

Title IX and Sexual Misconduct

The university policy defines sexual misconduct offenses to include, but not limited to:

1. Sexual Harassment
2. Non-Consensual Sexual Contact (or attempts to commit same)
3. Non-Consensual Sexual Intercourse (or attempts to commit same)
4. Sexual Exploitation

All forms of sexual misconduct can be committed by men or women and against other men or women.

Sexual Misconduct

By definition, sexual harassment is:

- unwelcome, gender-based verbal or physical conduct that is,
- sufficiently severe, persistent and pervasive that it,
- unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the university's educational program and/or activities

It is important to note that harassment can occur in a variety of contexts, including face-to-face interactions, emails, and other forms of written communication, social media, etc.

Examples of Harassment

Most of us are familiar with the general concept of sexual harassment, yet conduct constituting harassment can include a wide range of behavior. Inappropriate touching, comments, gestures, or other behaviors that reasonably make another individual uncomfortable enough to interfere with their ability to fully participate in their educational program or unemployment constitute sexual harassment when a part of a pattern of conduct meeting the definition set forth above. Other examples that are punishable when they meet the above harassment standard include attempts to: coerce an unwilling person into a sexual relationship; repeatedly subject a person to inappropriate, unwelcome sexual attention; punish a refusal to comply with a sexual based request; or condition a benefit on submitting to sexual advances. The key notion is not what you intend – it's about the interpretation of the victim, as well as the interpretation of a reasonable person in that victim's position.

Here are a few concrete examples that may help to provide additional understanding:

- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student gives in to the request.

- A student repeatedly sends sexually oriented jokes around on an email list s/he created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they live.
- Explicit sexual pictures are displayed in an advisor's office, on the exterior of a residence hall door, or on a computer monitor in a public space.
- Two supervisors frequently 'rate' several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in discussions in class about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social outcast on campus
- Male students take to calling a particular student "Monica" because of her resemblance to Monica Lewinsky. Soon, everyone adopts this nickname for her, and she is the target of relentless remarks about cigars, the president, "sexual relations" and Weight Watchers.
- A student grabbed another student by the hair, then grabbed her breast and put his mouth on it. He says it was just being playful, but it's not appropriate or allowed.

Three Types of Sexual Harassment—Legal Constructs

As defined by the courts, three different types of sexual harassment exist. All of them are equally egregious, inappropriate, and unacceptable. The policy seeks to deliver clear definitions of these three different legal constructs to ensure that all members of our university community appreciate the complexity and inclusiveness of the term.

A. *Hostile Environment* includes any situation in which there is harassing conduct that is sufficiently severe, pervasive, and objectively offensive that it alters the conditions of employment or limits, interferes with or denies educational benefits or opportunities, from both a subjective (the alleged victim's) and an objective (reasonable person's) viewpoint.

B. *Quid pro quo* sexual harassment exists when there are:

1) unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature; and

2) submission to or rejection of such conduct results in adverse educational or employment action.

Quid pro quo means "this for that." Essentially, this type of sexual harassment occurs when an individual reasonably believes that consent to or rejection of an unwelcome request for sex would have consequences in their educational or employment status. A concrete example would be a supervisor who suggests to an employee that she might not get promoted if she does not have sex with the supervisor – or that the promotion possibility would be helped by agreeing to engage in sex.

C. *Retaliatory harassment* is any adverse employment or educational action taken against a person because of the person's participation in a complaint or investigation of discrimination or sexual misconduct. An example would be if a professor fails a student unfairly through retaliation because he was upset by the fact that the student brought forth a complaint of sexual harassment charge against him.

Non-Consensual Sexual Contact:

Non-Consensual Sexual Contact is

- any intentional sexual touching,

- however slight,
- with any object,
- by a man or a woman upon a man or a woman,
- that is without consent and/or by force.

Sexual Contact includes:

- Intentional contact with the breasts, buttock, groin, or genitals, or
- touching another with any of these body parts, or
- making another touch you or themselves with or on any of these body parts, or
- any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

Non-Consensual Sexual Intercourse:

Non-Consensual Sexual Intercourse is

- any sexual intercourse
- however slight,
- with any object,
- by a man or woman upon a man or a woman,
- that is without consent and/or by force.

Intercourse includes:

- vaginal penetration by a penis, object, tongue or finger, or
- anal penetration by a penis, object, tongue, or finger, or
- oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

Sexual Exploitation

Sexual exploitation occurs when a student takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy;
- prostituting another student;
- non-consensual video or audio-taping of sexual activity (including use of cell phone);
- positioning camera and taking photos/videos in such a way as to capture another person's body revealing their exposed genitals or other sexual body parts;
- going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);
- engaging in voyeurism;

- knowingly transmitting an STI or HIV to another student;
- Exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals;
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation

CRITICAL POINT:

Consent: Consent is clear, knowing, and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity. Consent must be actively given for each sexual act. Consent can never be given by minors or by those who are mentally and/or physically incapacitated.