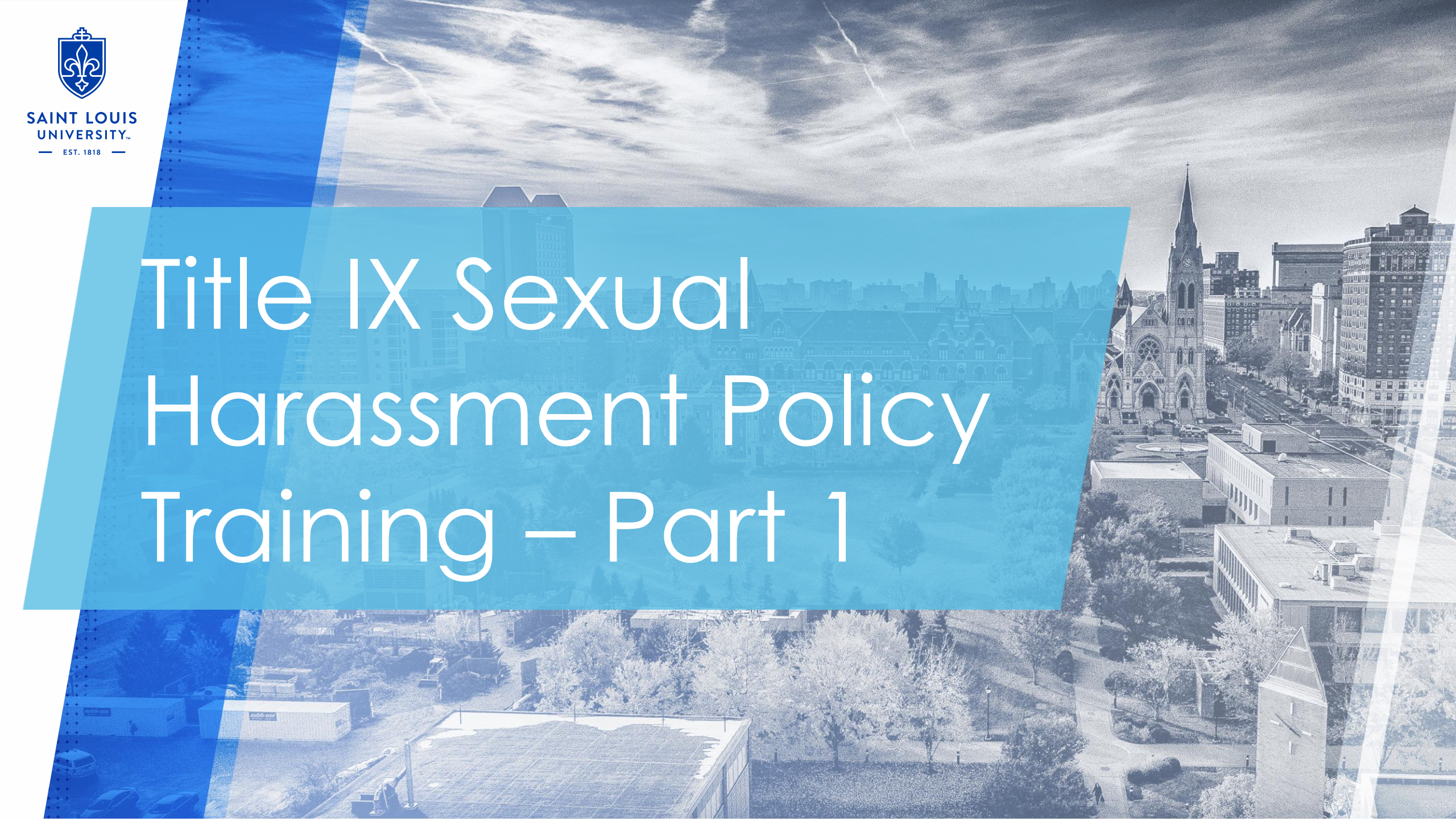




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Title IX Sexual Harassment Policy Training – Part 1



Why are we here?

As a Catholic, Jesuit educational institution, Saint Louis University is committed to fostering a safe and supportive environment conducive to the academic pursuits, employment opportunities, and healthy personal development of all persons. It is committed to the preservation of personal dignity and the safety of its community members. The University understands the forms of Prohibited Conduct identified in this Policy as offenses that can affect individuals of any race, ethnicity, sex, age, ability, faith, sexual orientation, gender, gender identity, gender expression, class, and ideology. ***All members of the University community share responsibility for fostering this environment by adhering to University standards of conduct.*** Any form of Prohibited Conduct is a serious violation of these standards and will not be tolerated. Any student found in violation of this Policy may face sanctions up to and including, suspension or expulsion from academic programs. Any employee found in violation of this Policy may face sanctions up to and including termination of employment.



Role in Title IX Sexual Harassment Policy

- Investigators and Panel members must be fair, impartial, and unbiased.
- Must approach the process without pre-judgment – determinations must be based on application of policy to the specific information brought forward in the process.



Agenda

- Overview of New Regulations
- Scope of Policy
- Important Definitions
- Complaint Intake Process



Why did we revise the policy?

- On May 6, 2020, the Department of Education released the final regulations on Title IX
- Regulations changed the requirements for how schools respond to complaints of “sexual harassment” as defined by the regulations
- Added requirements for a grievance process for certain complaints of sexual harassment



Overview of Regulations

- Must respond in a way that is not deliberately indifferent when school has actual knowledge of sexual harassment
- “Sexual harassment” is defined by the regulations
- Must offer supportive measures
- Requires a signed formal complaint to start the grievance process
- Formal complaints must be dismissed if they do not meet the jurisdictional requirements



Overview of Regulations

- Regulations include specific requirements for the grievance process used to address formal complaints
- Decision maker must be separate from investigator (no single investigator model)
- Must include a live hearing with the ability for parties' advisors to cross examine other parties/witnesses



Status of Policy

- Interim Title IX Sexual Harassment Policy was drafted over the summer
- Interim Policy went into effect on August 14, 2020
- Subject to comment by University community
- Final Title IX Sexual Harassment Policy is forthcoming this Fall



Scope of Interim Policy



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Scope of the Interim Policy

- This policy applies to Prohibited Conduct that occurs:
 - On campus;
 - In the context of a university program or activity, which includes locations, events, and circumstances where the university has substantial control over the Prohibited Conduct and the person accused of having committed the Prohibited Conduct.



Hypothetical #1

- A freshman student athlete reports that after drinking in his residence hall, he then attended a party hosted by upper classmen who are teammates. He reports that he was given several drinks while at the party and has few memories after the first hour. He reports he woke up on the couch of the apartment and found that he was not wearing pants. He reports there were another individual on the couch, who also was not wearing pants. He reports that he called an Uber and returned to his residence hall and then called his RA later that day.

Scope of the Interim Policy

- Conduct that occurs outside the United States, including on the campus of SLU-Madrid, is not covered by this policy. The Office of Student Life at SLU-Madrid is the reporting contact for all matters of Prohibited Conduct that fall under the SLU-Madrid Code of Conduct.



Scope of the Interim Policy

- When Respondent is an enrolled student, faculty, or staff at the university, the procedures outlined in Section 2.11 of this policy apply.
- When Respondent is a third party...the university will offer and implement supportive measures to the Complainant consistent with the goals of this policy...



Scope of the Grievance Process

- In order to initiate the grievance process, a Formal Complaint must be filed.
- A Formal Complaint may be filed by the Complainant or Title IX Coordinator.
- At the time of filing the Formal Complaint, the Complainant must be participating in or attempting to participate in an education program or activity at Saint Louis University



Scope of the Grievance Process

- The Title IX Coordinator must dismiss a Formal Complaint if:
 - The Formal Complaint does not allege circumstances that meet the definition of “sexual harassment” if proven;
 - The conduct did not take place within an education program or activity;
 - The conduct did not occur within the United States; or
 - The Formal Complaint is not signed by someone who meets the definition of a Complainant.

Scope of the Grievance Process

- The Title IX Coordinator has discretion to dismiss a Formal Complaint if:
 - The Complainant notifies the Title IX Coordinator that they wish to withdraw the Formal Complaint;
 - The Respondent is no longer enrolled at or employed by Saint Louis University; or
 - There are circumstances that prevent Saint Louis University from gathering the necessary information to make a determination regarding responsibility.



Scope of the Grievance Process

- If a Formal Complaint is dismissed under this policy, the university may address the Prohibited Conduct as a violation of the Student Code of Conduct, the Faculty Manual, or the Staff Performance Management Policy.
- In those instances, the Complainant will be directed to the appropriate office.



Prohibited Conduct



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Sexual Harassment

“Sexual Harassment” as defined by this policy occurs when conduct satisfies one or more of the following:

- A. **Quid Pro Quo:** sexual harassment occurs when an employee of Saint Louis University provides an educational benefit or service in exchange for unwelcome sexual conduct;
- B. **Hostile Environment:** sexual harassment occurs when there is conduct on the basis of sex that is unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectionably offensive that it effectively denies a person equal access to the school's education program or activity;
- C. **Clery Act:** sexual harassment occurs when there is an instance of **sexual assault, dating violence, domestic violence, or gender-based stalking** as defined by the Clery Act (see below for further definitions).

Sexual harassment also includes harassment based on gender, gender identity, gender expression or sexual orientation, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex/gender or sex/gender-stereotyping, even if the acts do not involve conduct of a sexual nature.



Sexual Harassment

Conduct reported under this policy as sexual or gender-based harassment will be evaluated by considering the totality of the particular circumstances, including the nature, frequency, intensity, location, context, and duration of the conduct at issue. Sexual harassment:

- May be committed by or against anyone, regardless of sex, gender, sexual orientation, gender expression/gender identity;
- May occur between people of the same sex or different sexes;
- Does not have to be “directed at” a specific person or persons to constitute harassment;
- May include both intentional conduct and conduct that results in negative effects, even if those negative effects were unintended;
- Often includes a power differential between the parties based on differences in age or educational, employment, or social status;
- May be committed by a stranger, an acquaintance, or someone with whom the Reporting Party has a current or previous relationship, including a romantic or sexual relationship;
- May occur in the classroom, in the workplace, in on-campus residential settings, or in any other setting related to an education program or activity; and
- May be committed in the presence of others, when the parties are alone together, or through remote communications, including email, text messages, or social media.

Sexual Assault

- Sexual Assault refers to an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting System. These sexual offenses include instances where the Complainant is incapable of giving consent.



Sexual Assault

- Rape refers to penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of other person, without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent.



Sexual Assault

- Fondling refers to the touching of the genitals (including vagina, penis or anus), the breasts, or the buttocks of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or not forcibly or against that person's will where the Complainant is incapable of giving consent because of their youth or because of their temporary or permanent mental incapacity.



Sexual Assault

- Incest refers to the non-forcible sexual intercourse between persons who are related to each other within the degree wherein marriage is prohibited by law.
- Statutory Rape refers to non-forcible sexual intercourse with a person who is under the statutory age of consent.





Stalking

“Stalking” occurs when a person engages 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.

A course of conduct means two or more acts, including, but not limited to acts in which the stalker directly, or 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.

A reasonable person means a person under similar circumstances and with similar identities to the Complainant.

Stalking under this Policy refers to incidents in which the course of conduct alleged is in some part based on sex or gender.



Dating Violence

“Dating Violence” includes violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse and does not include acts covered under the definition of domestic violence.



Domestic Violence

“Domestic Violence” includes a crime of violence, whether a felony or misdemeanor under the Missouri Revised Statutes, that is committed by: (1) a current or former spouse or intimate partner of the victim; (2) a person with whom the Complainant shares a child in common; (3) a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner; (4) a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; (5) any other person against an adult or youth Complainant 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.



Retaliation

“Retaliation” refers to any conduct that includes harassment, threats, intimidation, or coercion for the purpose of interfering with any right or privilege under this Policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in the Title IX Grievance Process.

A charge under the Student Handbook against an individual that does not involve a charge under this policy, but arises out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of sexual harassment, for the purpose of interfering with any right or privilege under this policy, constitutes retaliation. Retaliation can be committed by any individual or group of individuals, not just a complainant or respondent.

Note: Allegations of retaliation are addressed under different University policies.



Hypothetical #2

A student alleges that the Graduate Assistant in an upper level course is engaging in microaggressions based on gender-biased view of women. The student provides examples of images used in presentations in two of the class meetings. The student asks to file a complaint against the Graduate Assistant.

Other Definitions



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Complainant and Respondent

- The Complainant is an individual who is alleged to be the victim of conduct that could constitute sexual harassment, as defined by this policy.
- The Respondent is an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment, as defined by this policy.



Effective Consent



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Effective Consent

- Effective Consent is an affirmative, knowing, and voluntary decision – clearly communicated through mutually understandable words (e.g. saying “yes”) and/or actions – to willingly engage in mutually acceptable sexual activity (e.g. to do the same thing, at the same time, in the same way, with another individual(s)).



Effective Consent

- Effective Consent must be given freely, willingly, consciously and knowingly by each participant to any desired sexual contact.
- Consent may be withdrawn by any consenting party at any time during the sexual activity. Withdrawal of consent must be demonstrated by words and/or actions that indicate a desire to end sexual activity. Once an individual has communicated withdrawal of consent, all sexual activity must end.





What is NOT Effective Consent:

- Conduct will be considered “without consent” if no clear consent, verbal or nonverbal, is given.
- Effective Consent cannot be given by someone who is incapacitated.
- Effective Consent cannot be gained through force, threat, intimidation or coercion.
- A current or previous dating or sexual relationship, by itself, does not constitute Effective Consent. Even in the context of a relationship, there must be mutually understandable communication that clearly indicates a willingness to engage in sexual activity. Effective Consent cannot be assumed based on prior sexual contact or subsequent sexual contact.
- Effective Consent cannot be inferred from silence, passivity or lack of resistance. Without outward communication or action, Effective Consent does not exist.
- Effective Consent cannot be inferred from an individual’s attire or physical appearance.
- Effective Consent cannot be inferred from an individual’s offer, acceptance, or participation in any form of non-physical sexual activity (e.g., social media forums, date/activity, consumption of alcohol, or invitation to a residence hall room or private area).
- A verbal “no,” even if perceived to be indecisive, constitutes a lack of consent.

Effective Consent

- Responsibility of the person initiating sexual activity to obtain the other party's Effective Consent (not the responsibility of the intended recipient of such sexual contact to affirmatively deny such contact).
- All parties must have Effective Consent throughout the duration of the sexual activity



Effective Consent

- *Effective Consent can be given by words and/or actions. Relying solely on non-verbal communication, however, can lead to misunderstanding and as a result, a potential policy violation.*
- Effective Consent to one form of sexual activity is not, by itself, consent to other forms of sexual activity.





Incapacitation and Effective Consent

Incapacitation: A person violates this policy if they have sexual contact with someone they know, or should know, to be mentally incapacitated or to have reached the degree of intoxication that results in incapacitation.

An individual who is incapacitated cannot communicate Effective Consent to sexual activity. Incapacitation is the inability, temporarily or permanently, to give consent or communicate unwillingness, because an individual is mentally and/ or physically helpless, unconscious, asleep or unaware that the sexual activity is occurring.

Evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects an individual's: decision-making ability; awareness of consequences; ability to make informed judgments; capacity to appreciate the nature and the quality of the act; or level of consciousness.

Signs of Incapacitation

- A person is considered incapacitated, or unable to give consent, if they cannot understand the when, where, why, how, or who of a sexual encounter.
- Warning signs include:
 - Difficulty walking, stumbling, or falling down;
 - Being unable to stand or walk without assistance;
 - Slurred speech or an inability to communicate clearly;
 - Inability to focus or confusion about what is happening;
 - Urinating, defecating or vomiting; or
 - Combativeness, emotional volatility or other marked change in demeanor.





Incapacitation and Effective Consent

The test of whether an individual should know about another's incapacitation is whether a reasonable, sober person in the same position would know or should have been aware of the Reporting Party's incapacitation. A Respondent cannot rebut a charge of Prohibited Conduct merely by asserting that they were drunk or otherwise impaired and, as a result did not know that the other person was incapacitated. Alcohol, drugs or other intoxicants do not negate or diminish the responsibility of an individual to obtain Effective Consent.



Force/Coercion and Effective Consent

Force/Coercion: In some situations, an individual's ability to freely, willingly, and knowingly give Effective Consent is taken away by another person or circumstance. Examples include, but are not limited to:

- When an individual is physically forced to participate. Force is the use or threat of physical violence and/or imposing on someone physically in order to gain sexual access. There is no requirement that a party resists the sexual advance or request, but resistance is a clear demonstration of non-consent. Any sexual activity that is forced is by definition without Effective Consent.
- When an individual is intimidated, threatened – even a perceived threat – isolated, or confined. Such intimidation could involve the use or threat of a weapon.
- When an individual is coerced or unreasonably pressured to participate in sexual activity. When someone makes clear that they do not want to engage in sexual activity, that they want something to stop, or that they do not want to go past a certain point of sexual interaction – continued pressure past that point can be coercive behavior. When evaluating coercive behavior, factors such as the frequency, duration, location (isolation of recipient of unwanted contact), and intensity of coercive behaviors will be considered. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity.



Hypothetical #3

Student reports that after drinking at a bar, she returned to her residence hall and went to a party in another student's room. She reports that she was having trouble walking by the end of the night and that the male student whose room the party was in told her she could sleep there. She reports waking up, with no clothes on, in the male student's bed, with signs that intercourse occurred.

The male student reports that the female student came to his room, took her clothes off, and climbed into bed with him. He reports he could tell she had been drinking, but she did not seem intoxicated. He reports that he had also been drinking that night.

Serving Impartially

Avoiding prejudgment, conflicts of interest, and bias



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- Next session will address mechanics of the grievance process.
- Important that throughout process, individuals who administer process maintain an open mind – that they are neutral and unbiased.
- Only form an opinion at the conclusion of the process.



- Be mindful of prior interactions or relationships that may give the appearance of a conflict of interest – and make the Title IX Coordinator aware if any arise.
- *NB:* Decision-makers are not charged with finding a *particular* outcome and should avoid pre-conceived notions and consider *only* the information provided during the process.
- And, decision-makers must treat both parties equitably and with respect.



Complaint Intake Process



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Questions?



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Thank you for attending.

For questions or follow up, please
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