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|  | <b>Definitions and Relevant Terms regarding Complaints &amp; Adjudication of Gender-Based Discrimination, Sexual Harassment, &amp; Sexual Violence</b> | <b>Responsible Administrative Units:</b><br>Student Life & Human Resources<br><b>Contacts:</b><br>Associate Dean of Students<br><a href="mailto:dmorgan@mines.edu">dmorgan@mines.edu</a> & AVP<br>Human Resources<br><a href="mailto:mdougher@mines.edu">mdougher@mines.edu</a> |
|   | <b>Issued: August 19, 2015</b>   |   |

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## DEFINITIONS AND RELEVANT TERMS – ALPHABETICAL

**Coercion.** The intimidation of a victim to compel the individual to do some act against his or her will by the use of psychological pressure, physical force, or threats.


**Complainant:** A Mines Community Member who: 1) believes he or she has been subjected to gender-based discrimination, sexual harassment, and/or sexual violence; or 2) a Mines Community Member who files a complaint on behalf of another Mines Community Member who they believe may have been subjected to gender-based discrimination, sexual harassment, and/or sexual violence. Under Colorado statutes, the Complainant may also be referred to as “the victim.”

**Consent:** Positive, unambiguous, and voluntary agreement to engage in specific sexual activity throughout a sexual encounter. It is critical to note the nuances of consent:

- Consent cannot be inferred from the absence of a “no.”
- Consent cannot be inferred in the context of a current or previous sexual relationship.
- Consent to some sexual acts does not imply consent to others, nor does past consent to a given act imply or grant present or future consent.
- Consent must be ongoing throughout a sexual encounter and can be revoked at any time.
- Consent cannot be obtained by fear, threat, coercion, intimidation, or force.
- Consent cannot be obtained from someone who is asleep or otherwise mentally or physically incapacitated, whether due to alcohol, drugs, or some other condition.

**Dating violence:** An act or threatened act of violence (physical, sexual or verbal) committed by an actor who is or has been in a romantic/intimate relationship with the victim, as determined based on the length of the relationship, type of relationship and the frequency of interaction between the persons in the relationship. (Note: Colorado law includes dating violence in the definition of domestic violence.)

**Domestic violence:** An act or threatened act of violence upon a victim with whom the actor is or has been involved in an intimate relationship. Domestic violence also includes any other crime against a victim, or against property, including an animal, when used as a method of coercion, control, punishment, intimidation, or revenge directed against a victim with whom the actor is or has been involved in an intimate relationship.

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**Gender-based discrimination:** Incidents or situations where a Mines Community Member is treated unfavorably on the basis of that person's sex, gender, gender identity, or gender expression.

**Gender-based harassment:** Verbal, non-verbal, graphic or physical aggression, intimidation or hostile conduct that is based on sex, gender, gender identity, or gender expression which is sufficiently severe, persistent or pervasive to interfere with or limit a person's ability to participate in or benefit from educational or work-related programs or activities.

**Gender expression:** The manner in which a person's expresses masculinity, femininity, or gender variance. A person may express gender through appearance, speech, behavior, movement, or other factors. A person's gender expression may or may not align with their birth-assigned gender.

**Gender identity:** A person's innate sense of being a man, a woman, within a spectrum, or no gender. A person's gender identity may or may not align with their birth-assigned sex.


**Incapacitation:** The inability, temporarily or permanently, to give consent to sexual activity because the individual is mentally and/or physically helpless, asleep, unconscious, or incapable of understanding the sexual activity that is occurring. Incapacitation may result from the use of alcohol and/or drugs. The impact of alcohol and other drugs varies from person to person; however, warning signs that a person may be incapacitated may include slurred speech, vomiting, unsteady gait, odor of alcohol, combativeness, and/or emotional volatility.

**Intimate relationship:** A current or past sexual relationship between spouses, former spouses, past or present unmarried individuals, or individuals who share a child or children regardless of whether the persons have been married or have lived together at any time.

**Mines Community Member:** A person who has an affiliation with Mines through education, employment, or other statuses. Mines Community Members include, but are not limited to, students, faculty members, staff members, alumni, contractors, and visitors.

**Rape.** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person without the consent of the victim.

**Respondent:** A Mines Community Member or third party who is alleged to have violated the Policy. Under Colorado statutes, the Respondent may be referred to as "the actor."

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**Retaliation:** Situations where someone adversely impacts a Mines Community Member because he or she:

- filed a complaint of gender-based discrimination, sexual harassment, or sexual violence;
- participated in an investigation or other related proceeding; or
- otherwise opposed gender-based discrimination, sexual harassment, or sexual violence.

**Sex:** The biological or birth-assigned gender of an individual, typically male, female, or intersex.


**Sexual assault.** In Colorado, the criminal statutes prohibiting sexual assault include rape as a form of sexual assault. The statute provides that a person commits sexual assault if the person knowingly inflicts sexual intrusion or penetration on a victim. Specific examples of sexual assault that are relevant to a campus like Mines include, but are not limited to:

- the actor causes the victim to submit by means of sufficient consequence reasonably calculated to cause submission against the victim's will;
- the actor knows that the victim is incapable of appraising what is occurring;
- the actor knows that the victim erroneously believes the person is the victim's spouse;
- at the time of the commission of the act the victim is less than 15 and the actor is at least 4 years older than the victim and is not the spouse of the victim;
- the actor has authority over the victim and uses his or her position of authority to coerce the victim; or
- the actor, while purporting to offer some medical service, engages in some sort of treatment or examination for some other reason than a bona fide medical purpose.

**Sexual contact:** The knowing touching of the victim's body by the actor if that contact is for the purpose of sexual arousal, gratification, or abuse.

**Sexual exploitation:** When the actor knowingly observes or takes an image of the victim's intimate body parts without the victim's consent when the victim has a reasonable expectation of privacy, and the observation or the photograph is for the actor's own sexual gratification. Sexual exploitation also occurs if the actor shares or publishes visual or auditory records of sexual activity, nudity, or suggestive activity without the consent of all recorded parties and recipients

**Sexual harassment:** Unwelcome conduct (i.e., conduct without consent) of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Mines recognizes two types of sexual harassment: **quid pro quo** harassment and **hostile environment** harassment.

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**Quid pro quo sexual harassment:** Submission to or rejection of unwelcome conduct of a sexual nature made explicitly or implicitly a condition of an individual's employment or academic progress, or is used as the basis for employment decisions or for academic evaluation. Quid pro quo harassment occurs regardless of whether the victim submits or resists the threatened harm or the promised benefit.

**Hostile environment sexual harassment:** Unwelcome conduct of a sexual nature sufficiently severe, persistent, or pervasive that it interferes with or limits a person's ability to participate in or benefit from educational or work-related programs. A hostile environment can be created by persistent or pervasive conduct or by a single severe episode. Whether the conduct creates a hostile work or learning environment is determined based on the totality of the circumstances. Examples of behavior that may create a hostile environment that violates the policy include, but are not limited to:

- Repeated verbal or physical sexual advances;
- Repeated lewd, suggestive or otherwise inappropriate comments about another person's appearance;
- Intentional inappropriate physical contact with another person's body;
- Repeated requests for sexual favors;
- Repeated lewd or sexually suggestive comments, jokes, innuendoes, or gestures;
- Stalking;
- Observing, photographing, videotaping or making other visual or auditory records of sexual activity, nudity or suggestive activity where there is a reasonable expectation of privacy and without the consent of all parties;
- Sharing or publishing visual or auditory records of sexual activity, nudity or suggestive activity without the consent of all recorded parties and recipients; and
- Other verbal, nonverbal, graphic, or physical conduct may also create a hostile environment if the conduct is sufficiently persistent, pervasive, or severe.

**Sexual violence:** Physical, sexual acts perpetrated without the mutual consent of all people involved or where a person is incapable of giving legal consent (e.g., due to the person's age, use of drugs or alcohol, or because an intellectual or other disability prevents the person from having the capacity to give consent). Sexual violence includes **rape, sexual assault, sexual battery, sexual exploitation, sexual abuse, and sexual coercion**. Sexual violence may also include instances **of domestic violence, dating violence, and stalking**.

**Stalking:** Conduct directed at a specific person that would cause a reasonable person to fear for his/her safety or the safety of others or suffer substantial emotional distress. Forms of stalking include:

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- Making a credible threat to another person and repeatedly following, approaching, contacting, or surveilling that person or a friend or a member of that person's immediate family;
- Making a credible threat to another person and repeatedly communicating in any form that person or a friend or a member of that person's immediate family; or
- Repeatedly following, approaching, contacting, surveilling, or communicating with another person, or a friend or a member of that person's immediate family that would cause a reasonable person to suffer serious emotional distress and does cause that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship to suffer serious emotional distress

**Unlawful Sexual Conduct, including sexual battery, sexual abuse, and sexual coercion:** In Colorado, these offenses that do not involve intrusion or penetration but involve sexual contact without consent. Unlawful sexual contact occurs when the actor knowingly subjects the victim to any sexual contact if:

- the actor knows the victim does not consent;
- the actor knows the victim is incapable of appraising what the actor is doing (mental incapacity);
- the actor knows that the victim is physically helpless and that the victim has not consented (physical incapacity),
- the actor has substantially impaired the victim's power to control the actor's behavior by using alcohol or drugs (mental or physical incapacity); or
- the actor engages in treatment or examination of the victim for other than bona fide medical purposes.


**Unwelcome conduct:** Conduct that a person receives that they did not request or invite that is viewed as undesirable or offensive.

## DEFINITIONS AND RELEVANT TERMS – BY TOPIC

### 1.0 General Definitions

**1.1 Complainant:** A Mines Community Member who: 1) believes he or she has been subjected to gender-based discrimination, sexual harassment, and/or sexual violence; or 2) a Mines Community Member who files a complaint on behalf of another Mines Community Member who they believe may have been subjected to gender-based discrimination, sexual harassment, and/or sexual violence. Under Colorado statutes, the Complainant may also be referred to as “the victim.”

**1.2 Mines Community Member:** A person who has an affiliation with Mines through education, employment, or other statuses. Mines Community Members include, but are

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not limited to, students, faculty members, staff members, alumni, contractors, and visitors.

**1.3 Respondent:** A Mines Community Member or third party who is alleged to have violated the Policy.

**1.4 Retaliation:** Situations or incidents where a Mines Community Member is adversely impacted because he or she:

- filed a complaint of gender-based discrimination, sexual harassment, or sexual violence;
- participated in an investigation or other related proceeding; or
- otherwise opposed gender-based discrimination, sexual harassment, or sexual violence.

## 2.0 Definitions and Terms Related to Gender-Based Discrimination

**2.1 Gender-based discrimination:** Incidents or situations where a Mines Community Member is treated unfavorably on the basis of that person's sex, gender, gender identity, or gender expression.

**2.2 Gender-based harassment:** Verbal, non-verbal, graphic or physical aggression, intimidation or hostile conduct that is based on sex, gender, gender identity, or gender expression which is sufficiently severe, persistent or pervasive to interfere with or limit a person's ability to participate in or benefit from educational or work-related programs or activities.


**2.3 Gender expression:** The manner in which a person's expresses masculinity, femininity, or gender variance. A person may express gender through appearance, speech, behavior, movement, or other factors. A person's gender expression may or may not align with their birth-assigned sex.

**2.4 Gender identity:** A person's innate sense of being male or female. A person's gender identity may or may not align with their birth-assigned sex.

**2.5 Sex:** The biological or birth-assigned gender of an individual, typically masculine or feminine.

## 3.0 Definitions and Terms Related to Sexual Harassment

**3.1 Sexual harassment:** Unwelcome conduct (i.e., conduct without consent) of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Mines recognizes two

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types of sexual harassment: ***quid pro quo*** harassment and ***hostile environment*** harassment.

**3.2 Quid pro quo sexual harassment:** Submission to or rejection of unwelcome conduct of a sexual nature made explicitly or implicitly a condition of an individual's employment or academic progress, or is used as the basis for employment decisions or for academic evaluation. Quid pro quo harassment occurs regardless of whether the victim submits or resists the threatened harm or the promised benefit.

**3.3 Hostile environment sexual harassment:** Unwelcome conduct of a sexual nature sufficiently severe, persistent, or pervasive that it interferes with or limits a person's ability to participate in or benefit from educational or work-related programs. A hostile environment can be created by persistent or pervasive conduct or by a single severe episode. Whether the conduct creates a hostile work or learning environment is determined based on the totality of the circumstances. Examples of behavior that may create a hostile environment that violates the policy include, but are not limited to:


- Repeated verbal or physical sexual advances;
- Repeated lewd, suggestive or otherwise inappropriate comments about another person's appearance;
- Intentional inappropriate physical contact with another person's body;
- Repeated requests for sexual favors;
- Repeated lewd or sexually suggestive comments, jokes, innuendoes, or gestures;
- Stalking;
- Observing, photographing, videotaping or making other visual or auditory records of sexual activity, nudity or suggestive activity where there is a reasonable expectation of privacy and without the consent of all parties;
- Sharing or publishing visual or auditory records of sexual activity, nudity or suggestive activity without the consent of all recorded parties and recipients; and
- Other verbal, nonverbal, graphic, or physical conduct may also create a hostile environment if the conduct is sufficiently persistent, pervasive, or severe.

**3.4 Unwelcome conduct:** Conduct that a person receives that they did not request or invite that is viewed as undesirable or offensive.

#### **4.0 Definitions and Terms Related to Sexual Violence**

**4.1 Sexual violence:** Physical, sexual acts perpetrated without the mutual consent of all people involved or where a person is incapable of giving legal consent (e.g., due to the person's age, use of drugs or alcohol, or because an intellectual or other disability prevents the person from having the capacity to give consent). Sexual violence includes



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***rape, sexual assault, sexual battery, sexual exploitation, sexual abuse, and sexual coercion.*** Sexual violence may also include instances ***of domestic violence, dating violence, and stalking.***

**4.2 Consent:** Positive, unambiguous, and voluntary agreement to engage in specific sexual activity throughout a sexual encounter. It is critical to note the nuances of consent:

- Consent cannot be inferred from the absence of a “no”.
- Consent cannot be inferred in the context of a current or previous sexual relationship.
- Consent to some sexual acts does not imply consent to others, nor does past consent to a given act imply or grant present or future consent.
- Consent must be ongoing throughout a sexual encounter and can be revoked at any time.
- Consent cannot be obtained by fear, threat, coercion, intimidation, or force.
- Consent cannot be obtained from someone who is asleep or otherwise mentally or physically incapacitated, whether due to alcohol, drugs, or some other condition.


**4.3 Coercion.** The intimidation of a victim to compel the individual to do some act against his or her will by the use of psychological pressure, physical force, or threats.

**4.4 Dating violence:** An act or threatened act of violence (physical, sexual or verbal) committed by an actor who is or has been in a romantic/intimate relationship with the victim, as determined based on the length of the relationship, type of relationship and the frequency of interaction between the persons in the relationship. (Note: Colorado law includes dating violence in the definition of domestic violence.)

**4.5 Domestic violence:** An act or threatened act of violence upon a victim with whom the actor is or has been involved in an intimate relationship. Domestic violence also includes any other crime against a victim, or against property, including an animal, when used as a method of coercion, control, punishment, intimidation, or revenge directed against a victim with whom the actor is or has been involved in an intimate relationship.

**4.6 Incapacitation:** The inability, temporarily or permanently, to give consent to sexual activity because the individual is mentally and/or physically helpless, asleep, unconscious, or unaware that sexual activity is occurring. Incapacitation may result from the use of alcohol and/or drugs. The impact of alcohol and other drugs varies from person to person; however, warning signs that a person may be incapacitated may include slurred speech, vomiting, unsteady gait, odor of alcohol, combativeness, and/or emotional volatility.



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**4.7 Intimate relationship:** A current or past sexual relationship between spouses, former spouses, past or present unmarried couples, or persons who are both the parents of the same child regardless of whether the persons have been married or have lived together at any time.

**4.8 Rape.** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person without the consent of the victim.


**4.9 Sexual assault.** In Colorado, the criminal statutes prohibiting sexual assault include rape as a form of sexual assault. The statute provides that a person commits sexual assault if the person knowingly inflicts sexual intrusion or penetration on a victim. Specific examples of sexual assault that are relevant to a campus like Mines include, but are not limited to:

- the actor causes the victim to submit by means of sufficient consequence reasonably calculated to cause submission against the victim's will;
- the actor knows that the victim is incapable of appraising what is occurring;
- the actor knows that the victim erroneously believes the person is the victim's spouse;
- at the time of the commission of the act the victim is less than 15 and the actor is at least 4 years older than the victim and is not the spouse of the victim;
- the actor has authority over the victim and uses his or her position of authority to coerce the victim; or
- the actor, while purporting to offer some medical service, engages in some sort of treatment or examination for some other reason than a bona fide medical purpose.

**4.10 Sexual contact:** The knowing touching of the victim's intimate parts by the actor or the actor's intimate parts by the victim or the knowing touching of the clothing covering the immediate area of the victims' or actor's intimate parts if that contact is for the purpose of sexual arousal, gratification or abuse.

**4.11 Sexual exploitation:** When the actor knowingly observes or takes a photograph of the victim's intimate body parts without the victim's consent in a situation where the victim has a reasonable expectation of privacy, and the observation or the photograph is for the actor's own sexual gratification.

**4.12 Stalking:** Conduct directed at a specific person that would cause a reasonable person to fear for his/her safety or the safety of others or suffer substantial emotional distress. Forms of stalking include: (a) Making a credible threat to another person and, in connection with the threat, repeatedly follows, approaches, contacts, or places under surveillance that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship; or (b) Making a credible

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threat to another person and, in connection with the threat, repeatedly makes any form of communication with that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship, regardless of whether a conversation ensues; or (c) Repeatedly following, approaching, contacting, placing under surveillance, or making any form of communication with another person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship in a manner that would cause a reasonable person to suffer serious emotional distress and does cause that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship to suffer serious emotional distress.

**4.13 Unlawful Sexual Conduct, including sexual battery, sexual abuse, and sexual coercion:** In Colorado, these offenses that do not involve intrusion or penetration but involve sexual contact without consent. Unlawful sexual contact occurs when the actor knowingly subjects the victim to any sexual contact if:

- the actor knows the victim does not consent;
- the actor knows the victim is incapable of appraising what the actor is doing (mental incapacity);
- the actor knows that the victim is physically helpless and that the victim has not consented (physical incapacity),
- the actor has substantially impaired the victim's power to control the actor's behavior by using alcohol or drugs (mental or physical incapacity); or
- the actor engages in treatment or examination of the victim for other than bona fide medical purposes.