

ADDENDUM 3 - TITLE IX POLICY

SEXUAL HARASSMENT

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC) and the State of Alaska regard sexual harassment as a form of sex/gender discrimination and, therefore, as an unlawful discriminatory practice. Ilisagvik College has adopted the following definition of sexual harassment, in order to address the special environment of an academic community, which consists not only of employer and employees, but of students as well.

Sexual harassment is:

- Unwelcome,
- Sexual, sex-based and/or gender-based,
- Verbal, written, online and/or physical conduct.

Anyone experiencing sexual harassment in any Ilisagvik College program is encouraged to report it immediately to the Title IX Coordinator or a deputy. Remedies, education and/or training will be provided in response.

Sexual harassment may be disciplined when it takes the form of *quid pro quo* harassment, retaliatory harassment and/or creates a hostile environment.

A hostile environment is created when sexual harassment is:

- Severe, or
- Persistent or pervasive, and
- Objectively offensive, such that it:
 - Unreasonably interferes with, denies, or limits someone's ability to participate in or benefit from the College's educational, employment, social, and/or residential programs.

Quid Pro Quo Sexual Harassment:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by a person having power or authority over another constitutes sexual harassment when submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational development or performance.

Some examples of possible Sexual Harassment include:

- A professor insists that a student have sex with the professor in exchange for a good grade. This is harassment regardless of whether the student accedes to the request and irrespective of whether a good grade is promised or a bad grade is threatened.
- A student repeatedly sends sexually oriented jokes to an email list the student created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.
- Explicit sexual pictures are displayed in a professor's office or on the exterior of a residence hall door.
- Two supervisors frequently 'rate' several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. The

- professor probes for explicit details, and demands that students answer, though they are clearly uncomfortable and hesitant.
- A student widely spreads false stories about the sex life the student had with an ex, to the ex's embarrassment and causing others to avoid the ex..
 - Students take to calling a particular brunette student "Monica" due to a surface resemblance to Monica Lewinsky. Soon, everyone adopts this nickname, and the student is the target of relentless remarks about cigars, the president, "sexual relations" and Weight Watchers.
 - A student grabs another student by the hair, deliberately touches the victim's chest area and then the student puts their mouth on the victim's chest area.. While this is sexual harassment, it is also a form of sexual violence.

Policy Expectations with Respect to Consensual Relationships

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty 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 applicable sections of this policy. The University/College 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/College. 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 a party 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 timely self-report such relationships to a supervisor as required can result in disciplinary action for an employee.

Sexual Misconduct

State law defines various violent and/or non-consensual sexual acts as crimes. While some of these acts may have parallels in criminal law, Ilisagvik College has defined categories of sex/gender discrimination as sexual misconduct, as stated below, for which action under this policy may be imposed. Generally speaking, Ilisagvik College considers Non-Consensual Sexual Intercourse violations to be the most serious of these offenses, and therefore typically imposes the most severe sanctions, including suspension or expulsion for students and termination for employees. However, Ilisagvik College reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any act of sexual misconduct or other sex/gender-based offenses, including intimate partner (dating and/or

domestic) violence, non-consensual sexual contact and/or stalking based on the facts and circumstances of the particular allegation. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, sexual orientation and/or gender identity of those involved. Violations include:

1. Sexual Harassment (as defined on page 1)
2. Non-Consensual Sexual Intercourse is defined as any sexual intercourse, however slight, with any object, by a person upon another person, which is without consent and/or by force.

Sexual intercourse includes vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation (mouth to genital contact) no matter how slight the penetration or contact.

Non-Consensual Sexual Contact is defined as any intentional sexual touching, however slight, with any object, by a person upon another person, which is without consent and/or by force.

Sexual touching includes:

- Intentional contact with the breasts, groin, genitals, or mouth, 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 other bodily contact in a sexual manner.

Sexual Exploitation refers to a situation in which a person takes non-consensual or abusive sexual advantage of another, and that behavior does not otherwise fall within the definitions of Sexual Harassment, Non-Consensual Sexual Intercourse, or Non-Consensual Sexual Contact. Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as watching a person undressing, using the bathroom or engaged in sexual acts without the consent of the person observed)
- Invasion of sexual privacy
- Taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent)
- Prostitution
- Sexual exploitation also includes engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV), a sexually transmitted disease (STD) or infection (STI) without informing the other person of the infection
- Administering alcohol or drugs (such as "date rape" drugs) to another person without his or her knowledge or consent (assuming the act is not completed)
- Exposing one's genitals in non-consensual circumstances
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation

Force and Consent

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 ("Have sex with me or I'll hit you." "Okay, don't hit me, I'll do what you want.").

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 someone makes clear to you 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.

NOTE: Silence or the absence of resistance alone is not consent. There is no requirement on a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of consent is not demonstrated by the absence of resistance. Forced sexual activity is always non-consensual, but not all non-consensual sexual activity involves force.

Consent is knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent can be withdrawn at any time, as long as the withdrawal is expressed by word or an outward demonstration.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous dating relationship is not sufficient to constitute consent. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced.

Incapacitation: A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including conditions caused by alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy.

It is not an excuse that the responding party was intoxicated and, therefore, did not realize the incapacity of the reporting party.

Incapacitation is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction). This policy also covers a person whose incapacity results from mental disability, involuntary physical restraint and/or from the taking of incapacitating drugs.

In Alaska, a minor (meaning a person under the age of **16** years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than **16** years old may be a crime, and a potential violation of this policy, even if the minor agreed or wanted to engage in the act.

Examples of lack of consent:

1. Amanda and Bill meet at a party. They spend the evening dancing and getting to know

each other. Bill convinces Amanda to come up to his room. From 11:00 p.m. until 3:00 a.m., Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. He keeps at her, and begins to question her religious convictions, and accuses her of being "a prude." Finally, it seems to Bill that her resolve is weakening, and he convinces her to give him a "hand job" (hand to genital contact). Amanda would never have done it but for Bill's incessant advances. He feels that he successfully seduced her, and that she wanted to do it all along, but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn't want it, she could have left. Bill is responsible for violating the university Non-Consensual Sexual Contact policy. It is likely that campus decision-makers would find that the degree and duration of the pressure Bill applied to Amanda are unreasonable. Bill coerced Amanda into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. Consent is not valid when forced. Sex without consent is sexual misconduct.

2. Jiang is a junior at the university. Beth is a sophomore. Jiang comes to Beth's residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, and are soon becoming more intimate. They start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a baby-sitter when she was five, and has not had any sexual relations since, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with her, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop, but cannot. Beth is stiff and unresponsive during the intercourse. Is this a policy violation? Jiang would be held responsible in this scenario for Non Consensual Sexual Intercourse. It is the duty of the sexual initiator, Jiang, to make sure that he has mutually understandable consent to engage in sex. Though consent need not be verbal, it is the clearest form of consent. Here, Jiang had no verbal or non-verbal mutually understandable indication from Beth that she consented to sexual intercourse. Of course, wherever possible, it is important to be as clear as possible as to whether or not sexual contact is desired, and to be aware that for psychological reasons, or because of alcohol or drug use, one's partner may not be in a position to provide as clear an indication as the policy requires. As the policy makes clear, consent must be actively, not passively, given.
3. Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it's a lot. After the party, he walks John to his room, and John comes on to Kevin, initiating sexual activity. Kevin asks him if he is really up to this, and John says yes. Clothes go flying, and they end up in John's bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that John seems pretty groggy and passive, and he thinks John may have even passed out briefly during the sex, but he does not let that stop him. When Kevin runs into John the next day, he thanks him for the wild night. John remembers nothing, and decides to make a report to the Dean. This is a violation of the Non-Consensual Sexual Intercourse Policy. Kevin should have known that John was incapable of making a rational, reasonable decision about sex. Even if John seemed to consent, Kevin was well aware that John had consumed a large amount of alcohol, and Kevin thought John was physically ill, and that he passed out during sex. Kevin should be held accountable for taking advantage of John in his condition. This is not the level of respectful

conduct the college expects.

Personnel Actions or Discipline

Employees who violate policies, procedures, or standards of performance or conduct will be subject to disciplinary action. Iłisaǵvik College does not require any particular type of disciplinary action be taken in response to specific types of conduct or non-performance, or any requirement that any particular or lesser form of discipline be imposed before a more serious form of discipline is used. Employees having relatively greater responsibilities or managerial authority may be disciplined more severely than other employees committing similar acts. Discipline, up to and including termination from employment, also may be imposed where the conduct cannot be remedied or where the violation is of a particularly serious nature.

In taking personnel action, management will consider such factors as: the College's business needs, employee performance history, the nature of the violation or matter, current productivity and effectiveness, the employee's overall capacity and willingness to improve, the likelihood of recurrence of a problem or issue, and the risks to the College, including impacts on the College's relationships.

The College reserves the right to document any personnel or disciplinary actions, and to place such documentation in the employee's personnel file. However, discipline (including counseling or warnings) is still effective and valid, whether or not it is documented in the personnel file. The following general list of possible disciplinary actions is for information only and does not limit the College's discretion in imposing discipline, or in any way restrict other remedies, through:

- informal corrective counseling;
- transfer;
- oral or written warning;
- demotion;
- oral or written reprimand;
- dismissal (involuntary termination of employment);
- suspension with pay;
- or suspension without pay.

Non-exempt employees may be suspended without pay in increments of one hour or more, at the supervisor's discretion. Depending on the severity of the violation, exempt employees may be suspended without pay for a full workday, workweek, or longer, in which the employee is completely released from performing any work. A decision to involuntarily terminate employment shall be made on the recommendation of the employee's supervisor, with the approval of the appropriate executive-level supervisor and the Executive Director of Human Resources.

Model Policy: Sexual Harassment

Models of Proof

Sexual misconduct offenses include, but are not limited to:

- sexual advances
- requests for sexual favors
- other verbal or physical conduct of a sexual nature

which are unwelcome, and by a person having power or authority over another, and where submission to such sexual conduct is an implicit term or condition of rating, evaluating, and/or providing a benefit to an individual's educational or employment development or performance.

It is important to note that not all relationships between such individuals qualify as sexual harassment, because many of those relationships or situations are not unwelcome. Further, many relationships where one person has power or authority over another do not have explicitly or implicitly placed conditions, potential benefits, expectations, or detriments on one of the individuals, which prevent it from becoming *quid pro quo* harassment. Stated differently, there is a difference between conduct that violates only institutional consensual relationship policies (e.g.: a consensual relationship between a faculty member and student) and harassing-level *quid pro quo* misconduct.

The power or authority imbalance can be formal or informal. In some instances, the authority or power over another is formalized in terms of structure or hierarchy, such as supervisor-supervisee or faculty-student, where the student is in the faculty member's class. At other times the power or authority can be informal, such as a faculty member who offers to write a letter of recommendation for a student in exchange for sexual favors. Indeed, use of leverage or threats can both negate the validity of a person's consent to sexual activity, as well as create a *quid pro quo* harassment situation.

Rubric

Employing the above definition, a finding of *quid pro quo* harassment must answer each of the following four questions accordingly:

1. Are there sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature present? If not, there is no policy violation. If so,
2. Is such conduct welcome? If so, there is no policy violation. If not,
3. Is there a formal or informal power or authority imbalance between the parties? If not, there is no policy violation. If so,
4. Did the person with power or authority explicitly or implicitly condition the rating, evaluation, or receipt of a benefit to an individual's educational or employment development or performance on submission to the unwelcome sexual conduct? If not, there is no policy violation. If so, policy has been violated.

Model Policy: Non-Consensual Sex

Models of Proof

Non-consensual sexual conduct (NCSC) is any intentional sexual touching, however slight, with any object, by a person upon another person, which is without consent and/or by force.

Sexual contact includes:

- intentional contact with the breasts, buttock, groin, or genitals,
- touching another with any of these body parts,
- making another touch you or themselves with or on any of these body parts;
- or any other intentional bodily contact in a sexual manner.

Non-consensual sexual intercourse (NCSI) is:

- any sexual intercourse,
- however slight,
- with any object,
- by a person upon another person,
- which is without consent and/or by force

Intercourse includes vaginal or anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.

The model of proof for these offenses is the policy itself, because we have written it in element format already. The analysis only varies between them as to whether the contact is sexual touching or sexual intercourse. There is an element of intent in the NCSC definition that is not in the NCSI definition, but the definitions are otherwise identical. You can imagine a non-intentional sexual contact, such as brushing someone's breast or buttocks in a crowded bar without meaning to, which is not an offense, but it is hard to imagine someone having sexual intercourse unintentionally. Thus, intent is not a requirement of the NCSI offense. Intersectionally, these offenses have overlap because intercourse is a type of sexual touch, and thus intercourse would be included in NCSC, but only intercourse is included in NCSI, though intercourse is also a type of contact. NCSC is thus the broader offense, and NCSI is narrower, as to the contact each encompasses. Typically, NCSI would pertain to more invasive and thus more severe conduct, for which suspension, expulsion, or termination would commonly result. NCSC merits a wider range of sanctions, from warning to expulsion, because of the wide range of behaviors covered by that offense.

An example of a question set for the NCSC offense is:

1. Was there sexual contact by one person upon another, no matter how slight, as defined in the policy? If yes,
2. Was it intentional? If yes,
3. Was it by force? If yes, policy was violated. If no,
4. Was it without consent, as consent is defined in the policy? If yes, there is a policy violation, if no, there is no policy violation.

The set for NCSI is simpler still:

1. Was there sexual intercourse by one person upon another, no matter how slight, as defined in the policy? If yes,
2. Was it by force? If yes, policy was violated. If no,
3. Was it without consent, as consent is defined in the policy? If yes, there is a policy violation, if no, there is no policy violation.

Rubric

While the basic question rubric above is helpful, there are deeper issues and questions related to force, capacity, and consent that still need to be addressed. The expanded rubric below does so. The rubric for NCSC and NCSI is about ensuring that for each allegation, we are asking the right questions. If we ask the right question, we will have a better chance of getting the right answer. The three questions that should be asked are rooted in policy. All colleges should prohibit sexual activity when it occurs under the following circumstances:

1. When it is forced; or
2. When the reporting party is incapacitated, and that incapacity is known to or should have

- been known to the responding party; or
3. When it is non-consensual.

Model Policy: Sexual Exploitation

Model of Proof

Sexual exploitation occurs when one person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses.

In considering the behavior at issue, you must gather as much information as possible about the circumstances. First, use the elements listed below to consider whether the conduct violates another policy, because sexual exploitation defines itself as only applying when other policies do not.

The policy may be parsed into the following elements:

- Non-consensual or abusive conduct which takes sexual advantage of another person,
- For the responding party's own advantage or benefit *or* to benefit/advantage anyone other than the individual being exploited, and
- Does not constitute any other sexual misconduct offense addressed in your institution's policy

Rubric

To turn this into a question-based rubric, you would come up with something like this:

1. Was there non-consensual or abusive conduct (see example list on p. 31-32); If no, this policy has not been violated. If yes,
2. Did the conduct take sexual advantage of another person? If no, the policy has not been violated. If yes,
3. Was the conduct for the responding party's own advantage or benefit **OR** to benefit or advantage anyone other than the individual being exploited? If no, this is not a policy violation. If yes,
4. Does the conduct constitute any other sexual misconduct offense addressed in your institution's policy? If no, policy was violated. If yes, use other applicable policies instead.

Let's address each element in turn:

1. Non-consensual or abusive

To determine whether behavior is non-consensual or abusive, you must first isolate the behavior at hand. Consider all information available that would help you ascertain the nature of the behavior.

Communicate with the parties, as well as other individuals that may be knowledgeable about the situation, to understand the conduct from different vantage points. If appropriate, it may be helpful to create a timeline or other type of visual depiction of the conduct (a flowchart, for example) to understand the behavior and its course. Remember that reporting parties may not consider the unwelcome conduct at issue as exploitative or identify the behavior as sexual exploitation. They are not policy experts, you are. Their labelling has no impact on whether the conduct constitutes

a violation of policy.

In assessing the behavior to determine whether it is consensual, make sure you have a working understanding of your institution's definition of consent. Analyze the conduct pursuant to this established definition. Additionally, consider whether the reporting party has informed the responding party that the conduct is unwelcome. This is not a requirement, but could aid in the evidence of proof. If available, review social media messages, texts, and other forms of communication that may support the idea that the behavior is not consensual. Has the reporting party communicated their reaction(s) with other individuals who could confirm their position? If possible, review blog posts, social media, and other journaling methods that may corroborate or refute the reporting party's account of the conduct.

If you have determined the conduct is non-consensual, you can proceed to analyze the second element of this policy – whether the responding party has taken sexual advantage of the reporting party by the conduct at issue. If you determine the conduct is consensual, however, you must continue to the next prong of this analysis: whether the conduct is abusive. In analyzing whether the behavior is abusive (the policy intentionally does not define this term, though you may choose to), consider whether there was physical or emotional harm to the reporting party, whether the conduct transgressed against a socially acknowledged norm or boundary, violated privacy, or took advantage of a known weakness, youth, misunderstanding, inexperience, or naïveté. Again, communication with the parties and others who are familiar with the parties and the circumstances will provide you with a more complete awareness of the complexities of the situation.

Although there are circumstances where conduct is clearly abusive, it is highly likely you will encounter situations that are much less clear cut. In these instances, using a reasonable person standard is an imperative tool in assessing the conduct. How would a reasonable person, without any particular eccentricities, who is in roughly the same demographic as the reporting party, consider the behavior at issue? Would that reasonable person consider the conduct abusive?

2. Taking sexual advantage of another

Once you have determined that the conduct is either non-consensual or abusive (or both), proceed to the second element of the policy. In assessing whether the conduct takes sexual advantage of another individual, there are several questions to consider which will help with this determination. They are as follows:

- Does/did the responding party hold power or leverage over the reporting party?
- Is/was there an expectation of trust?
- Was there an exploitation of a weakness?
- Did the responding party lead the reporting party to believe their interest in the reporting party was genuine and then betray that trust?
- Has the responding party employed manipulation or misrepresentation?

Keep in mind that there must be a sexual element involved, or a selection of the target on the basis of sex or gender. As in the analysis of the first element of this policy definition, you need to carefully examine the circumstances of the situation and understand the dynamics between the parties. None of the questions above will necessarily lead to a dispositive conclusion of whether the conduct takes sexual advantage of another. When considered together, however, the process of asking these questions and ascertaining the responses will aid your analysis significantly.

3. For the responding party's own advantage or benefit or to benefit or advantage anyone other than the individual being exploited

The fundamental issue in this analysis is whether someone *other than the reporting party* is benefiting in some way from the conduct. Look at the effect, or potential effect of the behavior and consider the possible ramifications. Think creatively about potential benefits, which may not be readily apparent and may include monetary remunerations, personal gratification (sexually or otherwise), and advancement in social status, among other advantages.

Importantly, a reporting party may have obtained *some* type of benefit from some aspect of the conduct at issue – this fact alone does not necessarily prevent the conduct from satisfying this element. One example of this is a reporting party who has benefited from consensual sex with the responding party, yet the responding party has proceeded to exploit the reporting party by sharing video in a non-consensual manner for a third party’s benefit. Keep in mind as well that the benefit(s) may not have occurred yet and may be “traded” for other benefits. For example, consider an individual who films a sexual encounter and then, without the reporting party’s consent, emails the video to a friend with the understanding that the friend will help the responding party on an upcoming paper assignment. This would likely constitute sexual exploitation under the promoted policy.

4. The behavior does not constitute any other sexual misconduct offense addressed in your institution’s policy

The final element of this policy is that the conduct at hand must not fall within the definition of any other sexual misconduct offense within your institution’s policy. Although important to consider before proceeding with your analysis of the elements, once you conclude your assessment of the above elements, review this issue once again prior to rendering a determination to ensure you are not conflating policy violations.

Illustrative examples of sexual exploitation may include, but are not limited to:

- Invasion of sexual privacy,
- Prostituting another person,
- Non-consensual digital, video or audio recording of nudity or sexual activity,
- Unauthorized sharing or distribution of digital, video or audio recording of nudity or sexual activity,
- Engaging in voyeurism,
- Going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you having consensual sex),
- Knowingly exposing someone to or transmitting an STI, STD or HIV to another person,
- Intentionally or recklessly exposing one’s genitals in non-consensual circumstances,
- Inducing another to expose their genitals,
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

As with NCSI and NCSC, it is important to remember that “regretted” sexual encounters do not, on their own, constitute sexual exploitation. An individual may reflect on a sexual encounter and wish they had acted differently or may be embarrassed by their own prior conduct. This does not, without additional factors that meet the elements articulated above, constitute sexual exploitation.

Model Policy: Intimate Partner Violence

Model of Proof

Intimate partner violence (IPV) is defined as any instance of violence or abuse—verbal, physical,

or psychological—that occurs between those who are in, or have been in, an intimate relationship with each other.

Rubric

1. Did violence or abusive behavior occur? If no, the policy was not violated. If yes,
2. Did the behavior occur between those who are in or were in an intimate relationship to each other? If no, the policy was not violated. If yes, policy was violated.

To make a finding of responsibility for an allegation of intimate partner violence, one must establish, by a preponderance of the evidence, both prongs of the IPV definition referenced above, namely that:

1. The responding party more likely than not committed a form of violence or abuse upon the reporting party, and
2. The relationship between the reporting and responding party is more likely than not one of an intimate nature, or has been intimate in the past.

Prong 1: Violence or Abuse

To establish the first prong, we need to understand what types of behavior constitute violence or abuse. You'll notice that the IPV definition is intentionally written broadly, to encompass the numerous types of violence or abuse that can occur. We can think about violence or abuse as occurring in three main forms: verbal, physical, and emotional/psychological.

Verbal Abuse

Verbal abuse is the extreme or excessive use of language, often in the form of insults, name-calling, and criticism, designed to mock, shame, embarrass, or humiliate the other intimate partner.

Verbal abuse often has the aim of diminishing the reporting party's self-esteem, dignity, or security. Importantly, like other forms of verbal sexual harassment, the alleged verbal behavior must be: (1) objectively offensive and (2) sufficiently severe, persistent, or pervasive. Singular statements and isolated incidents will likely fall short of this sufficiency standard and thus will not constitute verbal abuse within the IPV framework. As an investigator of an IPV allegation, refrain from overstepping by unnecessarily inserting yourself into what some would call "lovers' quarrels" or "relationship drama." Those types of behaviors may be ripe for counseling or conflict resolution, but not for resolution under Title IX or VAWA §304. You are not the relationship police, so be scrupulous when establishing that alleged verbal abuse does, in fact, rise to the level of verbal sexual harassment under the traditional hostile environment standard. This standard is also helpful when it comes to questions of whether or how you address IPV occurring between two employees where the abuse is entirely off-campus. What is particular to IPV are the ways that verbal abuse can manifest. Common forms include gaslighting, double binds, body shaming, dominating, emotional blackmail, hidden daggers, baiting, infantilization, and dozens of other commonly recognized tactics.

Physical Violence or Abuse

Physical violence or abuse occurs when one intentionally or recklessly (1) causes bodily harm; (2) attempts to cause another bodily harm; or (3) puts another in fear of imminent bodily harm.

Put simply, if one *does* harm, *tries* to do harm, or *imminently threatens* to do harm to an intimate partner, the behavior will likely constitute violence or abuse under an IPV policy. Conventional battery, such as punching, slapping, scratching, or otherwise striking an intimate partner—with any part of one’s body or with any object—constitutes physical violence. A common misconception, though hopefully growing less common, is that intimate partners, by the very nature of their relationship, consent to sexual activity with one another such that sexual abuse of a spouse or partner is impossible. We know, of course, that this is categorically false, as consent in some form is required for *any* sexual act, regardless of the relationship or prior history of the involved parties.⁷¹ Accordingly, any form of non-consensual sexual activity within the context of an intimate partner relationship constitutes sexual—and thus physical—abuse under the IPV definition. Other forms of physical abuse include keeping an intimate partner captive, preventing them from leaving, or otherwise restraining them against their will.

Emotional/Psychological Abuse

Emotional and psychological abuse involves a persistent pattern or prolonged climate of dominating or controlling behavior, often involving some type of power imbalance. The abuser’s behavior is often intended to terrorize, intimidate, isolate, or exclude an intimate partner, and can often result in measurable psychological harm, such as depression, anxiety, or post-traumatic stress symptoms. Examples include relentless denigration and disparagement, threatening to harm a beloved pet or destroy sentimental possession(s), as well as financial and economic abuse and blackmail.

The above types of abuse can also occur concurrently. For example, an abuser might engage in both physical and psychological abuse by controlling what his partner is allowed to do during the day, who she is allowed to talk to, and when she can leave the house. Similarly, an abuser might engage in verbal, sexual, and psychological abuse by continually telling his girlfriend things like, “If you don’t have sex with me, I’ll just tell everybody that we did. And if you’re bad in bed, I’ll break up with you and tell everyone that you cheated on me with the whole football team. You might think you have a good reputation, but people actually think you’re a whore.”

Collecting Evidence of Violence or Abuse

Evidence of verbal abuse will often include testimonial evidence from the reporting party about what was said, when it was said, the context in which it was said, and whether there were witnesses to the statements. Witness statements will often consist of a roommate who heard the yelling and commotion, or a friend or family member who overheard a spouse screaming on the phone.

In today’s digital age, with numerous mechanisms of communication, verbal abuse will often extend to text messages, emails, voicemails, and social media. Importantly, digital communications are almost always documentable, providing investigators with rare physical evidence that might corroborate that verbal abuse had occurred. Allegations of emotional and psychological abuse will likely yield the same type of evidence. Keep in mind, however, that positive or complimentary digital communications do not necessarily refute the allegations of abuse. Witnesses may also recall when the reporting party first told them about their relationship issues, providing a valuable timestamp and corroboration for the reporting party’s allegation of an ongoing or long-lasting climate of abuse. Many victims of IPV attempt to conceal the fact that they are being abused, and so critical corroborating evidence may not come in the form of third-party knowledge of actual emotional or verbal abuse, but in the form of friends and family who notice shifts in mood, personality, and/or habits.

With physical abuse, in addition to a reporting party's testimony that the abuse occurred—which is evidence in and of itself—physical violence can also leave marks, scratches, bruises and other visual indications. Friends, family members, or colleagues who notice these injuries provide an investigator with valuable corroborating witness testimony, even if the marks or bruises have since healed. Additionally, reporting parties sometimes take pictures of their injuries using digital cameras, computers, or their mobile phones. Even if they can't provide the actual photos, they may have shown those photos to others, again providing an investigator with valuable corroborating testimony, which can be even more critical if an abuser found the photos on the phone and deleted them.

Allegations of Mutual Abuse

Very cagey abusers set up their own defenses well in advance. Sometimes that defense is mutual abuse. In one recent investigation, a responding party encouraged his girlfriend to burn his arm with cigarettes, telling her it was the only way he could feel anything. But, when she finally reported his abuse of her, his response was, "Well she abused me too, look at these burn marks for proof." A responding party, upon learning of an allegation that he physically abused his ex-girlfriend, might contend that she had also hit, scratched, or otherwise physically harmed him during their relationship, and that if he is being investigated for physical abuse then so should she. To be clear, mutual abuse is neither common nor is it truly mutual.

Thorough investigations into these types of situations typically reveal a primary aggressor, with one party often experiencing verbal and emotional abuse well beyond just the alleged physical abuse. If there is insufficient evidence to identify a primary aggressor, then each allegation of IPV should be investigated and resolved independently, as distinct policy violations. It does not matter who started it, who made it worse, or who hit the other harder. Abuse is abuse, and where there is no primary aggressor, each instance of abuse must be addressed accordingly. Additionally, policies should include some type of provision regarding self-defense, so that reporting parties are not held accountable if/when the responding party's counter-claim of physical violence is shown to more likely have been committed defensively.

Further, we mentioned above that one of the common trauma responses to IPV is the fight response. Thus, pay careful attention to the language of the reporting party when they describe responsive violence. They often don't realize (or don't want to admit) they did not have control over their response, when in fact admitting that would help their cause. Probe around how they struck out, what their thoughts were when they did, how they decided where and how to strike out, etc. If their brain simply sent the fight signal, there is unlikely to have been a thought process behind it, and they'll say things like, "it wasn't like me," or "something just came over me," or "the next thing I knew, I had slapped him."

Part of the reason why this is key, of course, is that someone isn't committing mutual abuse when their autonomic nervous system is controlling their responses. In fact, it's even possible for the brain to perceive a threat based on a prior pattern, and trigger a fight response even when there is no actual impending harm. Thus, there may be times when the "victim" appears to strike out unprovoked, and the skilled investigator will know to probe what the previous pattern of violence has been to determine if the reporting party (or their brain) perceived a potential threat, and the fight response kicked in for self-preservation.

Prong 2: Intimate Partner Relationship

The second prong in the IPV analysis is the determination of whether the relationship between the reporting and responding parties constitutes an intimate partner relationship, either presently or in the past. This prong is critical because it differentiates IPV from other forms of general misconduct. For instance, physical abuse without the intimate partner component in most cases constitutes simple assault, just as verbal abuse without the intimate partner component might constitute verbal sexual harassment. What makes striking a spouse or partner different from striking a fellow patron at a bar is that we choose our romantic partners based, at least in part, on their sex (e.g. a heterosexual male chooses a female romantic partner partly because that person is female, just as a lesbian chooses a female romantic partner in part because that person is female).

Intimate partner relationships are thus often inextricably tied to gender in a way that other types of relationships are not, and this is true regardless of the abuser's or victim's gender, gender identity, or sexual orientation.⁷² And, to the extent that violence or abuse within the context of that intimate partner relationship creates a hostile educational environment for the victim of that abuse, those incidents will fall under the purview of Title IX as forms of sex or gender- based harassment. The critical takeaway here is that it is the job of the Investigator to determine that sex or gender is, at least in part, a basis for the IPV, and not simply to assume it. Without that basis, IPV is still a policy violation and will fall under VAWA §304, but it will not fall within Title IX.

To be considered intimate, a relationship must include (or have included) some romantic, sexual, and/or domestic element. Common intimate partner relationships are:

- Married Partners – two individuals who are legally married.
- Domestic Partners – two individuals who live together AND who are romantically interested in one another (not simply roommates, regardless of state law); can be married or unmarried; can include a sexual component, but does not have to.
- Dating Partners – individuals who are romantically interested in one another; can be a couple (dating each other exclusively) or dating casually (concurrently dating other people); can include a sexual component, but does not have to.
- Sexual Partners – individuals who have engaged in at least one sexual act with one another.

In most cases, engaging in sexual activity will create the presumption of an intimate partner relationship, even if it occurred sometime in the past and even if it happened only once. Accordingly, a one night stand that happened six months prior could potentially constitute an intimate partner relationship for the purposes of an IPV analysis, *so long as* there was a preponderance of evidence demonstrating that the subsequent violence or abuse now being alleged was connected to or predicated upon some aspect of the prior sexually intimate relationship.

This often plays out as lingering jealousy, residual anger or resentment, feeling slighted or used, or delayed retribution for some past wrong an abuser felt was committed against them. For example, a male student shoves an ex-lover into a wall because he's jealous of her new boyfriend or love interest. This incident could occur a week or even a year after their breakup and still constitute IPV, given the connection of jealousy to the prior intimate relationship. It is, of course, possible for violence or abuse to have no nexus with the prior sexual activity, in which case the alleged violence or abuse would likely fall under a general misconduct provision (assault, threat, stalking, etc.) and Title IX would not be applicable. As an investigator, your job is to collect all evidence that either proves or disproves the causal relationship between the subsequent abuse

and the sexually intimate relationship. Further, a relationship can be considered intimate even if that relationship has no sexual component whatsoever.

An entirely non-sexual relationship can still possess the love, closeness, and intimacy necessary to be considered an intimate partner relationship, and in fact many dating relationships lack a sexual component, particularly in their early stages. Moreover, a non-sexual relationship can still be considered intimate partner even if the parties themselves, for whatever reason, deny that the relationship is romantic. For example, two students may insist that they are not dating and refuse to be labeled a “couple,” perhaps out of embarrassment or as the result of parental or social pressure, and abstain from any sexual activity for religious reasons, but nonetheless appear to observers as being romantically interested in one another. Despite their statements to the contrary, evidence acquired through investigation may indicate that, rather than the purely platonic relationship they would have everyone believe them to have, it is more likely that they are involved in an intimate relationship and simply refuse to acknowledge or publicly profess it.

Collecting Evidence of an Intimate Partner Relationship

So, what do we look for to determine whether a relationship is intimate in nature? The best evidence regarding the relationship between the reporting and responding parties is likely their own statements and how they describe their relationship with one another. Do both deny an intimate partner relationship? Does one say they have been dating for a couple months, while the other says they were never a thing and has never had nor expressed romantic feelings toward the other?

Terminology can sometimes create an investigative hurdle, with older generations using terms like “going out” and “going steady,” while younger generations use terms like “hooking up” and “just talking” and “friends with benefits.” And even these terms can mean different things to different people. In fact, in today’s college culture, “just talking” is often used to describe a more casual stage in the dating progression that comes before “being together,” which is a more common way of saying two individuals are “officially dating.” It is not unusual for couples who describe themselves as “just talking” to be sexually active together. Thus, for an investigator, these types of responses require follow-up questions to clarify what is meant by the descriptor used and what types of interactions it entails.

More often than not, reporting and responding parties will be open about their relationships, making differentiating intimate partner from platonic relationships fairly straightforward. And since most people tell their social circles about their relationships or love interests, there are often witnesses who can corroborate that the two are indeed a couple. Facebook™ usually can, as well, assuming you don’t snoop around privacy settings to see a status. Even in these situations, Investigators must be diligent in collecting and documenting evidence of the intimate partner relationship to firmly establish an allegation as being IPV.

It is when both parties either deny the existence of an intimate partner relationship or when the statements of the reporting and responding parties contradict, with one vehemently denying ever being intimate with or ever having romantic feelings for the other, that the investigator must delve deeper, using all available evidence to discern the true nature of the relationship. In these cases, the witness statements of friends, family members, and classmates are all the more critical. Text messages and social media interactions also tend to offer valuable evidence, as they may be the only physical and documentable form of communication between the reporting and responding parties. For instance, while a responding party may initially deny any intimate or romantic

connection to the reporting party, past conversations he had with her via text message, a medium he likely thought to be fairly private at the time, may turn out to be rather compelling evidence.

Analyzing how the reporting and responding parties interacted with one another, the types of activities they did together, what language they used when referring to one another, and how their relationship was perceived by witnesses will provide a preponderance of evidence either supporting or discrediting the existence of an intimate partner relationship.

Model Policy: Stalking

Model of Proof

Stalking is repetitive and menacing pursuit, following, harassing, and/or interfering with the peace and/or safety of another.

Rubric

1. Was there interference with the peace or safety of another? If not, there is no policy violation. If so,
2. Was it the result of repetitive and menacing pursuit, following, harassing or interfering? If not, there is no policy violation. If so, there is a policy violation.

Repetitive

One assessment that must be made is whether the action(s) at issue is repetitive (or continuous). While this may seem simple in theory, isolating the conduct in practice is not always an easy task. To constitute repetitive conduct, there must be at least two occurrences, although the repeated conduct does not have to be of the same type, or a long string of continuous incursions. To determine if the conduct is repetitive, consider the following questions:

- When did the action commence?
- Has the reporting party been bothered more than once?
- When did the reporting party first become aware of the conduct?
- Is there a pattern that the responding party has employed?
- Has the responding party used multiple methods to track, follow, or contact the reporting party?
- Has the conduct ceased or is it still ongoing?
- When was the last act?

The answers to these questions will help determine if there is more than one action at issue. The conduct need not, and likely will not, be of the same type. For analysis of this element, focus should be placed simply on determining whether there were two or more instances of behavior. If you determine that there was simply one act, you do not need to continue your analysis: there is no policy violation. If there are two or more acts, you must continue to assess the conduct.

Keep in mind as well that when someone comes to believe they are being stalked, they are often identifying the behavior because it somehow became obvious to them. In most stalking investigations, however, you will find many steps taken surreptitiously by the stalker well before anything became apparent to their target. Thus, stalking looks very different from the vantage

point of the stalker than it does from the vantage point of their target, who will most likely report it to you as a single incident. Whether you can find the precursor behaviors is an open question, but you need to know to look for them, as it is highly likely they are there, if indeed the conduct is stalking.

Menacing

In addition to being repetitive, the conduct at issue must *also* be menacing. In other words, the conduct must intend to control someone, restore a relationship at any cost, or obtain some other desired end for which the stalker is willing to cause harm if they don't get what they want. It is often hard to decipher a stalker's intent to cause harm, but that is what we are looking for. When we can't figure out the intent behind behaviors that include following, pursuit, harassment, or interference, we tend to look at whether the conduct is threatening or meant to frighten or intimidate.

We prefer to look at the behavior from the perspective of the responding party, rather than just the subjective perception of the behavior by the reporting party (e.g., is it *meant* to frighten, rather than just, "is it frightening?"). Menacing is included in this definition to separate stalking from lurking, as detailed above.

In order to ascertain whether the conduct is menacing, it is important to determine the relationship, if applicable, between the parties, both currently and in the past. Understanding the scope and nature of the relationship and interactions between the parties, even if they seem minimal or innocuous at first, will be essential to providing the relationship dynamic insights you will need to determine if stalking is occurring. Communication with both parties, as well as friends, co-workers, and others who may have witnessed or heard about the behavior, is paramount to understanding the conduct at issue and how it is intended and perceived.

There are certain instances where the question of whether the conduct is menacing is incontrovertibly clear, such as repeated threats indicating a clear intent to harm, or repeated online posts with negative comments and information about an individual's specific whereabouts. There are other situations, however, that are much more ambiguous. Certain behavior, considered in isolation or from an outsider's perspective, may not seem particularly pernicious, which is why it is imperative to consider the totality of the circumstances, including the scope of the conduct and its effects on the reporting party. A reporting party need not identify or label the conduct as menacing for the conduct to qualify as stalking, because menacing is really about the stalker's intent. As discussed in more detail below, the standard used to determine whether the conduct is menacing is a reasonable person standard, given the circumstances. Would a reasonable person, placed in the reporting party's shoes, believe that harm is impending and/or feel threatened by the behavior?

Pursuit, following, harassing, and/or interfering with the peace and/or safety of another

Information gathered in assessing the menacing element of this policy will likely overlap with your analysis of this element, which should focus on the action itself. What has the responding party done? How has the responding party targeted the reporting party? While not at all exhaustive, the below are examples of tactics and actions that could constitute stalking if the other elements of the policy definition are met:

- Unwelcome phone calls, voice or text messages, or hang-ups
- Unwelcome emails, instant messages, or messages through social media

- Unwelcome cards, letters, flowers, or presents
- Watching or following from a distance, or spying with a listening device, camera or global positioning system (GPS)
- Installing tracking apps or keystroke recorders on electronic devices
- Approaching or showing up in places such as the target's home, workplace, or school when it is unwelcome
- Leaving strange or potentially threatening items for the target to find
- Sneaking into target's home or car and doing things to scare the target or let the target know the stalker has been there

Technology also serves as a forum for various stalking methods. Impersonating the target online, spamming the target's email accounts, using passwords to access or hack accounts, and posting information about the target are notably different tactics, but each may constitute stalking. In evaluating the behavior, remain open to different tactics: while there are frequently used methods, there is no "typical" stalking conduct.

Consider as well how the actions have affected the reporting party. Look at changes in behavior and routine to determine if the peace and or safety of the reporting party has been affected. Keep in mind that people experience, and react to, stalking tactics in unique ways and various combinations. Given that, stalking victims often experience one or more of the following:

- Self-blame
- Guilt, shame, or embarrassment
- Frustration, irritability, anger
- Shock and confusion
- Fear and anxiety
- Post-traumatic stress disorder (PTSD)
- Emotional numbness
- Difficulties with concentration
- Flashbacks
- Isolation/disconnection from others
- Vulnerability/trust
- Inability to perform at school
- Depression
- Sleep disturbances, nightmares
- Sexual dysfunction
- Fatigue
- Appetite loss/overeating
- Self-medication with alcohol/drugs
- Attention deficits
- Work performance issues