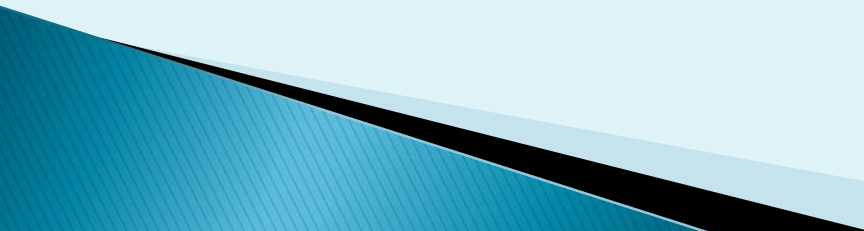


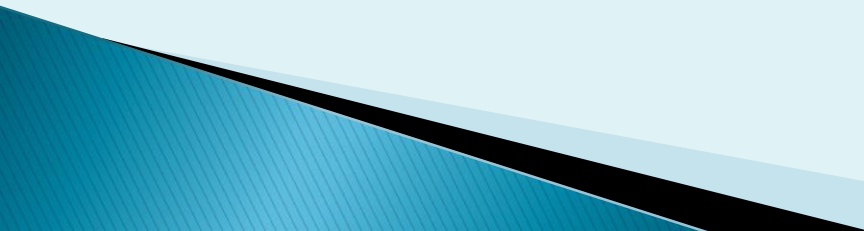
Sexual Misconduct Training for Faculty/Staff

September 12, 2017

Agenda

- ▶ Your Role as a Facilitator
 - ▶ Title IX and WOU Standards
 - ▶ Types of Sexual Misconduct Offenses
 - ▶ Myths and Misconceptions
 - ▶ Rights of the Complainant & Respondent
 - ▶ Consent
 - ▶ Impairment, Intoxication, Incapacitation
 - ▶ Evaluating the Complaint
 - ▶ Common Pitfalls
 - ▶ Preponderance Standard
 - ▶ Sanctioning
 - ▶ Questions
- 

Your Role as Hearing Facilitators

- ▶ Review the file in advance and prepare questions
 - ▶ Arrive at least 10 minutes early
 - ▶ Check in with all committee members to make sure they have their questions answered—encourage their involvement in the hearing
 - ▶ Facilitate the hearing, ask questions as needed
 - ▶ Facilitate discussion in deliberations
 - ▶ Assist with de-brief following hearing
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Title IX

“No person in the United States shall, on the basis of sex, be excluded from participation in, or denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.”

Title IX of the Education Amendments of 1972



Title IX Foundations

- ▶ Title IX applies to sex and gender discrimination
 - **Sexual Harassment**
 - Conduct of a sexual nature that is unwelcome
 - **Sexual Violence**
 - Physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent
 - Coerced sex
 - **Gender-based harassment**
 - Stalking, relationship violence, bullying
 - Failure to conform with sex or gender stereotypes

Applies to students and employees

Who is Protected by Title IX

All Students, regardless of sexual orientation, gender identity, disability, citizenship, age, ethnicity, religion, etc.

Oregon Civil Rights

1953 – Oregon’s Civil Rights Bill made Oregon the 21st state to outlaw discrimination in public places

Current Definition of Discrimination

“Discrimination” means any act that unreasonably differentiates treatment intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on age, disability, national origin, race, color, marital status, religion, sex, or sexual orientation.

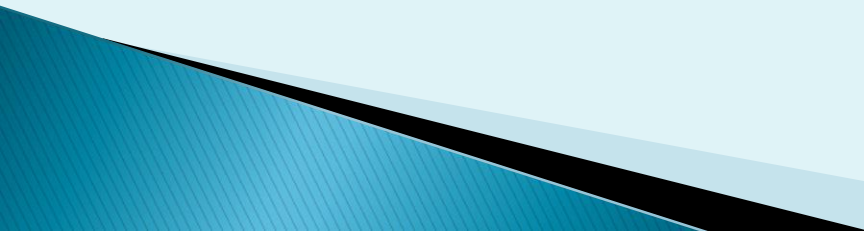
Sexual Misconduct Reporting

Year	Sexual Misconduct	Sexual Harassment	Stalking	Domestic Violence/IPV	Total
2013-14	19	1	0	-	20
2014-15	18	5	1	3	27
2015-16	18	6	3	3	30
2016-17	17	3	2	2	24
2017-18	8	2	1	-	11

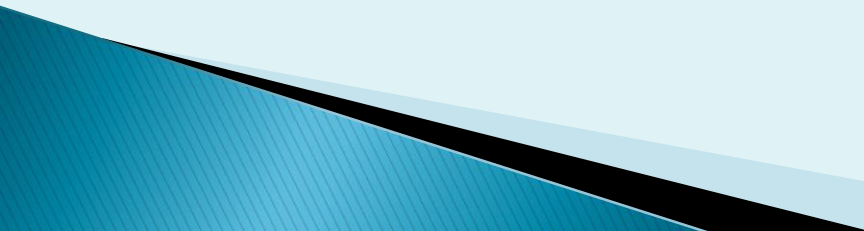
Bear Video

[Bear Video](#)

Code of Student Responsibility

- ▶ Sexual misconduct is an umbrella term encompassing a range of behavior, including sexual harassment, sexual violence, sexual assault, intimate partner violence, domestic violence, dating violence, and stalking.
 - ▶ In general, sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to incapacitation.
 - ▶ Intimate partner violence refers to any act of violence or threatened act of violence, sexual or otherwise, against a person who is or has been involved in a sexual, dating, domestic or other intimate relationship with that person.
 - ▶ The prohibited conduct of this policy includes a broad range of behavior.
- 

Types of Sexual Misconduct Offenses

- ▶ Sexual Harassment
 - ▶ Non-consensual sexual intercourse (rape)
 - ▶ Non-consensual sexual contact
 - ▶ Sexual exploitation
 - ▶ Domestic violence
 - ▶ Intimate partner violence
 - ▶ Dating violence
 - ▶ Stalking
- 

Complainant's Rights

- ▶ To have five working days notice prior to a hearing
- ▶ To have advance notification of hearing process and procedures
- ▶ To have a pre-hearing meeting with the Office of Student Conduct
- ▶ To have knowledge of the charges and the witnesses
- ▶ To have an advisor present during the hearing
- ▶ To indirectly challenge statements from complainant and/or witnesses
- ▶ The right to be shielded from face to face contact with the respondent
- ▶ Right to remain silent during a hearing and not have that silence used against them
- ▶ Right to not appear at a hearing and not have that absence used against them
- ▶ To be notified in writing of hearing outcomes within five working days
- ▶ To appeal to a University official within five working days

Respondent's Rights

- ▶ To have five working days notice prior to a hearing
- ▶ To have advance notification of hearing process and procedures
- ▶ To have a pre-hearing meeting with the Office of Student Conduct
- ▶ To have knowledge of the charges and the witnesses
- ▶ To have an advisor present during the hearing
- ▶ To indirectly challenge statements from complainant and/or witnesses
- ▶ Right to remain silent during a hearing and not have that silence used against them
- ▶ Right to not appear at a hearing and not have that absence used against them
- ▶ To be notified in writing of hearing outcomes within five working days
- ▶ To appeal to a University official within five working days

Myths and Misconceptions

BRAINSTORM

- ▶ Stereotypes about who survivors are
- ▶ Stereotypes about who offenders are

Myths and Misconceptions

What are some of the typical myths about sexual violence?

Victims provoke sexual assaults when they dress provocatively

Victims cause the violence that happened to them

Sexual assault is often the result of miscommunication

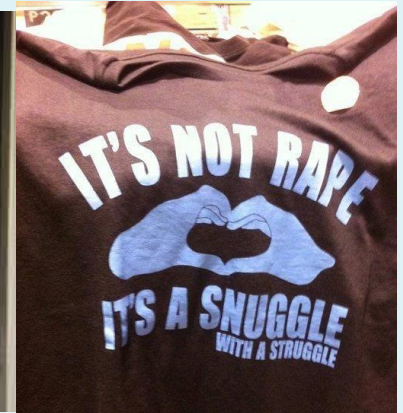
There is no reason for a victim not to report being raped to law enforcement

Women falsely accuse men of sexual assault or “regret rape.”

Most sexual assaults are committed by strangers

Myths and Misconceptions

CAMPUS CULTURE



More images of campus culture



Sex position of the week: The Prestige



Inspired by the motion picture starring Christian Bale and Hugh Jackman, "The Prestige" is a three part sex position.

Part 1: Partners begin in the always enjoyable and well-known doggy-style position. The couple must be facing a window.

Part 2: The partner standing behind the other trades with a friend who has been hiding in the closet. The receiving partner must not realize a change has been made.

Part 3: The partner who is no longer involved in intercourse must run outside and pop up in the

window. If properly executed, the receiving partner will be astonished as if a magic trick has just occurred. Tah dah!

Please read editor's sexy note in the bottom left corner of the page.

State of Oregon Definition of Consent

The Oregon Revised Statutes defines the inability to consent as:

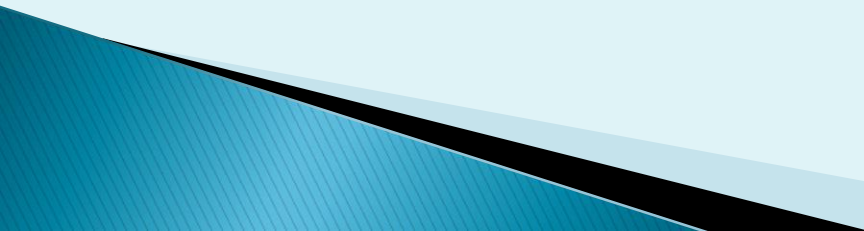
163.315 Incapacity to consent; effect of lack of resistance.

(1) A person is considered incapable of consenting to a sexual act if the person is:

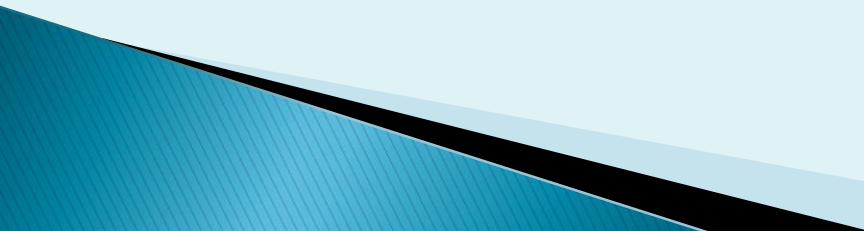
- (a) Under 18 years of age;
- (b) Mentally defective;
- (c) Mentally incapacitated; or
- (d) Physically helpless.

(2) A lack of verbal or physical resistance does not, by itself, constitute consent but may be considered by the trier of fact along with all other relevant evidence. [1971 c.743 §105; 1999 c.949 §2; 2001 c.104 §52]

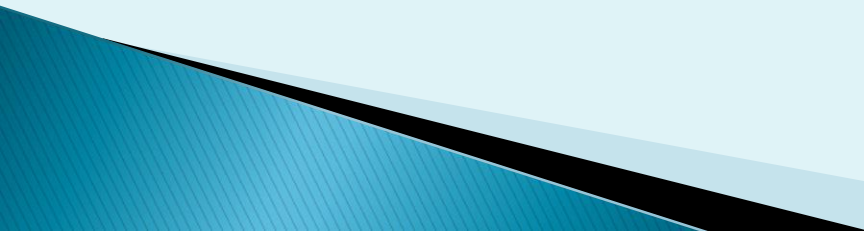
What is consent

- ▶ Consent is informed, knowing, and voluntary.
 - ▶ Consent is active, not passive.
 - ▶ Silence, in and of itself, cannot be interpreted as consent.
 - ▶ Consent can be given by words or actions as long as those words and actions create mutually understandable permission regarding the conditions of sexual activity.
 - ▶ It is the presence of a “yes” when “no” is a viable option
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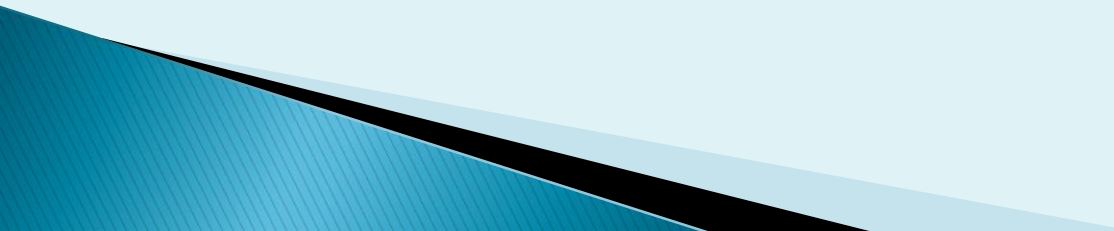
What is consent

- ▶ Consent to one form of sexual activity cannot imply consent to other forms of sexual activity.
 - ▶ Previous relationship or consent cannot imply consent to future sexual acts.
 - ▶ Ability to give clear consent (not impaired by alcohol, drugs, disability, or injury).
 - ▶ Consent can be withdrawn at any point in the ongoing behavior.
- 

What Consent is NOT

- ▶ Refusing to acknowledge when consent is withdrawn
 - ▶ Not acknowledging “no”
 - ▶ Assuming what a person is wearing is an invitation
 - ▶ Someone under the legal age of consent
 - ▶ Pressuring someone by using fear and intimidation
 - ▶ Assuming you have permission because you have done it before
 - ▶ Someone is incapacitated by drugs or alcohol
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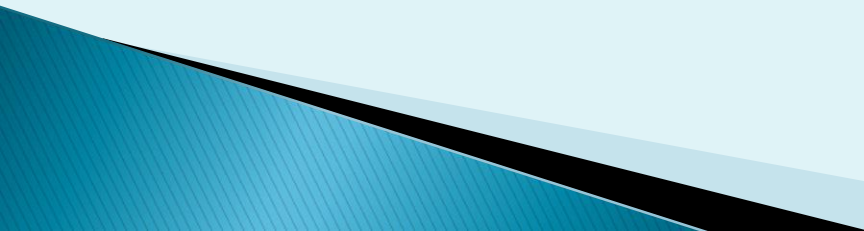
Force is NOT consent

- ▶ Physical force
 - ▶ Mental/emotional force
 - ▶ Financial threats
 - ▶ Coercion or intimidation
 - ▶ Threats/revenge porn
- 

Tea Consent

<https://youtu.be/fGoWLWS4-kU>

Impaired

- ▶ Usually by alcohol or drugs
 - ▶ Impairment starts upon consumption/use
 - ▶ Continuum up to and including incapacitation
 - ▶ Early stages of impairment are often undetectable to others
 - ▶ Person can be impaired but still have capacity
- 

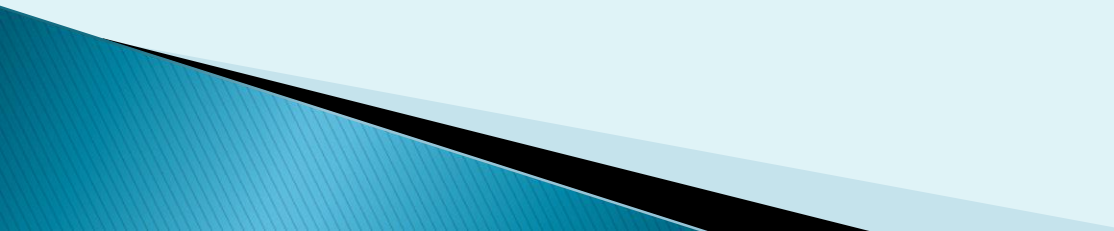
Intoxicated

- ▶ Has legal meaning in most states
- ▶ Intoxicated individuals can still have capacity
- ▶ Intoxication can lead to incapacitation

Incapacitated

- ▶ In the college setting, usually by drugs or alcohol
- ▶ Incapacitation can also result from disability (mental, developmental, or physical) or state of unconsciousness
- ▶ An incapacitated person is one who is “physically helpless” or substantially incapable of appraising their conduct, understanding potential consequences of sexual activity, or deciding to engage in sexual activity.

Two important questions to evaluate

1. Was the complainant incapacitated?
 2. Did the respondent know, or should the respondent reasonably have known, that the complainant was incapacitated?
- 

Evaluating the Complaint

- ▶ Force Based Analysis
 - Physical Force, threats, intimidation, coercion
 - 1) Frequency
 - 2) Intensity
 - 3) Duration
 - 4) Isolation
- ▶ Consent Based Analysis
 - Verbal Consent Based
- ▶ Incapacitated Based Analysis

Common Pitfalls

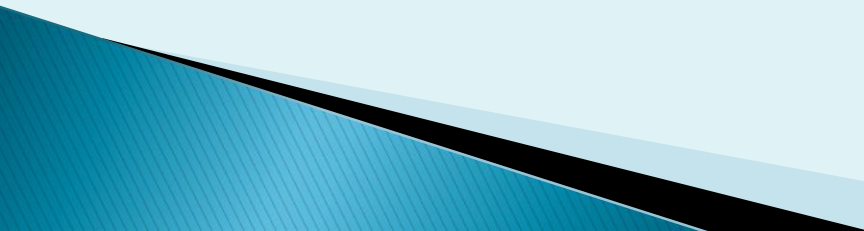
- ▶ *Everyone* believes they must perform for the investigator(s) and adjudicator(s)
- ▶ Everyone wishes to be believed
- ▶ Be watchful of the over-exaggeration of accounts consistent with myths surrounding sexual misconduct
- ▶ The physiobiological impact of trauma *may* be confused as dishonesty
- ▶ Not every inaccuracy is an untruth
- ▶ Use of an advisor/support person to be confused as a lack of cooperation or deception

Preponderance of the Evidence

- ▶ "Preponderance of the evidence" means that the evidence, as a whole, shows that the fact sought to be proved is more probable than not. This is the standard used in adjudicating all disciplinary cases within this Student Conduct Code.
- ▶ Possible changes to addressing Title IX complaints
- ▶ Making decisions
 - Ask yourself, are you persuaded by the all the relevant EVIDENCE that a violation occurred.
 - If you are, that is preponderance.

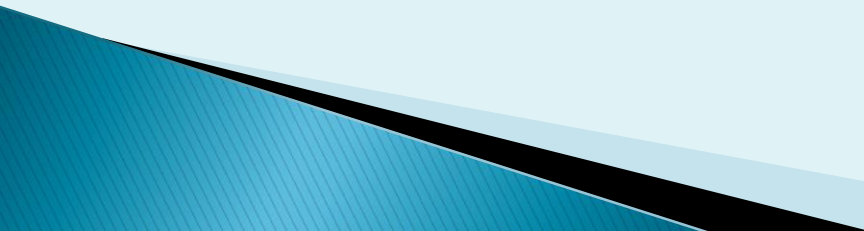
Written Rationale for Finding

This committee has determined, by the preponderance of the evidence, that Joe Smith violated the Code of Student Responsibility, Sexual Harassment and Non-Consensual Sexual Contact. The information evaluated in this determination included a report from University Public Safety which documented an appointment with the Student Health and Counseling Center for a forensic nurse exam, and the information provided at the hearing including medical records from that visit, which weighed heavily in our decision. Additionally, the committee evaluated evidence in the form of testimony from the respondent, complainant and witnesses, which also contributed to the finding.



Written Rationale for No Finding

The committee did not believe there was enough information to establish, by a preponderance of the evidence, the violation of Non-Consensual Sexual Contact and Sexual Harassment based on the definition of consent in the Code of Student Responsibility. The investigation report and testimonies during the hearing provided contradictory information on the level of Complainant's intoxication, including but not limited to the extent to which Complainant's speaking and walking were impaired at the time of the events in question, the perception of the Complainant's witnesses as to her level of intoxication and whether the Respondent was able to fully understand the Complainant's level of intoxication and ability to consent to sexual intercourse



Sanctioning

- ▶ 3 goals to keep in mind during sanctioning:
 - 1) Stop the behavior
 - 2) Prevent recurrence
 - 3) Use the process to help the victim
- ▶ Mediation
 - Not an option
- ▶ Minimum Sanctions

If allegation is upheld, minimum sanctions:

▶ Suspension

- The student is excluded from the University and may not enjoy academic privileges, participate in any University recognized function, be allowed to reside in any University residence hall or building, or be on University grounds. The student must withdraw immediately following any appeal time frame.
(a limited duration – number of terms determined by SCC)

▶ Expulsion

- The student is permanently excluded from the University and may not enjoy academic privileges, participate in any University recognized function, be allowed to reside in any University residence hall or building, or be on University grounds. The student must withdraw immediately following any appeal time frame.

Testimony

<https://youtu.be/mtodMfrlbNg>

Questions?