

misconduct. Sexual activity with a minor is never consensual when the complainant is under 18 years old, because the minor is considered incapable of giving consent.

**Sexual assault** is a form of sexual misconduct and is an attempt, coupled with the ability, to commit a violent injury on the person of another because of that person's gender or sex.

**Sexual battery** is a form of sexual misconduct and is any willful and unlawful use of force or violence upon the person of another because of that person's gender or sex as well as touching an intimate part of another person against that person's will and for the purpose of sexual arousal, gratification or abuse.

**Rape** is a form of sexual misconduct and is non-consensual sexual intercourse that may also involve the use of threat of force, violence, or immediate and unlawful bodily injury or threats of future retaliation and duress. Any sexual penetration, however slight, is sufficient to constitute rape. Sexual acts including intercourse are considered non-consensual when a person is incapable of giving consent because s/he is incapacitated from alcohol and/or drugs, is under 18 years old, or if a mental disorder or developmental or physical disability renders the person incapable of giving consent. The respondent's relationship to the person (such as family member, spouse, friend, acquaintance or stranger) is irrelevant.

**Acquaintance rape** is a form of sexual misconduct committed by an individual known to the victim. This includes a person the victim may have just met; i.e., at a party, introduced through a friend, or on a social networking website.

**Affirmative consent** means an informed, affirmative, conscious, voluntary, and mutual agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that s/he has the affirmative consent of the other participant(s) to engage in the sexual activity. Lack of protest or resistance does not mean consent nor does silence mean consent. Affirmative consent must be voluntary, and given without coercion, force, threats or intimidation. (1) The existence of a dating or social relationship between those involved, or the fact of past sexual activities between them, should never by itself be assumed to be an indicator of affirmative consent. A request for someone to use a condom or birth control does not, in and of itself, constitute affirmative consent. (2) Affirmative consent can be withdrawn or revoked. Consent to one form of sexual activity (or sexual act) does not constitute consent to other forms of sexual activity. Consent given to sexual activity on one occasion does not constitute consent on another occasion. There must always be mutual and affirmative consent to engage in sexual activity. Consent must be ongoing throughout a sexual activity and can be revoked at any time, including after penetration. Once consent is withdrawn or revoked, the sexual activity must stop immediately. (3) A person who is incapacitated cannot give affirmative consent. A person is unable to consent when s/he is asleep, unconscious or is incapacitated due to the influence of drugs, alcohol, or medication so that s/he could not understand the fact, nature or extent of the sexual activity. A person is incapacitated if s/he lacks the physical and/or mental ability to make informed, rational decisions. Whether an intoxicated person (as a result of using alcohol or other drugs) is incapacitated depends on the extent to which the alcohol or other drugs impact the person's decision-making capacity, awareness of consequences, and ability to make fully informed judgments. A person's own intoxication or incapacitation from drugs or alcohol does not diminish that person's responsibility to obtain affirmative consent before engaging in sexual activity. (4) A person with a medical or mental disability may also lack the capacity to give consent. (5) Sexual activity with a minor (a person under 18 years old) is not consensual, because a minor is considered incapable of giving legal consent due to age. (6) It shall not be a valid excuse that a person affirmatively consented to the sexual activity if the respondent knew or reasonably should have known that the person was unable to consent to the sexual activity under any of the following circumstances: [a] The person was asleep or unconscious; [b] The person was incapacitated due to the influence of drugs, alcohol or medication, so that the person could not understand the fact, nature or extent of the sexual activity; [c] The person was unable to communicate due to a mental or physical condition. (7) It shall not be a valid excuse that the respondent believed that the person consented to the sexual activity under either of the following circumstances: [a] The respondent's belief in affirmative consent arose from the intoxication or recklessness of the respondent; [b] The respondent did not take reasonable steps, in the circumstances known to the respondent at the time, to ascertain whether the person affirmatively consented.

**Consensual relationships:** Consensual relationship means a sexual or romantic relationship between two persons who voluntarily enter into such a relationship. While sexual and/or romantic relationships between members of the University community may begin as consensual, they may evolve into situations that lead to discrimination, harassment, retaliation, sexual misconduct, dating or domestic violence, or stalking. (1) A University employee shall not enter into a consensual relationship with a student or employee over whom s/he exercises direct or otherwise significant academic, administrative, supervisory, evaluative, counseling, or extracurricular authority. In the event such a relationship already exists, each campus shall develop a procedure to reassign such authority to avoid violations of policy. (2) This prohibition does not limit the right of an employee to make a recommendation on the personnel matters concerning a family or household member where the right to make recommendations on such personnel matters is explicitly provided for in the applicable collective bargaining agreement or MPP/confidential personnel plan.