

Code of Student Conduct/Code of Student Organization Conduct Revisions

This summer, a committee of subject-matter experts, which included student representation, reviewed the *Code of Student Conduct* and the *Code of Student Organization Conduct* and made the recommendations that follow.

To view the entire Code of Student Conduct, go to www.umbc.edu/sjp/articles/code.html
To view the entire Code of Student Organization Conduct, go to www.umbc.edu/sjp/organizationcode.html

One change, implemented as a result of a new guidance issued by the U.S. Department of Education, affirms that “victims” (a term with a very specific, statutorily-derived meaning in the *Code of Student Conduct* and the *Code of Student Organization Conduct*) have the right to appeal an outcome of a disciplinary matter on certain grounds. Refer to Article VI.C. and Article VI.E. of both Codes for further information.

Although Rule 2: Behavior Which Jeopardizes the Health or Safety of Self or Others has always prohibited “stalking”-type conduct, stalking is now specifically proscribed under Rule 2 and defined in the *Code of Student Conduct* and the *Code of Student Organization Conduct*.

The term “stalking” means any course of conduct directed at a particular individual that would cause a reasonable person to fear for their immediate health or safety or that of others. Stalking conduct includes, but is not limited to repeatedly following, pursuing, waiting, or showing up uninvited at a workplace, residence, classroom, or other locations frequented by a victim; unwanted surveillance and other types of observation, whether by physical proximity or electronic means; repetitive and unwanted communication such as by telephone, voice mail, text, or instant messages, social networking site postings, written letters, or gifts; and unwanted gathering of information about a victim from classmates, friends, co-workers, or family.

This definition adds clarification to the term “effective consent” and gives operational examples of what does and what does not constitute consent:

The term “effective consent,” when applied to any behavior which jeopardizes the health or safety of another, means words or actions that would demonstrate to a reasonable person a functioning, knowing and voluntary agreement to engage in mutually understood activity. Effective 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 actor knows or reasonably should have known of such incapacitation. Where alcohol or other drugs are involved, incapacitation is defined with respect to how the substance consumed impacts a person’s decision-making capacity, awareness of consequences, and ability to make fully informed judgments. Silence or passivity do not equate to consent. A mentally incapacitated or physically helpless person cannot give effective consent. The existence of a previous relationship, or consent granted for a previous activity, does not imply consent to future acts. Consent may be withdrawn at any time.

This definition, which should be read in the context of the previous definition of “effective consent” gives examples of sexualized behavior that is fundamentally exploitative in nature. This is a list of examples, not necessarily inclusive, that should now be understood as explicit violations of the *Code of Student Conduct* and the *Code of Student Organization Conduct*.

The term “sexual exploitation” means taking sexual advantage of another person without effective consent, and includes, without limitation, causing or attempting to cause the incapacitation of another person in order to gain sexual advantage; causing the prostitution of another person; electronically recording, photographing, or transmitting intimate or sexual utterances, sounds or images of another person when there is a reasonable expectation of privacy; allowing third parties to observe sexual acts without the effective consent of all the involved parties; engaging in voyeurism; and/or knowingly communicating a sexually transmitted infection, including HIV, to another person.

The term “indecent exposure” includes, with limitation, conduct such as mooning, streaking, or public urination.

Whereas “Residential Life contracts” are now known as “Residential Life licenses,” the terms were updated in both the *Code of Student Conduct* and the *Code of Student Organization Conduct*.

And finally, additional language was added to the *Code of Student Conduct* and *Code of Student Organization Conduct* to clarify Student Judicial Program’s commitment to serving students with disabilities and articulating a process for requesting accommodations, if they are needed, to participate in the disciplinary process.



Effective August 27, 2011