



KEY DEFINITIONS

As used in Clark Atlanta University's Title IX Policy and corresponding grievance procedures, the phrases and words listed therein shall have the meanings set forth below:

Advisor: Refers to an attorney or a non-attorney advisor who can provide assistance to the Complainant or the Respondent during Formal Resolution Hearings, Informal Resolution Conferences, and any other stage of the processes covered by this Policy. The University will provide a list of individuals who have received training to serve as Advisors.

Affirmative Consent: Means an affirmative, conscious decision by each participant to engage in mutually agreed-upon sexual activity. All five of the following elements are essential in order to have affirmative consent. If one or more of the following is absent, there is no affirmative consent.

- A. **Consists of Mutually Understandable Communication:** Communication regarding consent consists of mutually understandable words and/or actions that indicate an unambiguous willingness to engage in sexual activity. In the absence of clear communication or outward demonstration, there is no consent. Consent may not be inferred from silence, passivity, lack of resistance or lack of active response. An individual who does not physically resist or verbally refuse sexual activity is not necessarily giving consent. Relying solely upon non-verbal communication can lead to a false conclusion as to whether consent was sought or given. Verbal communication is the best way to ensure all individuals are willing and consenting to the sexual activity.
- B. **Informed and Reciprocal:** All parties must demonstrate a clear and mutual understanding of the nature and scope of the act to which they are consenting and a willingness to do the same thing, at the same time, in the same way.
- C. **Freely and Actively Given:** Consent cannot be obtained through the use of force, coercion, threats, intimidation or pressuring, or by taking advantage of the incapacitation of another individual.
- D. **Not Unlimited:** Consent to one form of sexual contact does not constitute consent to all forms of sexual contact, nor does consent to sexual activity with one person constitute consent to activity with any other person. Each participant in a sexual encounter must consent to each form of sexual contact with each participant. Even in the context of a current or previous intimate relationship, each party must consent to each instance of sexual contact each time. The consent must be based on mutually understandable communication that clearly indicates a willingness to engage in sexual activity. The mere fact that there has been prior intimacy or sexual activity does not, by itself, imply consent to future acts.
- E. **Not Indefinite:** Consent may be withdrawn by any party at any time. Recognizing the dynamic nature of sexual activity, individuals choosing to engage in sexual activity must evaluate consent in an ongoing manner and communicate clearly throughout all stages of sexual activity. Withdrawal of consent can be an expressed "no" or can be based on an outward demonstration that conveys that an individual is hesitant, confused, uncertain or is no longer a mutual participant. Once consent is withdrawn, the sexual activity must cease immediately and all parties must obtain mutually expressed or clearly stated consent before continuing further sexual activity.

Appeals Facilitator: Refers to a trained University faculty and staff member or other appropriate person(s) designated by the University's Title IX Coordinator (for non-student Respondents) that hear and decide appeals of findings and sanctions imposed by the Special Matter Hearing Board (defined below). The Appeals Facilitator is the individual specifically designated to handle and decide appeals based on the specific category of the Respondent. This individual is authorized to affirm, alter, or reverse the original findings and/or sanctions recommended by the Special Matter Hearing Board. Once issued, the decision of the Appeals Facilitator's is final.

Complainant: Refers to an individual who has been identified in a Formal Complaint as someone who has been subjected to an incident of Sex Discrimination or Sexual Misconduct. A Complainant has certain rights under this Policy, as discussed above. In most cases, a Reporter who has filed a Formal Complaint alleging to have personally experienced Sex Discrimination or Sexual Misconduct can also be a Complainant. In other cases, a Reporter who reports witnessing Sex Discrimination or Sexual Misconduct happening to or affecting *someone else* can make a Report, but that does not make them a Complainant.

Clery Act: Refers to the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act, 20 U.S.C. Section 1092(f); 34 C.F.R., Part 668.46. It requires colleges and universities, both public and private, participating in federal student aid programs to disclose campus safety information, and imposes certain basic requirements for handling incidents of sexual violence and emergency situations.

Coercion: Means the use of pressure to compel another individual to initiate or continue activity against their will, including psychological or emotional pressure, physical or emotional threats, intimidation, manipulation, or blackmail. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include, but are not limited to threatening to "out" someone based on sexual orientation, gender identity, or gender expression; threatening to harm oneself if the other party does not engage in the sexual activity; and threatening to expose someone's prior sexual activity to another person and/or through digital media.

Consent: See *Affirmative Consent* above.

Dating Violence: See *Sexual Misconduct* below, Subsection A.

Domestic Violence or Domestic Assault: See *Sexual Misconduct* below, Subsection B.

Force: 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 overcomes resistance or produces consent. There is no requirement that a person has to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

Formal Complaint: Refers to a formal written complaint filed with the Title IX Coordinator or the Title IX Coordinator's designee alleging any action, policy, procedure or practice that would be prohibited by Title IX, such as Sex Discrimination or Sexual Misconduct, signed by the Complainant or the Title IX Coordinator and indicating that they want the University to proceed with the formal grievance process. A report can be made by another individual who knows of or witnessed an incident of Sex Discrimination or Sexual Misconduct but who did not suffer such misconduct themselves.

Formal Resolution: Refers to the University's formal grievance proceeding through which the Special Matter Hearing Board evaluates evidence related to a Formal Complaint to determine whether a Respondent is in violation of this Policy, based on the criteria of a preponderance of evidence.

Incapacitation: Means the lack of the ability to make rational, reasonable judgments as a result of alcohol

consumption, other drug use, sleep, the taking of any so-called “date-rape” drug, unconsciousness, or blackout. An individual unable to make informed judgments is physically helpless. An incapacitated person cannot make rational, reasonable decisions because that person lacks the ability to fully understand the who, what, where, or how of their sexual interaction. Incapacitation is a state beyond drunkenness or intoxication, in which alcohol, drugs, or other factors render one unable to make fully informed judgments or have an awareness of consequences. Evaluating incapacitation also requires an assessment of whether a Respondent knew or should have known of the other individual's incapacitated state. While incapacitation may be caused by drugs or alcohol, it also includes the state of being asleep, during which time a person is unable to provide affirmative consent.

Informal Resolution Conference: Is intended to allow the Complainant and the Respondent to provide information about the alleged incident(s) of discrimination or harassment, and to reach a mutually agreeable resolution. This process aims to assure fairness, to facilitate communication, and to maintain an equitable balance of power between the parties.

Investigator: Refers to an official(s) designated by the Title IX Coordinator to conduct an investigation of alleged Sex Discrimination or Sexual Misconduct, and who acts as a witness in the event of a Formal Resolution Hearing. The Investigator will be a trained individual who objectively collects and examines the facts and circumstances of potential violations of this Policy and documents them for review. The Investigator will be neutral and will hold no biases in the investigation.

Mandatory Reporter: Refers to an individual or individuals the University has designated as being required to report any knowledge they have of Sex Discrimination and Sexual Misconduct. CAU has identified the following individual or set of individuals as Mandatory Reporters under this Policy: CAU Public Safety staff, Student Affairs Administrators (Dean and Associate Deans of Student Conduct), CAU Athletics Director, Senior Associate Athletic Director of Compliance, Senior Women’s Administrator, any Academic Dean, or the University Provost and Vice-President of Academic Affairs. The only students who are designated as Mandatory Reporters are on-campus Assistant Directors of Residence Life.

Non-Consensual Sexual Contact: See *Sexual Misconduct* below, Subsection A.

Non-Consensual Sexual Penetration: See *Sexual Misconduct* below, Subsection B.

Notice of Outcome: Written notification issued to a Complainant and a Respondent following the conclusion of a Formal Resolution Hearing. The Notice of Outcome shall be issued to the Complainant and the Respondent concurrently and shall contain the determination of whether the Respondent is Responsible or Not Responsible for the alleged violations and, where applicable, sanction(s) assigned, the due date(s) of the sanction(s), any other steps the University will or has taken to eliminate the hostile environment, and any available appeal rights. This term may also be used to refer to the written statement of a Title IX Coordinator or other investigator of his/her findings regarding the validity of the complaint and the recommended corrective actions to be taken and/or sanctions to be imposed in cases involving violations of Title IX.

Preponderance of Evidence: Refers to the standard by which it is determined at a hearing whether or not a violation of this Policy has occurred, and means that an act of sex discrimination is “more likely than not” to have occurred. This standard applies for all allegations of Sex Discrimination and Sexual Misconduct.

Report: Refers to any communication that puts a CAU Mandatory Reporter on notice of an allegation that Sex Discrimination or Sexual Misconduct occurred or may have occurred. After making a Report, an individual who has made the report may choose to end involvement in the process, to accept or decline University-offered supportive measures, or choose to file a Formal Complaint and pursue Formal Resolution or, if applicable, an Informal Resolution Conference involving the Respondent. The University strongly encourages all individuals to report incidents of Sexual Misconduct and Sex Discrimination even if the individual does not intend to pursue a Formal Complaint.

Reporter: Refers to an individual who notifies a CAU Mandatory Reporter of an alleged violation of this Policy. A Reporter can be any individual who reports to CAU that they have personally experienced or been subjected to Sex Discrimination or Sexual Misconduct; that they have been affected by Sex Discrimination or Sexual Misconduct, or that they have knowledge of Sex Discrimination and Sexual Misconduct happening to or affecting someone else.

Respondent: Refers to an individual against whom a Formal Complaint has been filed or Report has been made and whose conduct is alleged to have violated this Policy. Typically, the Respondent is an individual who has been accused of conduct that, if proven by a preponderance of the evidence, constitutes Sex Discrimination or Sexual Misconduct under this Policy. A Respondent has certain rights under this Policy, as discussed above.

Responsible: Means a determination by a University Special Matter Hearing Board that the Respondent has, in fact, committed an act in violation of this Policy.

Sex Discrimination: Refers to the unequal treatment of an individual based on their sex or gender in any employment decision, education program or educational activity receiving Federal financial assistance. Such programs or activities include, but are not limited to, admission, hiring and recruitment, financial aid, academic programs, student treatment and services, counseling and guidance, discipline, classroom assignment, grading, vocational education, recreation, physical education, athletics, housing and employment. The prohibition on sex discrimination also covers unlawful discrimination based on gender identity, sexual orientation, pregnancy, termination of pregnancy, childbirth or related conditions. Also prohibited as sex discrimination is any act which is based on parental, family, or marital status and which is applied differently based on sex.

Sexual Assault: See *Sexual Misconduct* below, Subsection D.

Sexual Exploitation: See *Sexual Misconduct* below, Subsection C.

Sexual Harassment: See *Sexual Misconduct* below, Subsection D.

Sexual Misconduct: Is a broad term that encompasses sexually-motivated misconduct as described in this Policy, including conduct of an unwelcome and/or criminal nature, whether such conduct occurs between strangers, acquaintances, or intimate partners. For the purposes of this Policy, the following terms are collectively referred to as “Sexual Misconduct” and will be defined in detail below: Nonconsensual Sexual Contact, Nonconsensual Sexual Penetration, Sexual Exploitation, Sexual Harassment, and Sexual Violence.

- A. ***Non-Consensual Sexual Contact:*** Any intentional touching of a sexual nature, however slight, with any object, by a man or a woman upon a man or a woman, without consent and/or by force. Sexual contact includes intentional contact with the breasts, buttock, groin, or genitals, or touching another person with any of these body parts, or making another touch you or themselves with or on any of these body parts; or any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice. The crimes of sexual battery and aggravated sexual battery are encompassed in this definition. Such contact is deemed non-consensual if done without the other person's affirmative consent (see definition above).
- B. ***Non-Consensual Sexual Penetration:*** Insertion of a sex organ, object, tongue or finger into the sex organ, mouth or anus of another, no matter how slight the insertion or contact, with consent and/or by force. Such contact is deemed non-consensual if done without the other person's affirmative consent (see definition above).
- C. ***Sexual Exploitation:*** Occurs when a person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or the benefit of anyone other than the one being exploited. Examples of sexual exploitation include, but are not limited to:

- Non-consensual video or audio-taping of sexual activity or other private activity, even if that activity occurs in a public or semi-public place;
- Non-consensual dissemination of video, photographs, or audio of sexual activity or other private activity, including dissemination by a third party or a person not involved in the original conduct;
- Exceeding the boundaries of consent (such as, permitting others to hide in a closet and observe consensual sexual activity, videotaping of a person using a bathroom or engaging in other private activities);
- Engaging in voyeurism, exposing one's breasts, buttocks, or genitals in a non-consensual circumstance or inducing another to expose their breasts, buttocks, or genitals without affirmative consent;
- Prostituting another person;
- Engaging in consensual sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease or infection (STD or STI,) and without informing the other person of such disease or infection; and
- Sexually-based stalking and/or bullying.

D. *Sexual Harassment*: Conduct on the basis of sex that satisfies one or more of the following: (1) A CAU employee conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct; (2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to CAU's education program or activity; or any sexually motivated conduct that falls within one or more of the following categories:

- *Sexual Assault (as defined in 20 U.S.C. 1092(f)(6)(A)(v))*: Any type of Sexual Contact or behavior that occurs without the explicit consent of the recipient of the unwanted sexual activity. Falling under the definition of sexual assault is sexual activity such as forced sexual intercourse, sodomy, child molestation, incest, fondling, rape, attempted rape, sexual battery and aggravated sexual battery. Georgia law defines sexual assault as sexual contact that is perpetrated by a person who has supervisory or disciplinary authority over another individual.
- *Dating Violence (as defined in 34 U.S.C. 1229 (a)(10))*: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the alleged victim. The existence of such a relationship will be determined based on the reporting party's statement and with consideration of the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.
- *Domestic Violence (as defined in 34 U.S.C. 12291 (a)(8))*: Felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. Georgia state law specifically defines such violence as the occurrence of a felony or the commission of offenses of battery, simple battery, simple assault, assault; stalking criminal damage to property, unlawful restraint, or criminal trespass between:
 - past or present spouses;
 - persons who are parents of the same child;
 - parents and children;
 - stepparents and stepchildren;
 - foster parents and foster children; or

- other persons living or formerly living in the same household.

Note: This definition will not be applied to simple roommate disputes, in particular, those that do not involve any allegations of gender or sex discrimination.

- *Stalking (as defined in 34 U.S.C. 1229 (a)(30))*: Occurs when a person follows, places under surveillance or contacts another person (i.e., the victim) at or about any public or private property occupied by the victim other than the residence of the person without the consent of the victim for the purpose of harassing and intimidating the victim. Harassment and intimidation is a knowing and willful course of conduct directed at a specific person which causes emotional distress by placing such person in reasonable fear for such person's safety or the safety of a member of his or her immediate family, by establishing a pattern of harassing and intimidating behavior, and which serves no legitimate purpose. Types of stalking could include, but are not limited to:
 - Following the targeted person;
 - Approaching or confronting that person in a public place or on private property;
 - Persistent and unwelcome attempts to contact the person by phone, electronic communication (including via the internet and cellphones), or regular mail, either anonymously or non-anonymously;
 - Vandalizing the person's property or leaving unwanted items for the person;
 - Persistently appearing at the person's classroom, residence, or workplace without that person's permission or other lawful purpose;
 - Cyber-stalking, in which a person follows, observes, monitors, or surveils another person through the use of electronic media such as the Internet, digital media networks, blogs, cell phones, texts or other similar devices; and
 - Using visual or audio recording devices or hidden or remote cameras used without the subject's consent.

E. *Sexual Violence*: Consists of physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (e.g., due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including, but not limited to, sexual assault, sexual battery, sexual abuse, and sexual coercion.

Special Matter Hearing Board: Refers to the three-member decision-making body composed of University faculty and staff or other appropriate persons designated by the University's Title IX Coordinator (for non-student Respondents) that considers cases brought under this Policy. Each particular Hearing Board is constituted, as needed, from the available pool of individuals who are trained to serve as Hearing Board members. One of the three Hearing Board members will be designated as the chairperson. The Hearing Board hears the facts and circumstances of an alleged policy violation as presented by the Investigator, a Complainant, a Respondent and/or witnesses at a Formal Resolution Hearing. This body is responsible for determining if a Policy violation has occurred and whether/what sanctions are appropriate.

Sexual Violence: See ***Sexual Misconduct*** above, Subsection E.

Stalking: See ***Sexual Misconduct*** above, Subsection D.

Supporter: Refers to any person, regardless of their association with the university, who a Reporter, Complainant, or Respondent may want to support them through a portion of or the entire process. A Supporter is not required, but is encouraged to help the party with emotional and personal support. When present during interviews, hearings, and appeals, the Supporter cannot take an active role. A Supporter can be a friend, family member, or any trusted person who can provide needed care to a party. Information gained or obtained while serving as a support should be kept in strict confidence.

- Limiting the access of the individual accused of the misconduct to certain University facilities until the matter is resolved, including the possibility of an interim suspension, if warranted.