

DEFINITIONS

From UC's Sexual Harassment, Gender-Based Harassment, and Sexual Misconduct Policy

Affirmative Consent: In order for individuals to engage in sexual activity of any type with each other, there must be clear affirmative consent. Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of affirmative consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

Sexual Harassment: Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when any one of the following is met:

- Submission to such conduct is made either explicitly or implicitly a term or condition of the individual's academic standing or employment;
- Submission to or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting the individual;
- Such conduct has the purpose or effect of unreasonably interfering with an individual's learning or work performance or creating an intimidating, hostile, or offensive work/learning environment.

There are two types of sexual harassment: quid pro quo sexual harassment and hostile environment sexual harassment. Sexual harassment can be physical, verbal, visual, or written, and may include online or social media communication. Sexual harassment is based on one's gender, gender identity, gender expression, or sexual orientation. Sexual harassment may be committed by individuals who are in supervisory positions or by one's peers (i.e., coworkers or other students) or by a subordinate, and may occur between individuals of the same sex or between individuals of the opposite sex.

Gender-Based Harassment includes acts of verbal, nonverbal, or physical aggression, intimidation, stalking, or hostility based on gender or gender-stereotyping. Gender-based harassment can occur if individuals are harassed either for exhibiting what is perceived as a stereotypical characteristic for their sex, or for failing to conform to stereotypical notions of masculinity or femininity. Harassment that targets a member of the College community based on gender identity, gender expression, transgender status, or gender transition is included in this definition. In order to constitute harassment, the conduct must be such that it has the effect of unreasonably interfering with an individual's academic/work performance or creating an intimidating, hostile, demeaning, or offensive academic, living, or work environment. At Utica College, gender-based harassment also includes dating violence, domestic violence, and stalking (see below).

Sexual Misconduct is a term used by this policy to refer to forms of non-consensual sexual activity or offenses, dating violence, domestic violence, or stalking. While sexual misconduct can be a criminal offense under New York State law, a person's conduct may violate Utica College's policy even if it does not violate State law. Thus, offenders may be prosecuted under New York State criminal statutes and/or be subject to disciplinary action by the College. The College may choose to pursue disciplinary action while criminal action is pending, even if criminal justice authorities choose not to prosecute. Sexual

misconduct includes non-consensual sexual contact, non-consensual sexual intercourse, and sexual exploitation.

Dating/Domestic Violence are both considered forms of gender-based harassment. *Dating/Relationship Violence* is the use of physical violence, coercion, threats, intimidation, isolation or other forms of violence directed towards a person who is or has been in a social relationship of a romantic or intimate nature with another. *Domestic Violence* refers to physical or non-physical violence between spouses or former spouses, cohabitating romantic partners or individuals who were formerly cohabitating romantic partners, individuals who share a child in common, or others in a family relationship.

Stalking refers to a course of knowingly unwanted conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress. Stalking involves repeated and continued harassment made against the expressed wishes of another individual, which causes the targeted individual to feel emotional distress, including fear and apprehension.

Coercion: Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When one person makes it clear to another that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Force: Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that overcome resistance or produce consent.

Incapacitation: Incapacitation means being in a state where a person lacks the capacity to appreciate the fact that the situation is sexual, or cannot appreciate (rationally and reasonably) the nature and/or extent of the situation. A person who knows or should reasonably have known that another person is incapacitated may not engage in sexual activity with that person. A person who has been drinking or using drugs is still responsible for ensuring that s/he has the other person's affirmative consent to engage in sexual activity.

A person's state of incapacity is determined based on all of the facts available because persons reach incapacitation at different points and as a result of different stimuli. Use of alcohol or other drugs does not, in and of itself, negate a person's ability to give consent. Alcohol-related incapacity results from a level of alcohol ingestion that is more severe than being under the influence, impairment, intoxication, inebriation, or drunkenness. Persons who are sleeping or passed out are incapacitated.

Predatory Drugs: A person under the influence of predatory drugs is also considered incapacitated. Predatory drugs, also called date rape drugs, include but are not limited to GHB (gamma hydroxybutyrate), Rohypnol, and Ketamine. These are odorless, colorless drugs that can easily be slipped into a drink. They can produce disorientation, loss of inhibition, and unconsciousness, and may also cause amnesia as an aftereffect.