court shall impose and may not suspend a fine in an amount the court determines the person is able to pay.

(d) For a persons first conviction under this section, the court may designate the offense as a sex crime under ORS [181.805 \(Definitions for 181.800 to 181.845\)](#) if the court finds that the circumstances of the offense and the age of the minor as reported to the defendant require the defendant to register and report as a sex offender for the safety of the community.

(4) As used in this section:

(a) John school means any course, class or program intended to educate and prevent recidivism of persons who have been arrested for, charged with or convicted of patronizing a prostitute or purchasing sex with a minor or attempting to patronize a prostitute or purchase sex with a minor.

(b) Minor means a person under 18 years of age.

163.415¹ Sexual abuse in the third degree

(1) A person commits the crime of sexual abuse in the third degree if:

(a) The person subjects another person to sexual contact and:

(A) The victim does not consent to the sexual contact; or

(B) The victim is incapable of consent by reason of being under 18 years of age; or

(b) For the purpose of arousing or gratifying the sexual desire of the person or another person, the person intentionally propels any dangerous substance at a victim without the consent of the victim.

(2) Sexual abuse in the third degree is a Class A misdemeanor.

(3) As used in this section, dangerous substance means blood, urine, semen or feces.

163.425¹ Sexual abuse in the second degree

(1) A person commits the crime of sexual abuse in the second degree when:

(a) The person subjects another person to sexual intercourse, deviate sexual intercourse or, except as provided in ORS [163.412 \(Exceptions to unlawful sexual penetration prohibition\)](#), penetration of the vagina, anus or penis with any object other than the penis or mouth of the actor and the victim does not consent thereto; or

(b)(A) The person violates ORS [163.415 \(Sexual abuse in the third degree\)](#) (1)(a)(B);

(B) The person is 21 years of age or older; and

(C) At any time before the commission of the offense, the person was the victims coach as defined in ORS [163.426 \(Crime category classification for sexual abuse in the second degree\)](#).

(2) Sexual abuse in the second degree is a Class C felony.

163.426¹ Crime category classification for sexual abuse in the second degree

(1) As used in this section, coach means a person who instructs or trains an individual or members of a team in a sport.

(2) The Oregon Criminal Justice Commission shall classify sexual abuse in the second degree as described in ORS [163.425 \(Sexual abuse in the second degree\)](#) (1)(a) as a crime category 8 of the sentencing guidelines grid of the commission if:

(a) The victim is incapable of consent by reason of being under 18 years of age;

(b) The offender is 21 years of age or older; and

(c) At any time before the commission of the offense, the offender was the victims coach.

163.427¹ Sexual abuse in the first degree

(1) A person commits the crime of sexual abuse in the first degree when that person:

(a) Subjects another person to sexual contact and:

(A) The victim is less than 14 years of age;

(B) The victim is subjected to forcible compulsion by the actor; or

(C) The victim is incapable of consent by reason of being mentally defective, mentally incapacitated or physically helpless; or

(b) Intentionally causes a person under 18 years of age to touch or contact the mouth, anus or sex organs of an animal for the purpose of arousing or gratifying the sexual desire of a person.

(2) Sexual abuse in the first degree is a Class B felony.

163.431¹ Definitions for ORS 163.431 to 163.434

As used in ORS [163.431 \(Definitions for ORS 163.431 to 163.434\)](#) to [163.434 \(Provisions applicable to online sexual corruption of a child\)](#):

(1) Child means a person who the defendant reasonably believes to be under 16 years of age.

(2) Online communication means communication that occurs via telephone text messaging, electronic mail, personal or instant messaging, chat rooms, bulletin boards or any other transmission of information by wire, radio, optical cable, cellular system, electromagnetic system or other similar means.

(3) Sexual contact has the meaning given that term in ORS [163.305 \(Definitions\)](#).

(4) Sexually explicit conduct has the meaning given that term in ORS [163.665 \(Definitions\)](#).

(5) Solicit means to invite, request, seduce, lure, entice, persuade, prevail upon, coax, coerce or attempt to do so.

163.432¹ Online sexual corruption of a child in the second degree

(1) A person commits the crime of online sexual corruption of a child in the second degree if the person is 18 years of age or older and:

(a) For the purpose of arousing or gratifying the sexual desire of the person or another person, knowingly uses an online communication to solicit a child to engage in sexual contact or sexually explicit conduct; and

(b) Offers or agrees to physically meet with the child.

(2) Online sexual corruption of a child in the second degree is a Class C felony.

163.433¹ Online sexual corruption of a child in the first degree

(1) A person commits the crime of online sexual corruption of a child in the first degree if the person violates ORS [163.432 \(Online sexual corruption of a child in the second degree\)](#) and intentionally takes a substantial step toward physically meeting with or encountering the child.

(2) Online sexual corruption of a child in the first degree is a Class B felony.

163.434¹ Provisions applicable to online sexual corruption of a child

(1) It is an affirmative defense to a prosecution for online sexual corruption of a child in the first or second degree that the person was not more than three years older than the person reasonably believed the child to be.

(2) It is not a defense to a prosecution for online sexual corruption of a child in the first or second degree that the person was in fact communicating with a law enforcement officer, as defined in ORS [163.730 \(Definitions for ORS 30.866 and 163.730 to 163.750\)](#), or a person working under the direction of a law enforcement officer, who is 16 years of age or older.

(3) Online sexual corruption of a child in the first or second degree is committed in either the county in which the communication originated or the county in which the communication was received.

163.435¹ Contributing to the sexual delinquency of a minor

(1) A person 18 years of age or older commits the crime of contributing to the sexual delinquency of a minor if:

- (a) Being a male, he engages in sexual intercourse with a female under 18 years of age; or
- (b) Being a female, she engages in sexual intercourse with a male under 18 years of age; or
- (c) The person engages in deviate sexual intercourse with another person under 18 years of age or causes that person to engage in deviate sexual intercourse.

(2) Contributing to the sexual delinquency of a minor is a Class A misdemeanor.

163.445¹ Sexual misconduct

(1) A person commits the crime of sexual misconduct if the person engages in sexual intercourse or deviate sexual intercourse with an unmarried person under 18 years of age.

(2) Sexual misconduct is a Class C misdemeanor.

163.448¹ Definitions for ORS 163.452 and 163.454

As used in ORS [163.452 \(Custodial sexual misconduct in the first degree\)](#) and [163.454 \(Custodial sexual misconduct in the second degree\)](#), correctional facility has the meaning given that term in ORS [162.135 \(Definitions for ORS 162.135 to 162.205\)](#).

163.452¹ Custodial sexual misconduct in the first degree

(1) A person commits the crime of custodial sexual misconduct in the first degree if the person:

(a) Engages in sexual intercourse or deviate sexual intercourse with another person or penetrates the vagina, anus or penis of another person with any object other than the penis or mouth of the actor knowing that the other person is:

- (A) In the custody of a law enforcement agency following arrest;
- (B) Confined or detained in a correctional facility;
- (C) Participating in an inmate or offender work crew or work release program; or
- (D) On probation, parole, post-prison supervision or other form of conditional or supervised release; and

(b) Is employed by or under contract with the state or local agency that:

- (A) Employs the officer who arrested the other person;
- (B) Operates the correctional facility in which the other person is confined or detained;
- (C) Is responsible for supervising the other person in a work crew or work release program or on probation, parole, post-prison supervision or other form of conditional or supervised release; or
- (D) Engages the other person in work or on-the-job training pursuant to ORS [421.354 \(Authority of Oregon Corrections Enterprises\)](#) (1).

(2) Consent of the other person to sexual intercourse, deviate sexual intercourse or the sexual penetration is not a defense to a prosecution under this section.

(3) Lack of supervisory authority over the other person is an affirmative defense to a prosecution under this section when the other person is on probation, parole, post-prison supervision or other form of conditional or supervised release.

(4) Custodial sexual misconduct in the first degree is a Class C felony.

163.454¹ Custodial sexual misconduct in the second degree

(1) A person commits the crime of custodial sexual misconduct in the second degree if the person:

(a) Engages in sexual contact with another person knowing that the other person is:

- (A) In the custody of a law enforcement agency following arrest;
- (B) Confined or detained in a correctional facility;
- (C) Participating in an inmate or offender work crew or work release program; or
- (D) On probation, parole, post-prison supervision or other form of conditional or supervised release; and

(b) Is employed by or under contract with the state or local agency that:

- (A) Employs the officer who arrested the other person;
- (B) Operates the correctional facility in which the other person is confined or detained;
- (C) Is responsible for supervising the other person in a work crew or work release program or on probation, parole, post-prison supervision or other form of conditional or supervised release; or
- (D) Engages the other person in work or on-the-job training pursuant to ORS [421.354 \(Authority of Oregon Corrections Enterprises\)](#) (1).

(2) Consent of the other person to sexual contact is not a defense to a prosecution under this section.

(3) Lack of supervisory authority over the other person is an affirmative defense to a prosecution under this section when the other person is on probation, parole, post-prison supervision or other form of conditional or supervised release.

(4) Custodial sexual misconduct in the second degree is a Class A misdemeanor.

163.465¹ Public indecency

(1) A person commits the crime of public indecency if while in, or in view of, a public place the person performs:

(a) An act of sexual intercourse;

(b) An act of deviate sexual intercourse; or

(c) An act of exposing the genitals of the person with the intent of arousing the sexual desire of the person or another person.

(2)(a) Public indecency is a Class A misdemeanor.

(b) Notwithstanding paragraph (a) of this subsection, public indecency is a Class C felony if the person has a prior conviction for public indecency or a crime described in ORS [163.355 \(Rape in the third degree\)](#) to [163.445 \(Sexual misconduct\)](#) or for a crime in another jurisdiction that, if committed in this state, would constitute public indecency or a crime described in ORS [163.355 \(Rape in the third degree\)](#) to [163.445 \(Sexual misconduct\)](#).

163.466¹ Classification of felony public indecency

The Oregon Criminal Justice Commission shall classify felony public indecency as a person felony and crime category 6 of the sentencing guidelines grid of the commission.

163.467¹ Private indecency

(1) A person commits the crime of private indecency if the person exposes the genitals of the person with the intent of arousing the sexual desire of the person or another person and:

(a) The person is in a place where another person has a reasonable expectation of privacy;

(b) The person is in view of the other person;

(c) The exposure reasonably would be expected to alarm or annoy the other person; and

(d) The person knows that the other person did not consent to the exposure.

(2) Private indecency is a Class A misdemeanor.

(3) Subsection (1) of this section does not apply to a person who commits the act described in subsection (1) of this section if the person cohabits with and is involved in a sexually intimate relationship with the other person.

(4) For purposes of this section, place where another person has a reasonable expectation of privacy includes, but is not limited to, residences, yards of residences, working areas and offices.

163.476¹ Unlawfully being in a location where children regularly congregate

(1) A person commits the crime of unlawfully being in a location where children regularly congregate if the person:

(a)(A) Has been designated a sexually violent dangerous offender under ORS [137.765 \(Sexually violent dangerous offenders\)](#);

(B) Has been classified as a level three sex offender under ORS [181.800 \(Risk assessment tool\)](#) (3) or designated a predatory sex offender under ORS [181.838 \(Juvenile predatory sex offender defined\)](#), and does not have written approval from the State Board of Parole and Post-Prison Supervision or the persons supervisory authority or supervising officer to be in or upon the specific premises;

(C) Has been sentenced as a dangerous offender under ORS [161.725 \(Standards for sentencing of dangerous offenders\)](#) upon conviction of a sex crime; or

(D) Has been given a similar designation or been sentenced under a similar law of another jurisdiction; and

(b) Knowingly enters or remains in or upon premises where persons under 18 years of age regularly congregate.

(2) As used in this section:

(a) Premises where persons under 18 years of age regularly congregate means schools, child care centers, playgrounds, other places intended for use primarily by persons under 18 years of age and places where persons under 18 years of age gather for regularly scheduled educational and recreational programs.

(b) Sex crime has the meaning given that term in ORS [181.805 \(Definitions for 181.800 to 181.845\)](#).

(3) Unlawfully being in a location where children regularly congregate is a Class A misdemeanor.

163.479¹ Unlawful contact with a child

(1) A person commits the crime of unlawful contact with a child if the person:

(a)(A) Has been designated a sexually violent dangerous offender under ORS [137.765 \(Sexually violent dangerous offenders\)](#);

(B) Has been classified as a level three sex offender under ORS [181.800 \(Risk assessment tool\)](#) (3);

(C) Has been designated a predatory sex offender under ORS [181.838 \(Juvenile predatory sex offender defined\)](#);

(D) Has been sentenced as a dangerous offender under ORS [161.725 \(Standards for sentencing of dangerous offenders\)](#) upon conviction of a sex crime; or

(E) Has been given a similar designation or been sentenced under a similar law of another jurisdiction; and

- (b) Knowingly contacts a child with the intent to commit a crime or for the purpose of arousing or satisfying the sexual desires of the person or another person.
- (2) As used in this section:
 - (a) Child means a person under 18 years of age.
 - (b) Contact means to communicate in any manner.
 - (c) Sex crime has the meaning given that term in ORS [181.805 \(Definitions for 181.800 to 181.845\)](#).
 - (3) Unlawful contact with a child is a Class C felony.

163.730¹ Definitions for ORS 30.866 and 163.730 to 163.750

As used in ORS [30.866 \(Action for issuance or violation of stalking protective order\)](#) and [163.730 \(Definitions for ORS 30.866 and 163.730 to 163.750\)](#) to [163.750 \(Violating a courts stalking protective order\)](#), unless the context requires otherwise:

- (1) Alarm means to cause apprehension or fear resulting from the perception of danger.
- (2) Coerce means to restrain, compel or dominate by force or threat.
- (3) Contact includes but is not limited to:
 - (a) Coming into the visual or physical presence of the other person;
 - (b) Following the other person;
 - (c) Waiting outside the home, property, place of work or school of the other person or of a member of that persons family or household;
 - (d) Sending or making written or electronic communications in any form to the other person;
 - (e) Speaking with the other person by any means;
 - (f) Communicating with the other person through a third person;
 - (g) Committing a crime against the other person;
 - (h) Communicating with a third person who has some relationship to the other person with the intent of affecting the third persons relationship with the other person;
 - (i) Communicating with business entities with the intent of affecting some right or interest of the other person;
 - (j) Damaging the other persons home, property, place of work or school;
 - (k) Delivering directly or through a third person any object to the home, property, place of work or school of the other person; or
 - (L) Service of process or other legal documents unless the other person is served as provided in ORCP 7 or 9.
- (4) Household member means any person residing in the same residence as the victim.
- (5) Immediate family means father, mother, child, sibling, spouse, grandparent, stepparent and stepchild.
- (6) Law enforcement officer means:
 - (a) A person employed in this state as a police officer by:
 - (A) A county sheriff, constable or marshal;
 - (B) A police department established by a university under ORS [352.383 \(University police departments and officers\)](#) or [353.125 \(Creation of police department and commission of police officers\)](#); or
 - (C) A municipal or state police agency; or
 - (b) An authorized tribal police officer as defined in section 1, chapter 644, Oregon Laws 2011.
- (7) Repeated means two or more times.
- (8) School means a public or private institution of learning or a child care facility.

163.732¹ Stalking

- (1) A person commits the crime of stalking if:
 - (a) The person knowingly alarms or coerces another person or a member of that persons immediate family or household by engaging in repeated and unwanted contact with the other person;
 - (b) It is objectively reasonable for a person in the victims situation to have been alarmed or coerced by the contact; and
 - (c) The repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a member of the victims immediate family or household.
- (2)(a) Stalking is a Class A misdemeanor.
- (b) Notwithstanding paragraph (a) of this subsection, stalking is a Class C felony if the person has a prior conviction for:
 - (A) Stalking; or
 - (B) Violating a courts stalking protective order.
- (c) When stalking is a Class C felony pursuant to paragraph (b) of this subsection, stalking shall be classified as a person felony and as crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission.

166.065¹ Harassment

- (1) A person commits the crime of harassment if the person intentionally:
 - (a) Harasses or annoys another person by:
 - (A) Subjecting such other person to offensive physical contact;

(B) Publicly insulting such other person by abusive words or gestures in a manner intended and likely to provoke a violent response; or

(C) Distributing a visual recording, as defined in ORS [163.665 \(Definitions\)](#), of the other person engaged in sexually explicit conduct, as defined in ORS [163.665 \(Definitions\)](#), or in a state of nudity, as defined in ORS [163.700 \(Invasion of personal privacy\)](#), when the other person is under 18 years of age at the time of the recording;

(b) Subjects another to alarm by conveying a false report, known by the conveyor to be false, concerning death or serious physical injury to a person, which report reasonably would be expected to cause alarm; or

(c) Subjects another to alarm by conveying a telephonic, electronic or written threat to inflict serious physical injury on that person or to commit a felony involving the person or property of that person or any member of that persons family, which threat reasonably would be expected to cause alarm.

(2)(a) A person is criminally liable for harassment if the person knowingly permits any telephone or electronic device under the persons control to be used in violation of subsection (1) of this section.

(b) Harassment that is committed under the circumstances described in subsection (1)(c) of this section is committed in either the county in which the communication originated or the county in which the communication was received.

(3) Harassment is a Class B misdemeanor.

(4) Notwithstanding subsection (3) of this section, harassment is a Class A misdemeanor if a person violates:

(a) Subsection (1)(a)(A) of this section by subjecting another person to offensive physical contact and the offensive physical contact consists of touching the sexual or other intimate parts of the other person;

(b) Subsection (1)(a)(C) of this section; or

(c) Subsection (1)(c) of this section and:

(A) The person has a previous conviction under subsection (1)(c) of this section and the victim of the current offense was the victim or a member of the family of the victim of the previous offense;

(B) At the time the offense was committed, the victim was protected by a stalking protective order, a restraining order as defined in ORS [24.190 \(Foreign restraining orders\)](#) or any other court order prohibiting the person from contacting the victim;

(C) At the time the offense was committed, the person reasonably believed the victim to be under 18 years of age and more than three years younger than the person; or

(D)(i) The person conveyed a threat to kill the other person or any member of the family of the other person;

(ii) The person expressed the intent to carry out the threat; and

(iii) A reasonable person would believe that the threat was likely to be followed by action.

(5) It is not a defense to a charge under subsection (1)(a)(C) of this section that the defendant did not know the age of the victim.

(6) As used in this section, electronic threat means a threat conveyed by electronic mail, the Internet, a telephone text message or any other transmission of information by wire, radio, optical cable, cellular system, electromagnetic system or other similar means.

Bystander Intervention

The Academy's primary prevention and awareness program includes a description of safe and positive options for bystander intervention. Active bystanders take the initiative to help someone who may be targeted for a sexual assault. They do this in ways that are intended to avoid verbal or physical conflict. Active bystanders also take the initiative to help friends, who are not thinking clearly, from becoming offenders of crime. Intervention does not mean that you directly intervene to stop a crime in progress; rather, these steps are "early intervention" – before a crime begins to occur. There are three important components to consider before taking action that we refer to as the ABCs:

- **Assess for safety.** Ensure that all parties are safe, and whether the situation requires calling authorities. When deciding to intervene, your personal safety should be the #1 priority. When in doubt, call for help.
- **Be with others.** If it is safe to intervene, your are likely to have a greater influence on the parties involved when you work together with someone or several people. Your safety is increased when you stay with a group of friends that you know well.
- **Care for the person.** Ask if the target of the unwanted sexual advance/attention/behavior is okay – does he or she need medical care? Ask if someone they trust can help them get safely home.

Information on Bystander Intervention was provided by the Department of Defense Sexual Assault Prevention and Response Office from: www.sapr.mil

Risk Reduction

The Academy's primary prevention and awareness program includes information on risk reduction. This includes:

Avoiding Dangerous Situations. While you can never completely protect yourself from sexual assault, there are some things you can do to help reduce your risk of being assaulted.

- Be aware of your surroundings. Knowing where you are and who is around you may help you to find a way to get out of a bad situation.
- Try to avoid isolated areas. It is more difficult to get help if no one is around.
- Walk with purpose. Even if you don't know where you are going, act like you do.
- Trust your instincts. If a situation or location feels unsafe or uncomfortable, it probably isn't the best place to be.
- Try not to load yourself down with packages or bags as this can make you appear more vulnerable.
- Make sure your cell phone is with you and charged and that you have cash money.
- Don't allow yourself to be isolated with someone you don't trust or someone you don't know.
- Avoid putting music headphones in both ears so that you can be more aware of your surroundings, especially if you are walking alone.

Safety Planning. Things to think about:

- How to get away if there is an emergency? Be conscious of exits or other escape routes. Think about options for transportation (car, bus, subway, etc.).
- Who can help? Friends and/or family, or support centers in your area. Please see Section 4 of this Policy for a list of support organizations.
- Where to go? Options may include a friend's house or relative's house, or you may consider going to a domestic violence or homeless shelter. You may also go to the police. **Important Safety Note:** If the dangerous situation involves a partner, go to the police or a shelter first.
- What to bring? This may include important papers and documents such birth certificate, social security card, license, passport, medical records, lease, bills, etc. This will also include house keys, car keys, cash, credit cards, medicine, important numbers, and your cell phone. If you are bringing children with you, remember to bring their important papers and legal documents. You can keep all of these things in an emergency bag. You should hide the bag—it is best if it is not in your house or car. If the bag is discovered, you can call it a "tornado" or "fire" bag.

Protecting Your Friends. You have a crucial role to play in keeping your friends safe. No matter what the setting, if you see something that doesn't feel quite right or see someone who might be in trouble, there are some simple things you can do to help out a friend.

- Distract. If you see a friend in a situation that doesn't feel quite right, create a distraction to get your friend to safety. This can be as simple as joining or redirecting the conversation: suggest to your friend that you leave the party, or ask them to walk you home. Try asking questions like: "Do you want to head to the bathroom with me?" or "Do you want to head to another party – or grab pizza?"
- Step in. If you see someone who looks uncomfortable or is at risk, step in. If you feel safe, find a way to de-escalate the situation and separate all parties involved. Don't be shy about directly asking the person if they need help or if they feel uncomfortable.
- Enlist others. You don't have to go it alone. Call in friends or other people in the area as reinforcements to help defuse a dangerous situation and get the at-risk person home

safely. There is safety in numbers.

- Keep an eye out. Use your eyes and ears to observe your surroundings. If you see someone who has had too much to drink or could be vulnerable, try to get them to a safe place. Enlist friends to help you. Even if you weren't around when the assault occurred, you can still support a friend in the aftermath.

Social Situations. While you can never completely protect yourself from sexual assault, there are some things you can do to help reduce your risk of being assaulted in social situations.

- When you go to a social gathering, go with a group of friends. Arrive together, check in with each other throughout the evening, and leave together. Knowing where you are and who is around you may help you to find a way out of a bad situation.
- Trust your instincts. If you feel unsafe in any situation, go with your gut. If you see something suspicious, contact law enforcement immediately.
- Don't leave your drink unattended while talking, dancing, using the restroom, or making a phone call. If you've left your drink alone, just get a new one.
- Don't accept drinks from people you don't know or trust. If you choose to accept a drink, go with the person to the bar to order it, watch it being poured, and carry it yourself. At parties, don't drink from the punch bowls or other large, common open containers.
- Watch out for your friends, and vice versa. If a friend seems out of it, is way too intoxicated for the amount of alcohol they've had, or is acting out of character, get him or her to a safe place immediately.
- If you suspect you or a friend has been drugged, contact law enforcement immediately. Be explicit with doctors so they can give you the correct tests (you will need a urine test and possibly others).

Information on Risk Reduction was provided by RAINN: Rape, Abuse & Incest National Network: www.rainn.org.

14. Amendments

The Academy may amend the Policy or the Procedures from time to time. Nothing in the Policy or Procedures shall affect the inherent authority of the Academy to take such actions as it deems appropriate to further the educational mission or to protect the safety and security of the school community.

Phagans Salon Academy

Sexual Misconduct Policy

Definitions of Key Terms

- Sexual Harassment - Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (i) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's education or employment, (ii) submission to or rejection of such conduct by an individual is used as the basis for education or employment decisions affecting such individuals, or (iii) such conduct has the purpose or effect of unreasonably interfering with an individual's school or work performance or creating an intimidating, hostile, or offensive educational or working environment.
 - Hostile Environment Caused By Sexual Harassment - refers to a situation where students and/or employees are subject to a pattern of exposure to unwanted sexual behavior that is so severe, persistent, or pervasive that it alters the conditions of education, employment, or participation in a school program or activity, thereby creating an environment that a reasonable person in similar circumstances and with similar identities would find hostile, intimidating, or abusive. An isolated incident, unless sufficiently severe, does not amount to a hostile environment caused by sexual harassment.
 - Quid Pro Quo Harassment – refers to a situation where students and/or employees are subject to unwanted sexual behavior where submission or rejection of such conduct is used, explicitly or implicitly, as the basis for decisions affecting an individual's education, employment, or participation in a school program or activity.
- Sexual Assault - is any unwanted physical contact of a sexual nature that occurs either without the consent of each participant or when a participant is unable to give consent freely. Sexual assault can occur either forcibly and/or against a person's will, or when a person is unable to give consent freely. Non-consensual sexual intercourse is any form of sexual intercourse (vaginal, anal or oral) with any object without consent. Non-consensual sexual contact is any intentional sexual touching, however slight, with any object without a person's consent.
- Domestic Violence - A felony or misdemeanor crime of violence committed (i) by a current or former spouse or intimate partner of the victim; (ii) by a person with whom the victim shares a child in common; (iii) by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; (iv) by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or (v) by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- Dating Violence - Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purpose of this definition dating violence includes, but is not limited to, sexual or physical abuse or the

threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

- Prohibited Conduct – The Academy prohibits the crimes of Sexual Assault, Sexual Harassment, Sexual Exploitation, Dating Violence, Domestic Violence, and Stalking as defined in these Definitions of Key Terms.
- Sexual Exploitation - sexual misconduct that occurs when a person takes unjust or abusive sexual advantage of another for his or her own advantage or benefit or for the benefit or advantage of anyone other than the exploited party; and that behavior does not otherwise constitute sexual assault. Examples of sexual exploitation include, but are not limited to, videotaping or photographing of any type (web-cam, camera, Internet exposure, etc.) without knowledge and consent of all persons; prostituting another person; knowingly transmitting HIV or a sexually transmitted disease to an unknowing person or to a person who has not consented to the risk; or inducing incapacitation with the intent to commit sexual assault, without regard to whether sexual activity actually takes place.
- Stalking - Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others, or suffer substantial emotional distress. 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. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
- Retaliation - means any adverse action, or attempted adverse action, against an individual or group of individuals because of their participation in any manner in an investigation, proceeding, or hearing under this Policy.
- Intimidation - To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.
- Consent is a voluntary agreement to engage in sexual activity.
 - Past consent does not imply future consent.
 - Silence or an absence of resistance does not imply consent.
 - Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.
 - Consent can be withdrawn at any time.
 - Coercion, force, or threat of either invalidates consent.

Someone who is incapacitated cannot consent. Incapacitation refers to a situation in which a person is not capable of providing consent because the person lacks the ability to understand her or his decision. This situation may occur due to the use of drugs or alcohol, when a person is asleep or unconscious, or because of an intellectual or other disability that prevents the student from having the capacity to give consent.

- Complainant – means the person making the allegation(s) of sexual misconduct.
- Respondent – means the person alleged to have committed sexual misconduct.