

Guideline 1-012A

I. Purpose and Scope

This Guideline is intended to clarify certain aspects of Policy 1-012 and its attendant rules related to consent.

II. Definitions

Consent, as defined by Rule 1-012, means affirmative, unambiguous, and voluntary agreement.

III. Guideline

- A. Consent is about communication. It is the responsibility of each participant to ensure they receive affirmative consent of the other participant before engaging in each sexual activity or contact. To fulfill the responsibility of ensuring affirmative consent has been given, participants must take reasonable steps with the information known to them at the time of sexual activity or contact to ascertain if consent was given.
- B. Prior consensual sexual contact of any kind does not indicate current consent.
- C. Consent does not have to be verbal, but a standard of verbal agreement to sexual activity provides clear communication to help participants respect each other's boundaries. Lack of protest, lack of resistance, or silence does not constitute affirmative consent.
- D. Consent can be withdrawn at any time by clearly communicating the withdrawal of consent. Once consent is withdrawn, any further sexual activity or contact is not consensual.
- E. Consent is not voluntary when coercion is present. Coercion includes overcoming the will of a participant by force (the use of physical force or inducing reasonable fear of immediate or future bodily injury); violence (the use of physical force to cause harm or injury), menace (a threat, statement or act showing intent to injure), duress (a direct or implied threat of force, violence, danger, hardship, or retribution that causes a reasonable person of ordinary sensitivity, taking into

account all circumstances, including age and relationship, to do or submit to something that they would not otherwise do), threats or use of a deadly weapon, intimidation, or deliberately causing a person to be incapacitated (through drugs or alcohol) or intentionally taking advantage of the other person's incapacitation (including voluntary intoxication), or deception in order to engage in sexual activity or contact.

- F. Consent is not voluntary when a disparity in power between the participants is a source of pressure, manipulation, or intimidation to engage in sexual activity or contact. Relationships with unbalanced power dynamics include, and are not limited to: teacher/advisor and student, supervisor and subordinate employee, coach and athlete, and other similar types of relationships. (This guideline is intended to complement, and not to interfere or conflict with Policy 1-020 Required Professional Boundaries in Relationships).
- G. Consent is not voluntary unless the participant has the capacity to give consent. Sexual activity or contact is not consensual when a participant knows or should know the other participant is incapacitated. The determination of whether a participant should have known that another participant was incapacitated is based upon whether a sober, reasonable person should have known that the participant was incapacitated. A participant's own intoxication or impairment does not diminish their obligation to take reasonable steps to determine whether consent was given. If both participants were incapacitated, the person who initiated the sexual activity or contact may be held responsible for engaging in nonconsensual sexual activity or contact under this policy. A participant is incapacitated when that person cannot make a rational, reasonable decision to give knowing consent. A participant may not have the capacity to consent when:
- 1) the participant is under the influence of a substance (e.g., drugs or alcohol) that impairs or limits their understanding of the extent, fact, or nature of the sexual activity or contact;
 - 2) the participant is asleep or unconscious;

- 3) the participant has a mental or physical condition that impairs or limits their understanding of the extent, fact, or nature of the sexual activity or contact;
 - 4) the participant does not meet the requirements of applicable local, state, or federal laws regarding the legal age of consent. (See, e.g., U.C.A. 76-5-406 <https://le.utah.gov/xcode/Title76/Chapter5/76-5-S406.html>).
- H. Utah code defines circumstances where a sexual offense against a victim is considered to be without the consent of the victim. Conduct that violates U.C.A. 76-5-406 is also considered a violation of this policy.

IV. Contacts

The designated contact officials for this Policy are:

- A. Policy Owner (primary contact person for questions and advice): Office of Equal Opportunity and Affirmative Action.
- B. Policy Officer: General Counsel and Vice President.