



A Beginner's Look: Launching Your Title IX Student Hearing Panel Sample Policy Definitions for Mock Hearing

Non-Consensual Sexual Penetration

Non-consensual sexual penetration is defined as:

- any sexual penetration or attempted penetration,
- however slight,
- with any body part or object
- by a person upon another person
- that is without consent and/or by force.

Sexual penetration includes vaginal or anal penetration or oral copulation (genital to mouth contact) no matter how slight the penetration.

Non-Consensual Sexual Contact

Non-consensual sexual contact is defined as:

- any intentional sexual touching,
- however slight,
- with any body part or object
- by a person upon another person
- that is without consent and/or by force.

Sexual touching includes intentional contact with the breasts, 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 other bodily contact made in a sexual manner.

Sexual Harassment

Sexual harassment is broadly defined as:

- unwelcome
- sexual, sex-based, and/or gender-based,
- verbal, written, online and/or physical conduct.

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Consent

Consent is freely given, mutually understandable permission to engage in a specific sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consents to that specific sexual conduct. Neither silence nor the absence of resistance convey consent. Consent also cannot be gained by force or coercion, and an individual who is incapacitated cannot give consent.

Whether or not consent was communicated is based on the totality of the circumstances, including the context in which the sexual activity occurred and (if applicable), how the parties may have communicated consent in the past. However, past consent for sexual activity does not automatically convey current consent for sexual activity. Similarly, consent to some sexual activity (such as kissing or fondling) cannot be presumed to extend consent for other sexual activity (such as intercourse). The existence of a current or previous dating relationship also does not establish or convey consent.

Consent can be withdrawn at any time, and once the withdrawal of consent has been clearly communicated the sexual activity must cease immediately.

Incapacitation

Incapacitation is defined as a state in which an individual cannot fully understand or comprehend the nature or context of their decisions and/or actions. An incapacitated person cannot, by definition, consent to sexual activity because they cannot understand or appreciate the “who, what, when, where, why, or how” of the sexual activity in question. Incapacitation may result from a person consuming a large amount of alcohol or other drugs, having a mental disability, being asleep or passed out, or being involuntarily physically restrained. Incapacitation is a state beyond intoxication.

A person cannot consent to sexual activity if they are incapacitated. An individual who engages in sexual activity when that individual knows or reasonably should know that the other person is physically or mentally incapacitated has violated the Comprehensive Policy. The intoxication of a respondent, such that the respondent may not have realized the incapacity of an affected party, does not excuse such a violation.