



Office of Institutional Equity

UNIVERSITY OF COLORADO **COLORADO SPRINGS**

OIE DEFINITION GUIDE

TITLE IX

Title IX of the Higher Education Amendments of 1972 is a federal law that prohibits discrimination on the basis of sex in education programs or activities. It states:

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

UCCS is committed to providing an environment where all individuals are free from unlawful discrimination and harassment, and will take prompt and effective steps reasonably intended to stop any form of sexual misconduct, eliminate any hostile environment, prevent its recurrence and as appropriate, remedy its effects.

SEXUAL MISCONDUCT

UCCS is committed to providing an environment where all individuals are free from unlawful discrimination and harassment, and therefore prohibits any of the following collectively referred to as “sexual misconduct,” and further defined below:

1. Sexual assault - non-consensual sexual intercourse;
2. Sexual assault - non-consensual sexual contact;
3. Sexual exploitation;
4. Intimate partner abuse (including domestic or dating violence);
5. Stalking;
6. Sexual harassment

Non-Consensual Sexual Intercourse

Any sexual intercourse, however slight, with any object, by any person upon another person that is without affirmative consent. Intercourse includes vaginal penetration by a penis, object, tongue or finger; anal penetration by a penis, object, tongue, or finger; and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

Non-Consensual Sexual Contact

Any intentional sexual touching, however slight, with any object, by any person upon another person that is without affirmative consent including by force. Sexual contact includes intentional contact with the breasts, buttocks, 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 intentional bodily contact in a sexual manner.

Sexual Exploitation

Conduct that takes sexual advantage of another person without that person's affirmative consent. Examples of behavior that could rise to the level of sexual exploitation include, but are not limited to: prostituting another person; taking possession of the intimate personal property of another person without that person's affirmative consent; recording images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness without that person's affirmative consent; distributing images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not affirmatively consent to such disclosure; and viewing or listening to another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's affirmative consent.

Intimate Partner Abuse

Any act of violence or threatened act of violence against a person with whom the individual is or has been involved in a sexual or dating relationship when used as a method of coercion, control, punishment, intimidation, or revenge. This includes, but is not limited to, assault, threats, and intentional property damage. This also includes acts of violence or threatened acts of violence against oneself and/or against the family members, friends, or pets of the sexual or dating partner. This definition includes intimate partner violence, dating violence, and domestic violence.

Stalking

Directly or indirectly through another person repeatedly following, approaching, contacting, placing under surveillance, or making any form of communication with another person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship in a manner that would cause a reasonable person to: (a) fear for the individual's safety or the safety of others or; (b) suffer substantial emotional distress, including causing a person to respond by altering their activities.

Sexual Harassment

Unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, or physical conduct of a sexual nature.

Sexual harassment results if one of the following occurs:

Quid Pro Quo (“This for That”)

This type of sexual harassment occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, living environment or participation in a University activity is conditioned upon, either explicitly or implicitly, submission to or rejection of unwelcome sexual advances or requests for sexual favors, or such submission or rejection is a factor in decisions affecting that individual's employment, education, living environment or participation in a University program or activity.

Hostile Environment

Hostile environment is a form of sexual harassment. Whether a hostile environment exists is determined from both a subjective and an objective perspective. The subjective perspective evaluates whether or not the complainant experienced unwelcome sexual conduct. The objective perspective evaluates whether or not the unwelcome sexual conduct was, from the perspective of a reasonable person in the alleged complainant's position, sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the university's education or employment programs and/or activities. Mere offensive nonsexual conduct is not enough to create a hostile environment. Although repeated incidents increase the likelihood that harassment has created a hostile environment, a single or isolated incident of sexual assault may be sufficient.

UCCS DEFINITION OF AFFIRMATIVE CONSENT

UCCS defines affirmative consent as the, unambiguous and voluntary agreement to engage in a specific sexual activity. Consent is clear, knowing and voluntary words or actions that create mutually understandable clear permission of willingness to engage in, and the conditions of, sexual activity. Consent must be active; silence by itself cannot be interpreted as consent.

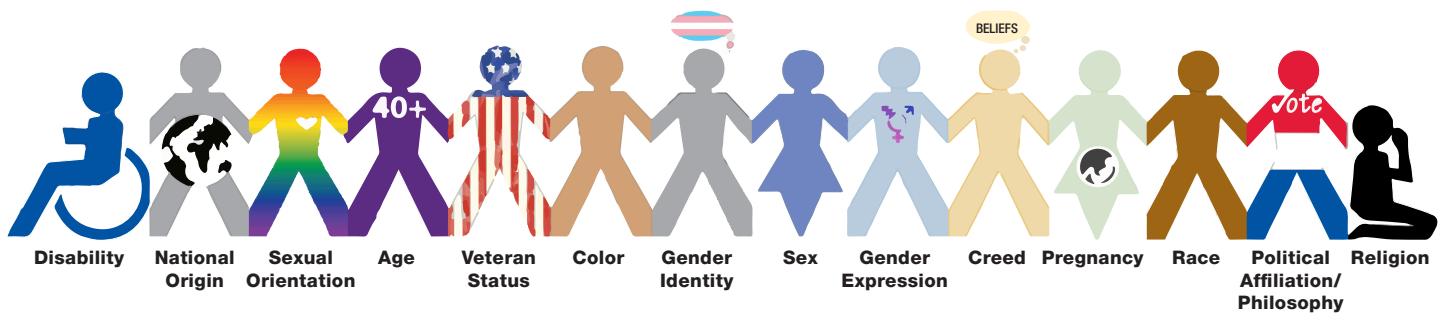
Consent is not effectively given if it results from the use of force, including threats, or intimidation, or if it is from someone who is incapacitated:

- **Force** is the use of physical violence or imposing on someone physically to gain sexual access.
- **Threats** exist where a reasonable person would have been compelled by the words or actions of another to give permission to sexual contact they would not otherwise have given. For example, threats to kill or harm someone, kill or harm themselves, or to kill or harm someone for whom a person cares constitute threats.
- **Intimidation** occurs when someone uses physical presence to menace another, although no physical contact occurs, or where knowledge of prior violent behavior by an assailant, coupled with menacing behavior, places someone in fear as an implied threat.

Consent will be determined using both objective and subjective standards. The objective standard is met when a reasonable person would consider the words or actions of the parties to have manifested an agreement between them to do the same thing, in the same way, at the same time, with one another. The subjective standard is met when a party believes in good faith that the words or actions of the parties manifested an agreement between them to do the same thing, in the same way, at the same time, with one another.

- A person who does not want to consent to sex is not required to resist.
- Consent to some forms of sexual activity does not automatically imply consent to other forms of sexual activity.
- Silence, previous sexual relationships or the existence of a current relationship do not imply consent.
- Consent cannot be implied by attire or inferred from the giving or acceptance of gifts, money or other items.
- Consent to sexual activity may be withdrawn at any time, as long as the withdrawal is communicated clearly.
- Withdrawal of consent can be manifested through conduct and need not be a verbal withdrawal of consent.
- In order to give effective consent, the person giving consent must be of legal age under Colorado law for the purposes of determining whether there was a sexual assault.
- A respondent's intoxication resulting from intentional use of alcohol/drugs will not function as a defense to engaging in sexual activity without an individual's consent.

PROTECTED CLASS HARASSMENT



UCCS defines **“protected classes”** to include the following:

Race, color, national origin, sex, pregnancy, age, disability, creed, religion, sexual orientation, gender identity, gender expression, veteran status, political affiliation, or political philosophy.

What is Protected Class Harassment?

Harassment is verbal or physical conduct related to one’s protected class that unreasonably interferes with an individual’s work or academic performance or creates an intimidating or hostile work or educational environment.

Harassment based upon protected class may involve:

- physically assaulting or repeatedly intimidating, teasing, mocking, or joking based on an individual’s protected class
- repeatedly directing racial or ethnic slurs at an individual
- repeatedly telling an individual that they are too old to understand new technology

What is Protected Class Discrimination?

Discrimination occurs when an individual suffers a material adverse consequence on the basis of their protected class.

Examples include, but are not limited to, failure to be hired or promoted or denial of admission to an academic program, activities, or employment based on protected class status.

AMOROUS RELATIONSHIP

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect.

Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of policies.

The university does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the university. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student) are generally discouraged.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift the student out of being supervised or evaluated by someone with whom they have established a consensual relationship. This includes RAs and students over whom they have direct responsibility.

While no relationships are prohibited by this policy, failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee.

Individuals should refer to the Conflict of Interest in the Case of Amorous Relationships policy when an amorous relationship has been established.

PRIVACY

Privacy generally means that information related to a report of prohibited conduct will be shared with a limited number of individuals who “need to know” in order to assist in the active review, adjudication, resolution of the report, and related issues. All University employees who are involved in a potential response receive specific training and guidance about safeguarding private information in accordance with applicable laws.

The privacy of student education records will be protected in accordance with the University’s policy for compliance with the Family Educational Rights and Privacy Act (FERPA) and state law protections. Access to personnel records is restricted in accordance with University policy and state law.

CONFIDENTIALITY

Confidentiality means that information shared by an individual with designated campus or community professionals cannot be revealed to any other person without express permission of the individual, or as otherwise permitted or required by law. Those campus and community professionals who have the ability to maintain confidential relationships include health care providers, mental health professionals, designated victims’ advocates, attorneys, and ordained clergy, all of whom normally have privileged confidentiality that is recognized by Colorado state law. These individuals are prohibited from breaking confidentiality unless 1) given permission to do so by the person who disclosed the information; 2) there is an imminent threat of harm to self or others; 3) the conduct involves suspected abuse of a minor under the age of 18; or 4) as otherwise required or permitted by law or court order.

The University supports the use of confidential resources so that complainants can provide information confidentially and still receive remedial and/or protective measures as necessary through the Director of Institutional Equity or designee. Communications with these confidential resources are confidential to the extent permitted by statutory law. Confidential resources are not considered “responsible employees” for mandatory reporting purposes.

RETALIATION

Means any adverse action threatened or taken against a person because an individual has filed, supported, or provided information in connection with an OIE complaint, including, but not limited to, direct and indirect intimidation, threats and harassment. An “adverse action” is any conduct or action that would dissuade a reasonable person from reporting an allegation of sexual misconduct or participating in an investigation of sexual misconduct.