

# Office of Title IX Compliance (/)

## Definitions of Prohibited Conduct and Related Terms

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## Definitions of Prohibited Conduct and Related Terms

### Coercion

Unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear by words or actions that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

### Consent

For consent to be present, it must be knowing and voluntary, with clear permission, by word or action, to engage in sexual activity. For more about consent, visit, [What is Consent?](https://titleix.appstate.edu/What%20is%20consent%3F) (<https://titleix.appstate.edu/What%20is%20consent%3F>)

### Force

The use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

### Incapacitation

A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates Appalachian Policy 112 – Sex-Based Misconduct if they engage in sexual activity

with someone incapable of giving consent.

- Incapacitation occurs when someone cannot make rational, reasonable decisions because they cannot give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).
- Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.
- These procedures also cover a person whose incapacity results from a temporary or permanent physical or mental health condition, intellectual disability, involuntary physical restraint, and/or the consumption of incapacitating drugs.

Defense to a Charge of Sexual Assault with an Incapacitated Party. It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

## Sex-based Misconduct

The umbrella category including the offenses of sexual harassment, sexual assault, stalking, dating violence, and domestic violence.

## Sexual Harassment

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to any Appalachian education program or activity.

## Quid Pro Quo Sexual Harassment

An employee or agent of Appalachian conditioning the provision of aid, benefit, or service of Appalachian on an individuals’ participation in unwelcome sexual conduct.

## Sexual Assault

Sex Offenses - Any sexual act directed against another person, without the consent of the Complainant including instances where the Complainant is incapable of giving consent.

- Non-Consensual Sexual Intercourse - 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 Complainant.
- Non-Consensual Sexual Contact - the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the Complainant
- Incest - sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law
- Statutory Rape - sexual intercourse with a person who is under the statutory age of consent

## Dating Violence

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, and 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.

## Domestic Violence

To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates: the people cohabitating must be current or former spouses or have an intimate relationship. Domestic violence involves a felony or misdemeanor crime of violence committed by:

- A current or former spouse or intimate partner of the Complainant;
- A person with whom the Complainant shares a child in common;
- A person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
- A person similarly situated to a spouse of the Complainant under the domestic or family violence laws of North Carolina;
- 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 North Carolina.

## 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" is defined as 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; and "substantial emotional distress" is defined as significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

## Sexual Exploitation

Taking non-consensual and/or abusive sexual advantage of another person for one's own advantage or benefit, or for anyone other than the person being exploited, or taking advantage of another person's sexuality.

## Sex-Based Discrimination

To exhibit preference or detrimental treatment of one individual compared to other individuals in any educational program or activity, including any facet of Appalachian education, employment, or conditions of full participation therein, on the basis of that individual's sex. "Sex" in this context includes sex, gender, gender expression, and sexual orientation. Sex-based discrimination includes Quid Pro Quo Sexual Harassment and Hostile Environment Discrimination. "Sex" is defined under

Appalachian policy as encompassing gender, gender expression, gender identity, genetic information, sex (including pregnancy), or sexual orientation, as defined by federal and state law and UNC system policies.

## Hostile Environment Discrimination

Unwelcome conduct that is based on sex as defined in this policy where enduring the offensive conduct unreasonably interferes with a person's participation in the educational program or activity OR the conduct is so severe, pervasive, and objectively offensive such that a reasonable person in similar circumstances and with similar identities would consider it intimidating, hostile, or abusive. An isolated incident, unless sufficiently severe, does not constitute a hostile environment.

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