

Spring 2022
Refresher and
Policy Update



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LMU's Title IX/Sexual Harassment Policy

- Applies to all LMU and JFWA students, employees, faculty, staff, and others participating in or attempting to participate in education programs or activities in the United States
- LMU education programs and activities includes:
 - Locations, events, or circumstances over which LMU **exercises substantial control over the person accused of committing sexual harassment and the context in which the sexual harassment occurs.**
 - Includes conduct that occurs on LMU campuses and/or in any building owned or controlled by a student organization that is officially recognized by the University.

Sexual Harassment

34 C.F.R. §106.30

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. An employee conditioning the provision of an aid, benefit, or service of the university on an individual's participating 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 the recipient's education program or activity;
3. Dating violence, domestic violence, sexual assault, or stalking.

Dating Violence

34 U.S.C. §12291(a)(10)

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall 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.

Domestic Violence

34 U.S. §12291(a)(8)

- A felony or misdemeanor crime of violence committed:
 - By a current or former spouse or intimate partner 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 or intimate partner;
 - By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;
 - 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 in which the crime of violence occurred.

Sexual Assault

20 U.S.C. §10929f)(6)(A)(v)

- Any sexual act directly against another person, without consent of the victim, including instances where the victim is incapable of giving consent. Sexual assault includes:
 - **Rape:** the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of both males and females.
 - **Fondling:** touching of the private body parts of another person for the purposes of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his or her age or because of his or her temporary or permanent mental incapacity.
 - **Incest:** sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - **Statutory rape:** sexual intercourse with a person who is under the statutory age of consent.

LMU Definition of Consent

Consent: a clear, knowing, and voluntary mutual agreement engage in specific sexual behavior. Consent is active and ongoing words or actions that create mutually understandable permission and willingness to engage in specific sexual behavior.

- An individual may withdraw consent at any point during a sexual encounter.
- Consent to one form of sexual activity is not consent for any other forms of sexual activity.
- A person who is incapacitated, or whose capacity is diminished, because of drugs or alcohol may not be able to consent.
- Silence or non-communication is not consent.
- A current or prior dating or sexual relationship is not consent.
- Consent given in response to coercion, violence, or threat of violence is not consent.
- A person who is under the age of consent, as defined by state law, cannot consent.
- A person with a mental defect may not be able to consent.

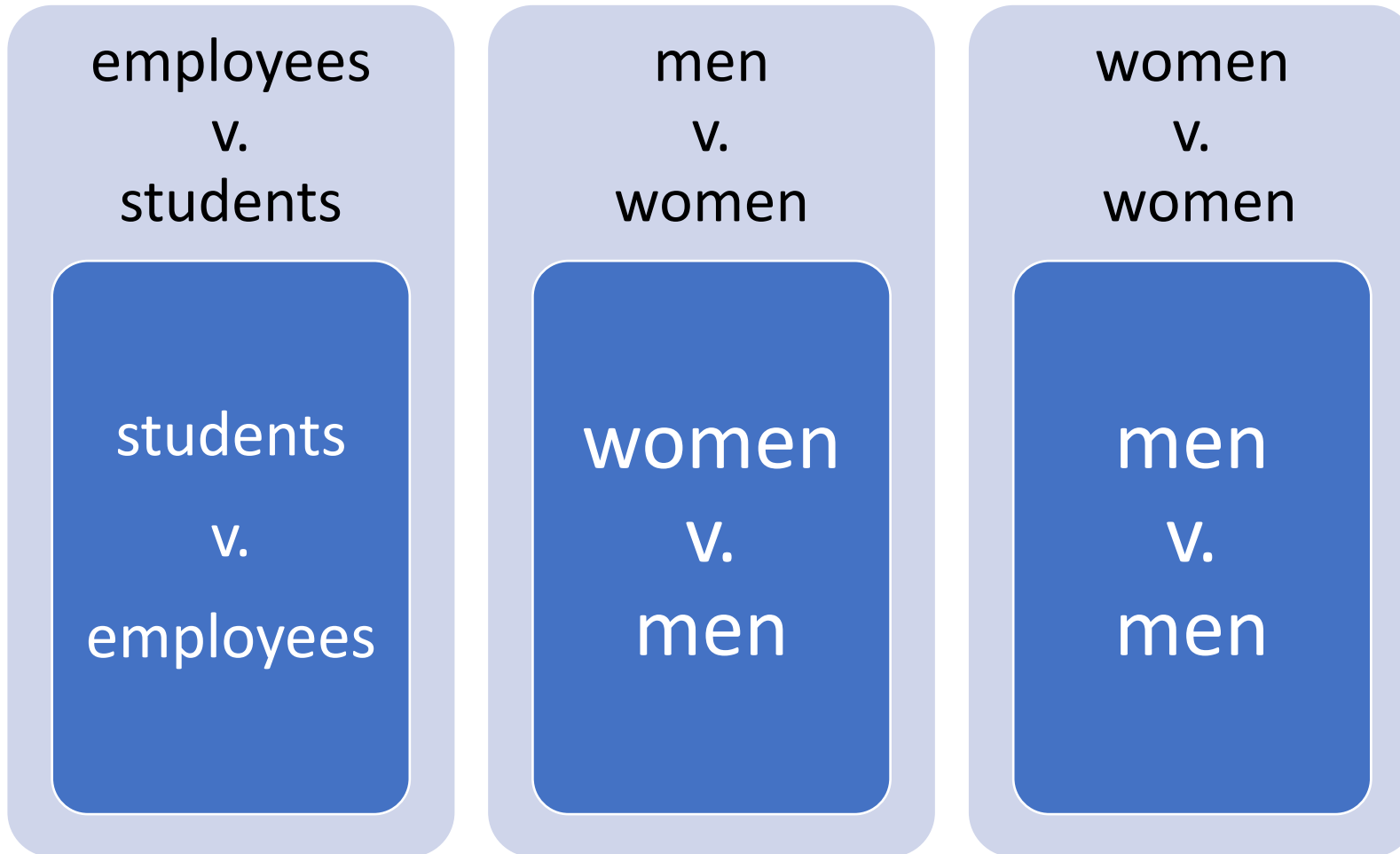
LMU Definition of Incapacitation

- A state beyond intoxication where decision-making faculties are impaired, rendering an individual incapable to consent to sexual activity.
- Incapacitation is an inability to make decisions and an inability to understand who, what, when, where, and how with respect to sexual activity.
- Signs of incapacitation can include, but are not limited to:
 - slurred speech,
 - bloodshot eyes,
 - smell of alcohol on the breath,
 - stumbling,
 - vomiting,
 - unusual behavior, and
 - unconsciousness or passing out.
- Incapacity may depend on an individual's body weight, height, size, tolerance for alcohol and other drugs, and the amount, pace, and type of alcohol or other drugs consumed, amount of food intake prior to consumption, and propensity for blacking out.

Stalking

34 U.S. §12291(a)(30)

- Engaging in a course of conduct directed at a specific person that would cause a reasonable person to
 - Fear for the person's safety or the safety of others; or
 - Suffer substantial emotional distress.
 - For purposes of this definition . . .
 - Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by an action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
 - Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
 - Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.



A person of any gender identity could be the harasser or be the person being harassed. If you suspect that harassment is occurring but are not sure, contact your Title IX Coordinator.

Retaliation

- Adverse actions or acts of revenge against an individual for:
 - For filing, or encouraging someone to file, a complaint of discrimination,
 - For participating in, or refusing to participate in, an investigation or hearing under the policy implementing Title IX regulations, or
 - For opposing discrimination.



Bias

Be Aware and Avoid

- Affinity Bias: Favoring others who are like us or who we have connection or similarities with
 - Question for assumptions
 - Ask if your opinion would change if this person was different/similar to you
- Anchoring Bias: Tendency to be overly influenced by the first thing we hear about a situation
 - Give yourself time to evaluate
 - Check that you've considered all key factors
- The Halo/Horns Effect: Tendency for a first impression to influence what we overall think of that person
 - Remember people are complicated
 - Collect objective information

Other Tips to Avoid Bias

- Avoid Confirmation Bias.
 - Seek out other perspectives on the panel.
 - Assign someone to play devil's advocate.
- Don't rush.
- Avoid Attentional Bias.
 - Be aware of your physical/emotional state and how it could affect decisions.
- Be able to justify your decisions with information.
- Ground yourself in the policy.



Sanctioning Guidelines

Aggravating Factors

- **Nature and Severity of the Incident**
 - Committing multiple violations of the Code during a single incident;
 - Committing a violation of the Code that results in significant injury, trauma, and/or harm to another person, property, and/or the University community.
- **Alcohol and Other Drugs**
 - Committing a violation of the Code while under the influence of alcohol and/or other drugs;
 - Committing a violation of the Code in connection with participating in a high-risk drinking activity, such as binge drinking, drinking games and/or using alcohol-related paraphernalia (e.g., beer funnels/bongs, alcohol luges, paint sticks, shot skis);
 - Causing or requiring others to engage in such behaviors associated with alcohol and/or drugs.
- **Prior Student Conduct History**
 - Committing multiple violations of the Code throughout the student's tenure at the University;
 - Committing a violation of the Code while on an active sanction (Until any sanction is completed, it is considered "active.").

Aggravating Factors

- **Bias-Related Conduct**

- Committing a violation of the Code which demonstrates clear bias against another individual.
- Bias related conduct is defined as and refers to language and/or behaviors which clearly demonstrate intentional bias, unfairness, against an individual (or group of individuals) because of, but not limited to, and individual's actual or perceived:
 - Color
 - Disability
 - Ethnicity
 - Gender
 - National Origin
 - Race
 - Religion
 - Sexual Orientation

- **Retaliatory Conduct**

- Committing a violation of the Code against another individual that is motivated by that individual's involvement in the filing or investigation of a student conduct complaint.

Mitigating Factors

- **Nature and Severity of the Incident**
 - Committing a violation of the Code that was in self-defense and/or defense of other.
- **Risk and Harm**
 - Committing a violation of the Code that did not pose any direct risk and/or harm to an individual, property, the University, or the broader community in which we live.
- **Accountability & Responsibility**
 - Committing a violation of the Code, but exhibiting a significant amount of cooperation with University and public officials responding to the incident.