9.2.7.2 *Discrimination and Sexual Misconduct Policy*

Bellarmine strongly opposes and will not tolerate any form of discrimination or sexual misconduct by its employees (defined below as including faculty, staff, administration, temporary, part-time and adjunct employees) against another employee, supervisor, student, customer, client, visitor or applicant. Nor will Bellarmine tolerate any form of discrimination or sexual misconduct against one of its employees or students by someone who is not employed by the University. The procedure for filing and resolving complaints of discrimination and sexual misconduct is set forth in Section 9.2.7.3.

Discrimination is any distinction, preference, advantage for or detriment to an individual compared to others that is based upon an individual's actual or perceived gender, race, color, age (40 or over), creed, national or ethnic origin, physical or mental disability, veteran status, pregnancy status, religion or sexual orientation that unreasonably interferes with or limits employment or the ability to participate in or benefit from the University's educational program.

Sexual Misconduct comprises a broad range of behavior that will not be tolerated in Bellarmine's community of trust. For purposes of this Policy, **"Sexual Misconduct" includes (a) Sexual Exploitation, (b) Sexual Harassment, (c) Non-Consensual Sexual Contact, and (d) Non-Consensual Sexual Intercourse, or Retaliation, each as more fully defined below.** Sexual Misconduct violates University policy and federal and state civil rights laws and may also be subject to criminal prosecution.

Overview:

Bellarmine is committed to fostering a community that promotes prompt reporting of all types of discrimination and sexual misconduct and timely and fair resolution of complaints, whether related to conduct on or off the University campus. Off campus situations include, but are not limited to, student activities, student trips, and all programs for study abroad or away from the University campus, and may include other situations involving University employees or students. Creating a safe environment is the responsibility of all members of the Bellarmine community.

Bellarmine is committed to providing employment, programs, activities and an educational environment free from discrimination and sexual misconduct through this Policy and through additional policies applicable to students. These policies are designed to provide an equitable process for all parties while also ensuring all protections under law. Nothing in this Policy is intended to abridge the rights or freedoms guaranteed by the First Amendment.

Definitions:

The following definitions are incorporated in this Policy and are used in making decisions and determining sanctions in connection with behaviors complained about under this Policy.

(a) Non-Consensual Sexual Contact means sexual contact that occurs without effective consent. **Sexual Contact** means the deliberate touching of a person's intimate parts including genitalia, groin, breast or buttocks, or clothing covering any of those areas, or using **force** to cause a person to touch his or her own or another person's intimate parts. **Force** means physical force, violence, threats, intimidation or coercion. Non-consensual sexual contact is a form of sexual assault.

(b) Non-Consensual Sexual Intercourse means sexual intercourse that occurs without consent**.** **Sexual Intercourse** means penetration (anal, oral or vaginal) by a penis, tongue, finger, or an inanimate object. Non-consensual sexual intercourse is a form of sexual assault.

(c) Sexual Exploitation means taking sexual advantage of another person without consent, and includes, without limitation, causing or attempting to cause the Incapacitation of another person in order to gain a sexual advantage over such person, including but not limited to the use of alcohol or other drugs; causing the prostitution or another person; recording, photographing or transmitting identifiable images of private sexual activity and/or the intimate parts (including genitalia, groin, breasts or buttocks of another person; allowing third parties to observe private sexual acts; engaging in voyeurism; and/or knowingly or recklessly exposing another person to a significant risk of sexually transmitted infection, including HIV.

(d) Sexual Harassment constitutes discrimination and is illegal under state and federal laws. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when, for example:

(1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or

(2) submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting such individual; or

(3) submission to or rejection of such conduct by an individual has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive work or academic environment. All employees and volunteers are required to complete the University's Sexual Harassment Prevention training within two weeks of employment or the start of volunteer activities.

Sexual harassment may include a range or subtle and not-so-subtle behaviors and may involve individuals of the same or different sexes. These behaviors may include, but are not limited to: unwanted sexual advances, subtle or overt pressure for sexual favors, sexual jokes, profane language, innuendoes, advances or propositions, stalking, bullying, verbal abuse or a sexual nature or about a person's lifestyle, graphic commentary about a person's body, sexual prowess or sexual deficiencies, comments about appearance, manner of dress or accent, cultural differences, leering, whistling, touching, pinching, assault, coerced sexual acts, or suggestive, insulting or obscene comments, gestures, pictures, cartoons, photographs, objects, computer screen savers or wallpaper, or other conduct of a sexual nature. Such behavior is unacceptable whether it occurs on the Bellarmine campus or is non-University conduct.

Sexual harassment may also include intimate partner violence, defined as the use of physical violence, coercion, threats, intimidation, isolation, stalking or other forms of emotional, sexual or economic abuse directed towards a partner in an intimate relationship. Intimate partner violence can be a single act or a pattern of behavior in relationships. Intimate partner relationships may be short or long-term relationships intended to provide some emotional, romantic and/or physical intimacy.

(e) Employees includes all faculty, staff and administration of Bellarmine University, including temporary, part-time and adjunct employees.

(f) Consent means words or actions that show an explicit, knowing and voluntary approval and agreement to engage in mutually agreed-upon sexual activity.

- Consent cannot be gained by force, by ignoring or acting in spite of the objections of another, or by taking advantage of the incapacitation of another, where the respondent knows or reasonably should have known about the incapacitation.
- Consent is also absent when the activity in question exceeds the scope of effective consent previously given or when the person is under the "minimum age" according to state law.
- The absence of "No" is not "Yes" and is not agreement to sexual activity. Agreement to previous sexual activity is not consent to current sexual activity, even if the sexual act is the same as in the previous activity.

(g) Incapacitation means the physical and/or mental inability to make informed, rational judgments. States of incapacitation include, without limitation, sleep, blackouts, and flashbacks. Where drugs or alcohol are involved, one does not have to be drunk or intoxicated to be considered incapacitated. Rather, incapacitation is determined by how the alcohol consumed impacts a person's decision-making capacity, awareness of consequences, and ability to make informed judgments. Alcohol and drugs can lower inhibitions and create an atmosphere of confusion over whether consent is freely and affirmatively given. The question is whether the respondent knew, or a sober, reasonable person in the position of the respondent should have known, that the complainant was incapacitated. Employees and students are strongly encouraged to err on the side of caution; when in doubt, assume that the other person is incapacitated and therefore unable to give consent. The use of alcohol and drugs never makes someone at fault for being sexually assaulted. Likewise, being intoxicated or drunk is never a defense to a complaint of sexual misconduct under this Policy.

(h) Retaliation is any adverse action against a person who reports discrimination or sexual misconduct, files a complaint, assists someone in reporting or filing a complaint, participates in an investigation or hearing of a complaint, or protests what he or she considers to be discrimination or sexual misconduct under this Policy, where the intent of the action is to intimidate, coerce, or otherwise deter the person from exercising his or her rights under this Policy. Retaliation includes, but is not limited to, verbal threats, physical abuse or different treatment because of the person's exercise of his or her rights. Retaliation is a violation of this Policy and of federal and state law.

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