

Other Important Concepts and Relevant Definitions

Consent: Clear, voluntary permission, which cannot be inferred by the absence of verbal or physical resistance. A lack of consent results from forcible compulsion or incapacity to consent. Forcible compulsion is a physical force or a threat, whether expressed or implied, that places a person in fear of immediate serious physical injury or economic harm to him/herself or a third party.

A person is deemed incapable of providing consent if, at the time of the act, the person:

- is under the age of 16;
- suffers from a mental impairment, whether temporary or permanent, which renders them incapable of appraising the nature of his or her conduct (e.g., age, disability, or temporary impairment due to drug or alcohol consumption); or
- is physically helpless (e.g., unconscious), asleep, or in a state of shock.

Consent can be withdrawn by either party at any point. Consent must be voluntarily given and may not be valid if a person is being subjected to actions or behaviors that elicit emotional or psychological pressure, intimidation, or fear. Consent to engage in one sexual activity, or past agreement to engage in a particular sexual activity, cannot be presumed to constitute consent to engage in a different sexual activity or to engage again in a sexual activity. For purposes of this Policy, the issue is whether the Respondent knew, or should have known, that the activity in question was not consensual. Engaging in sexual activity with a person who you know to be incapacitated, or reasonably should know to be incapacitated, violates this Policy.

Incapacitation: The inability, temporarily or permanently, to give consent because the individual is mentally or physically helpless, asleep, unconscious, or unaware that sexual activity is occurring. With incapacitation, an individual lacks the ability to make informed, rational judgments and cannot consent to sexual activity. Incapacitation may also result from the use of alcohol and/or drugs. The impact of alcohol and other drugs varies from person to person; however, warning signs that a person may be approaching incapacitation or may already be incapacitated include, but not limited to, slurred speech or word confusion, vomiting, stumbling, bloodshot, glassy or unfocused eyes, being disoriented, confusion as to time, place, etc., loss of consciousness, odor of alcohol, combativeness, or emotional volatility. Evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects an individual's:

- Decision-making ability;
- Awareness of consequences;
- Capacity to appreciate the nature and the quality of the act.

Evaluating incapacitation also requires an assessment of whether a Respondent was aware or should have been aware of the Complainant's incapacitation based on objectively and reasonably apparent indications of impairment when viewed from the perspective of a sober, reasonable person in the Respondent's position.

With regard to alcohol, there are multiple levels of effect, along a continuum:

- The lowest level is impairment, which occurs with the ingestion of any alcohol. A synonym for impairment is "under the influence."
- The next level of intoxication, also called drunkenness, is similar to the state's drunk driving limit.
- Incapacity is a higher level of alcohol consumption.
- The highest level is overdose, or alcohol blood poisoning, which may lead to coma or death.
- **Student:** Any person who is admitted, or enrolled at the University of Alabama at Birmingham, and is pursuing undergraduate, graduate, or professional studies, including full-time and part-time status, as well as any person attending classes on campus, online or off campus.
- Any person who is not officially enrolled for a particular term, but has a continuing relationship with the University.
- Any person who is admitted and participating in orientation is considered a "student."
- Any person who has completed an academic term and can be reasonably expected to enroll the following term.
- Any person who attended the University during a previous academic term and who committed an alleged violation of the Code during the time of enrollment.

The term "student organization" or "organization" means any group of students that has complied with the University's requirements for registration as a student organization.

Complainant: an individual who is reported to be or alleges that they were the victim of an offense that violates this Policy.

Respondent: an individual who has been accused of an offense under this Policy or is reported to have violated this Policy.

Confidential Employee: (1) Any University employee who is a licensed medical, clinical or mental health professional (e.g. physicians, nurses, physician's assistants, psychologists, psychiatrists, professional counselors and social workers, and those performing services under their supervision), when acting in that professional role in the provision of services to a patient who is a University student ("health care provider"), and (2) any University employee providing administrative, operational and/or related support for such health care providers in the performance of such services. These resources do not report any information about an incident to the Title IX Coordinator without a victim's permission. Off-campus counselors and health care providers will also generally maintain confidentiality and not share information with the University unless the victim requests disclosure and signs a consent or waiver form. However, these resources may have reporting obligations under state or federal law. For instance, healthcare providers and certain other individuals are required to notify law enforcement when a victim seeks treatment for injuries related to a violent crime, including sexual assault. Similarly, all University employees are required to notify law enforcement when they receive a report of sexual abuse of a minor.

Responsible Employee: A University employee who has the authority to address sexual misconduct, who has the duty to report incidents of sexual misconduct, or who as a member of the University the Complainant could reasonably believe such individual has such authority or duty.

In addition, the following who, in the course of employment, receive a report of Prohibited Conduct from any other person affiliated with the University shall notify the Title IX Coordinator or designee

- UAB Police
- UAB Human Resources and Human Resources Partners
- Managers and Supervisors, including Deans, Department Chairs, and Directors

- Faculty
- Resident Advisers

Preponderance of the Evidence: This standard of evidence means that an investigation or hearing panel must determine whether a complaint of sex discrimination is "more likely than not" to have occurred. This standard applies for all complaints of sex discrimination, including sexual harassment and violence. This is different than the standard used in criminal complaints, which is considered the highest standard of evidence, "beyond a reasonable doubt."

Title IX Coordinator: University representative charged with ensuring the University's overall compliance with Title IX and related University Policy.

Deputy Title IX Coordinators: individuals located in Student Advocacy Rights and Conduct (Emily Feinstein), Athletics (Derita Ratcliffe), Human Resources (Robert Barnes), and the Office of Diversity, Equity and Inclusion (Dr. Paulette Patterson Dilworth), who are trained to assist students and employees in their departments with complaints or concerns about sexual misconduct, and direct them to the resources they need. They report all complaints and concerns to the Title IX Coordinator, and work closely with the Title IX Coordinator in promptly responding to a person's concerns. The Deputy Coordinators can help with interim measures that a complainant may need during the investigation of a complaint. The Deputy Title IX Coordinators may serve as a designee for the Title IX Coordinator in any case where there is a conflict of interest that would prohibit the Title IX Coordinator from providing fair and impartial oversight.

Title IX Investigator: University official(s) charged with investigating a Title IX complaint.