

Alcohol, Consent, and Accountability: Policy and Procedure

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Overview

- Columbia University: Student Services for Gender-Based and Sexual Misconduct
- Gender-Based Misconduct Policies for Students
 - Sexual harassment
 - Gender-based harassment
 - Intimate Partner Violence
 - Stalking
 - Sexual Assault
 - Non-consensual sexual intercourse
 - Non-consensual sexual contact
- Investigative Model
- Hearing Panels
- “Complainant” and “Respondent”

Policy Definitions

- **Sexual Assault: non-consensual sexual intercourse**
 - Any form of sexual intercourse (anal, oral, or vaginal), however slight, with any object, without consent. Intercourse means: vaginal or anal penetration (however slight) by a penis, object, tongue, or finger; and oral copulation (mouth to genital or genital to mouth)
- **Sexual Assault: non-consensual sexual contact**
 - Any intentional sexual touching, however slight, with any object without a person's consent. Intentional sexual contact includes contact with the breast, buttocks, groin, or touching another with any of these body parts, or making another person touch any of these body parts; any intentional bodily contact in a sexual manner

Consent

- The presence of consent involves explicit communication and mutual approval for the act in which the parties are/were involved
- A sexual encounter is considered consensual when individuals willingly and knowingly engage in sexual activity
- Consent cannot be procured by the use of physical force, compelling threats, intimidating behavior, or coercion
- The use of coercion can involve the use of pressure, manipulation, substances, and/or force. Ignoring the objections of another person is a form of coercion.

Consent

- Knowingly engaging in sexual activity with someone who is incapacitated (by alcohol or drug use, unconsciousness, disability, or other forms of helplessness) does not constitute consent and is a violation of policy. Incapacitation is a state where one cannot make a rational, reasonable decision because they lack the ability to understand their decision. Incapacity can result from a person's disability, involuntary physical constraint, sleep, or consumption of alcohol and/or other drugs
- Consent to one form of activity does not imply consent to other forms of sexual activity. Previous relationships or previous consent for sexual activity cannot imply consent to sexual activity on a different occasion
- Silence cannot be interpreted as consent

Policy Statements

- **Force**

- The use of physical violence and/or imposing on someone physically to gain sexual access. Force can also include threats, intimidation (implied threats), or coercion used to overcome resistance

- **Coercion**

- Unreasonable pressure for sexual activity. When someone makes it clear that they do not want to engage in sexual behavior, or that they do not want to go beyond a certain point of sexual interaction, continued pressure beyond that point can be considered coercive

Policy Statements

- **The use of alcohol and other drugs**
 - The use of alcohol and other drugs can have unintended consequences. Alcohol and other drugs can lower inhibitions and create an atmosphere of confusion over whether consent is freely and affirmatively given. The perspective of a reasonable person will be the basis for determining whether one should have known about the impact of alcohol and other drugs on another person's ability to give consent. The use of alcohol and other drugs never makes someone at fault for being sexual assaulted.

Investigation

- What are we investigating regarding alcohol and consent?
 - “Paint the picture”
 - Consent
 - Force/coercion
 - Incapacitation
 - Presence of consent: “mutual approval and explicit communication”

Investigating force/coercion

- Force
 - Physical force
 - Compelling threats
 - Intimidating behavior (implied threats)
 - not just threats of physical harm
- Coercion
 - Unreasonable or continued pressure
 - Ignoring objections
 - Manipulation
 - Utilizing substances to manipulate/coerce

Investigating incapacitation

- What kind of information are you realistically able to gather?
 - What kind of alcohol and/or drugs? How much?
 - Who provided the alcohol?
 - Body type (height/weight)
 - Physical symptoms
 - Slurred speech, inability to walk, loss of consciousness, vomiting
 - Student's assessment of their own intoxication level
 - Student's assessment of the other party's intoxication level
 - Witness statements
 - Medical documentation (rare)

Investigating consent

- Mutual approval and explicit communication
 - What did consent look like in the incident?
 - From complainant, if there was consent at any point, what did that look like?
 - Consent for one form of activity does not imply consent for other sexual activity – consent must explicit throughout
 - How did the respondent know they had consent for sexual activity?
 - What clear words or actions gave the respondent permission?

Hearing Panel Decision-Making

- Preponderance of the Evidence
 - “More likely than not”
 - 50% plus a feather
 - Tolerating ambiguity
 - Not a legal process
 - Do your best with the information you have
- Force, coercion, or incapacitation renders any consent invalid

Decision-making

- Force/coercion
 - If it is more likely than not that force or coercion were used to gain sexual access, then the policy was violated

Decision-making

- Incapacitation due to alcohol
 - Intoxication vs. incapacitation
 - Usually will **not** have medical documentation to confirm incapacitation
 - Is it **more likely than not** the complainant was incapacitated?
 - Would a reasonable person have known that the complainant was incapacitated?
 - In rare circumstances, they may not have

Decision-making

- Presence of consent
 - Training panelists on what consent looks like:
 - “Explicit communication”
 - “Mutual approval”
 - Active
 - Enthusiastic
 - Willing (freely given)
 - Informed
 - Indicating permission
 - Would a reasonable person have believed they had consent to engage in sexual activity? Why?

What factors are irrelevant?

- Complainant putting herself/himself in “risky situation”
- Whether complainant *should have* resisted or objected, if they did not