AFFIRMATIVE CONSENT AND OTHER APPLICABLE DEFINITIONS

Affirmative Consent
Affirmative consent is a knowing, voluntary and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant’s sex, sexual orientation, gender identity or gender expression. The following conditions apply to the term “consent” according to the University:

1. Silence, lack of physical resistance, and/or the absence of a verbal “no” are not forms of consent.
2. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
3. Consent can be initially given but withdrawn at any time.
4. When consent is withdrawn or can no longer be given, sexual activity must stop. Once a person says “no,” it is established that he or she is not giving consent to a sexual act. Any activity or further encouragement beyond that point could be construed as force, coercion or intimidation.
5. Prior relationship, existing relationship, or prior sexual contact does not pre-suppose consent. A sexual act must be mutually agreed upon each time it occurs.
6. Consent to one sexual act does not indicate consent to all sexual acts.
7. Consent cannot be given if a person is incapacitated (see definition of “incapacitation”). Sexual activity with someone whom one should know to be – or based on the circumstances should reasonably have known to be – mentally or physically incapacitated (by disability, sleep, involuntary restraint, or the taking of drugs or alcohol, unconsciousness or blackout) constitutes a violation of this policy.
8. Consent cannot be given under coercion, force, or threat of physical harm or injury.
9. Consent cannot be given if someone is under the legal age defined by New York State (see NYS Penal Law below).

A person is considered unable to give effective consent under the following conditions according NYS Penal Law, Article 130, Sex Offenses:

1. He/she is unconscious or otherwise physically unable to communicate consent or lack of consent to an act.
2. He/she is mentally disabled, or suffers from a mental disorder, which renders him/her incapable of appraising or controlling his/her conduct.
3. He/she is mentally incapacitated, rendering him/her temporarily incapable of appraising the nature of his/her conduct, due to the influence of alcohol or other drugs, administered to him/her without his/her consent or due to any other act committed upon him/her without his/her consent.
4. He/she is less than 17 years old.
5. He/she is subject to forcible compulsion
Force
Force is the use of physical violence and/or imposing on someone physically to gain sexual access. It includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent. It also includes rendering someone incapacitated by administering alcohol or any other drug.

Coercion
Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes it 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.

Incapacitation
Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to knowingly choose to participate in the sexual activity (e.g., to understand the “who, what, when, where, why or how” of the sexual interaction). Incapacitation can result from disability, sleep, involuntary restraint, or the taking of drugs or alcohol.

NOTE: There is no requirement that a party resists 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.