

Affirmative Consent (Section 6441)

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.”

Specific Provisions on Affirmative Consent to Sexual Activity:

- 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.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.
- New York state law establishes that an individual less than 17 years old is incapable of consent.

Consent must be knowing, voluntary and mutual. Voluntary consent means that consent under coercion such as a threat of violence is not consent. Mutual means that all parties must consent. Being intoxicated is not a license to engage in sexual activity with another person without their consent. Incapacitated individuals cannot consent to sexual activity or contact. Incapacitation is determined by a student conduct or investigation process based on available evidence. Someone who is unconscious, asleep, or involuntarily restrained cannot consent to sexual activity. Minors who cannot consent under New York’s laws covering age of consent are considered incapacitated. Whether all parties consented to sexual activity or contact is to be determined through the student conduct or grievance process