

# Understanding Terminology

## Reporter

Refers to an individual(s) who is reporting an alleged experience of harm under the College's *Sexual Harassment, Misconduct, & Discrimination Policy*. In other contexts outside the Office of Title IX & Sexual Misconduct, the "Reporter" may be synonymous with "victim/survivor."

## Respondent

Refers to the individual(s) who is alleged to have engaged in Prohibited Conduct under the College's *Sexual Harassment, Misconduct, & Discrimination Policy* and is 'responding' to the allegations. They may be subject to an investigation & other procedural requirements. In other contexts outside of the Office of Title IX & Sexual Misconduct, the "Respondent" may be synonymous with "perpetrator."

## Witness

An individual who has been identified as someone who may have pertinent information about an alleged incident(s). The Reporter & Respondent have equal opportunity to present witnesses, including fact and expert witnesses. The College can also identify witnesses as well. Witnesses will have the opportunity to participate in both the investigation process and Formal Administrative Hearing.

## Advisor

An individual who can attend any meeting/proceeding, but is required to be present at a live formal hearing in order to conduct a cross-examination on behalf of either the Reporter or Respondent. An Advisor may be a friend, family member, lawyer, or other individual of the party's choosing. The College also offers trained Advisors (TCNJ faculty/staff members) that parties may choose to utilize, as well. If a party doesn't have an Advisor for the hearing, TCNJ will provide the party with an Advisor free of charge.

## Hearing Administrator

Any person hired and/or trained by the College who is designated by the Office of Title IX & Sexual Misconduct to conduct Formal Administrative hearings. The Hearing Administrator will have the authority and responsibility of overseeing the formal administrative hearing and objectively evaluating all relevant evidence (both inculpatory and exculpatory) to make an independent determination of responsibility as to whether the Respondent engaged in Prohibited Conduct that is in violation of the *Policy*.

## Assistant Vice President for Student Affairs (AVP)

The individual (or their designee) who serves as the appeal officer for those appealing decisions regarding dismissals of a Formal Complaint and Emergency Removals.



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## Vice President of Student Affairs (VPSA)

The individual (or their designee) who serves as the appeal officer for a student(s) appealing decisions rendered following a Formal Administrative Hearing.

## Title IX Jurisdiction

Collectively, all forms of conduct included in this *Policy* & accompanying procedures are referred to as "Prohibited Conduct" – some may fall under Title IX, while others may not.

Per the Title IX Final Rule, alleged conduct would fall under Title IX if the behavior –

- ✓ Would constitute Sexual Harassment as defined by the Final Rule and outlined in Section II, F.: Prohibited Conduct of the *Policy*;
- ✓ Occurred in the College's Education Program or Activity; AND
- ✓ Occurred against a person in the United States.



The Title IX Final Rule does not draw a line between on-campus, off-campus, or online conduct, provided the conduct occurred in an Education Program or Activity in the U.S. So just because an incident occurred off-campus doesn't necessarily mean it automatically falls outside of Title IX – each case is fact specific.

Regardless, of whether the alleged Prohibited Conduct falls under Title IX or not, if the behavior would otherwise constitute a violation of this *Policy*, the College has the ability to address the conduct through available resolution processes (if the Respondent is affiliated with TCNJ) & provide supportive measures.

## Education Program or Activity

Includes locations, events, or circumstances over which the College exercises substantial control over **both** the Respondent and the context in which the Prohibited Conduct occurs. This also includes any building owned or controlled by a student organization that is officially recognized by the College.

## Formal Complaint



A document filed by a Reporter or signed by the Title IX Coordinator alleging Prohibited Conduct against a Respondent and requesting that the College utilize a College resolution process to adjudicate or resolve the allegation of Prohibited Conduct. A Formal Complaint is required prior to utilizing the Formal Grievance Process or the Alternative Resolution Process. Supportive measures are available *regardless* of whether a Formal Complaint is filed.

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## Formal Dismissal

At any time during the handling of a Formal Complaint, the Title IX Coordinator may dismiss the complaint, in whole or in part. There are two different types of dismissals:

### Mandatory Dismissal

Title IX Final Rule requires the Title IX Coordinator to dismiss some or all of the allegations in the Formal Complaint under Title IX if the conduct alleged in the Formal Complaint:

- would not constitute Sexual Harassment as defined in Section II, F.: Prohibited Conduct of the *Policy*, even if proved;
- did not occur in the College's Education Program or Activity (see below for definition);
- did not occur against a person in the United States; or
- if at the time of filing a Formal Complaint, a Reporter is not participating in or attempting to participate in the Education Program or Activity of the College with which the Formal Complaint is filed.

### Discretionary Dismissal

The Title IX Final Rule grants discretion to the Title IX Coordinator to dismiss a Formal Complaint at any time during the investigation or hearing, if:

- a Reporter notifies the Title IX Coordinator in writing that the Reporter would like to withdraw the Formal Complaint or any allegations therein;
- the Respondent is no longer enrolled or employed by the College; or
- specific circumstances prevent the College from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations therein.

Upon a dismissal, regardless of the type, the College will send written notice of the dismissal & rationale for the decision to both parties via email. Each party may appeal that dismissal.

If the alleged behavior in the Formal Complaint was dismissed due to falling outside of Title IX (criteria listed under Mandatory Dismissal), but the behavior at issue would still, as alleged, constitute a form of Prohibited Conduct under the *Policy*, the dismissal may have no practical effect on the College's investigation and the allegations of Prohibited Conduct may continue to be addressed through a College resolution process.

## Intimate Body Parts

Includes the following: sexual organs, genital areas, anal area, inner thigh, groin, buttock, or breast of a person.

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## Effective Consent

Informed, freely and actively given mutually understandable words or actions which indicate a willingness to participate in mutually agreed upon sexual activity. A person may be unable to give Effective Consent when they are unable to consent due to their age, or because the person is physically helpless, mentally Incapacitated, or Incapacitated from alcohol/Drugs.

- Effective Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Effective Consent is required regardless of whether the person initiating the act is under the influence of Drugs and/or alcohol.
- Effective Consent may be initially given but withdrawn at any time.

Effective Consent cannot be given when it is the result of intimidation, force, or threat of Harm. When Effective Consent is withdrawn or can no longer be given, sexual activity must stop immediately.

## Incapacitation

A state in which a person lacks the capacity to understand the fact that a situation is sexual, or cannot understand or make a rational and reasonable judgment about the nature and/or extent of a situation (the “who, what, when, where, why and how” of the sexual interaction).

### A person is incapacitated if they are:

(1) sleeping; (2) passed out or otherwise unconscious; (3) under the age of consent or under a certain age in relation to the other party to the sexual activity (both of which are matters of state law); (4) due to a disability, do not have the mental capacity to consent.

**Alcohol related incapacitation** results from a level of alcohol ingestion that is **more severe** than that required to produce the minimum levels of influence, impairment, intoxication, inebriation, or drunkenness.

Factors that can influence a person’s status include gender, body size and composition; tolerance for alcohol and other Drugs; amount and type of alcohol or other Drugs taken or administered, and the mixture taken; amount of food intake prior to ingestion; propensity for blacking out; genetics; and time elapsed since the ingestion of the alcohol or Drugs. Under the *Sexual Harassment, Misconduct, and Discrimination Policy*, a person can no longer consent if they are incapacitated.

Incapacitation due to alcohol or drug use is a state **beyond “mere” intoxication or even being drunk**. It exists when a person lacks the ability to make or act on a considered decision to engage in sexual activity. Indicators of incapacitation may include inability to communicate, lack of control over physical movements, and/or lack of awareness of circumstances. An incapacitated person can also experience a blackout state during which the person is conscious, but cannot consent. The relevant standard that will be applied is whether the Respondent knew, or a sober reasonable person in the same position should have known, that the other party was incapacitated and therefore could not consent to the sexual activity.

Some medical conditions may also cause incapacitation. Incapacity can result from factors including, but not limited to mental disability, involuntary physical restraint, or the administration of substances.