



# THE UNIVERSITY OF TENNESSEE SOUTHERN

The Office of Title IX

## Consent Policy

The following excerpts regarding Consent are found in the University's Title IX Policy. For complete Title IX Policy, please visit [www.utsouthern.edu/about/title-ix](http://www.utsouthern.edu/about/title-ix).

### 2.3 RELATED DEFINITIONS: CONSENT; FORCE; INCAPACITATION

#### 2.3.1 Consent

“**Consent**” means an active agreement to participate in a sexual act. An active agreement is words and/or conduct that communicate a person’s willingness to participate in a sexual act.

Examples of sexual act(s) include, without limitation: vaginal intercourse; anal intercourse; oral sex; any other intrusion, however slight, of a person’s finger or any object into any other person’s genitals or anus; the intentional touching of a person’s intimate parts (genital area, groin, inner thigh, buttock or breast), the intentional touching of the clothing covering the immediate area of a person’s intimate parts, or the intentional touching of any other person with a person’s own intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual gratification.

Consent can be revoked at any time.

Valid Consent cannot be given if:

- A person is Incapacitated and a Reasonable Person in the same situation as the Respondent would have known that the person is Incapacitated;
- A person is Forced; or
- The sexual penetration of a person by the Respondent would constitute mitigated statutory rape, statutory rape, or aggravated statutory rape under state law, based on the ages of the Respondent and the other person.

Appendix B explains how the University determines whether Consent was obtained. Persons subject to this Policy are responsible for understanding and conforming their conduct to the standards described in this Section 2 and Appendix B.

#### APPENDIX B: CONSENT

The University of Tennessee Southern is committed to creating and maintaining a safe and non-discriminatory learning, living, and working environment free from Sexual Harassment including Sexual Assault, Domestic Violence, Dating Violence, and Stalking (collectively, “Sexual Harassment”), Sexual Exploitation, and Retaliation. Prohibited Conduct is defined in the University’s Policy on Sexual Harassment, Sexual Assault, Dating and Domestic Violence, and Stalking (the “Policy”).<sup>1</sup>

The purpose of this Appendix B is to inform students, employees, and third parties about how the University, in investigations and disciplinary hearings,<sup>2</sup> will determine whether sexual act(s) occurred without Consent.

“**Consent**” means an active agreement to participate in a sexual act. An active agreement is words and/or conduct that communicate a person’s willingness to participate in a sexual act.

Examples of sexual act(s) include, without limitation: vaginal intercourse; anal intercourse; oral sex; any other intrusion, however slight, of a person’s finger or any object into any other person’s genitals

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<sup>1</sup> Capitalized terms have the same meaning in the Policy and Appendix B.

<sup>2</sup> Including contested case proceedings under the Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-101 et seq. (“UAPA”).

or anus; the intentional touching of a person's intimate parts (genital area, groin, inner thigh, buttock or breast), the intentional touching of the clothing covering the immediate area of a person's intimate parts, or the intentional touching of any other person with a person's own intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual gratification.

Consent can be revoked at any time.

- Valid Consent cannot be given if:
  - A person is Incapacitated and a Reasonable Person in the same situation as the Respondent would have known that the person is Incapacitated;
  - A person is Forced; or
  - The sexual penetration of a person by the Respondent would constitute mitigated statutory rape, statutory rape, or aggravated statutory under state law, based on the ages of the Respondent and the other person
- During a sexual encounter, each person has responsibility for obtaining Consent from the other person. During a University investigation or disciplinary hearing, the University has the burden of proving that a sexual act(s) occurred without Consent (and it is not a Respondent's burden to prove Consent).
- Whether a person has communicated Consent to participate in a sexual act(s) generally is evaluated from the perspective of what a Reasonable Person who perceived the individual's words and/or non-verbal conduct would have understood; however, in the context of a relationship that has involved sexual activity and a pattern of communicating Consent, whether Consent has been communicated may be evaluated based on a subjective standard (i.e., What did the specific person who initiated the Sexual Act conclude based on the pattern of communication?).
- A verbal "no" (or words equivalent to "no") or the nonverbal communication of "no," even if it sounds or appears insincere or indecisive, means that Consent has not been communicated, or if previously communicated has been withdrawn. The absence of a verbal "no" or the absence of a nonverbal communication of "no" does not necessarily mean that Consent has been communicated.
- Consent must exist from the beginning to the end of each sexual encounter and for each sexual act that occurs during a sexual encounter. A person has a right to change their mind; thus, Consent to participate in sexual act(s) may be withdrawn at any time. A withdrawal of Consent is communicated through clear words and/or conduct that indicate that a person no longer agrees to participate in sexual act(s). Once a person's withdrawal of Consent has been communicated, the other person must cease the sexual act for which Consent was withdrawn and must obtain Consent before reinitiating that sexual act. Consent is automatically withdrawn when a person becomes Incapacitated or is Forced to participate in sexual act(s).
- Consent to one sexual act (e.g., oral sex) does not constitute or imply Consent for another sexual act (e.g., vaginal intercourse), whether during a sexual encounter or based on a previous sexual encounter.
- The following do not communicate a person's willingness to participate in a sexual act(s):
  - Silence, unless accompanied by non-verbal conduct conveying a willingness to participate in sexual act(s) ;
  - Consent communicated by the person on a previous occasion;
  - Consent communicated to a third person;

- The person's failure to resist physical force (however, for purposes of the Policy, the person's resistance to physical force will be viewed as a clear demonstration that the person has not communicated Consent);
  - A current or previous dating, romantic, intimate, or sexual relationship with the other person;
  - Currently or previously cohabitating with the other person;
  - The person's attire, reputation, giving or acceptance of gifts, sexual arousal, or extension or acceptance of an invitation to go to a private residence, room, or other location.
- One's own use of alcohol, drugs, or other substances does not diminish one's responsibility to obtain Consent from the other person. Another person's use of alcohol, drugs, or other substances does not diminish one's responsibility to obtain Consent from that person.

#### Recommendations on Consent

- The University urges individuals to communicate with one another before and throughout a sexual encounter to ensure Consent exists for every sexual act. Because interpreting non-verbal conduct may lead to misunderstanding and a violation of the Policy, persons subject to the Policy are strongly encouraged to err on the side of caution and not rely solely on the non-verbal conduct of another person in concluding that the other person has communicated Consent.

The University urges individuals to be cautious before engaging in sexual activity when either person has been consuming alcohol or using other drugs. Alcohol and other drugs impair a person's ability to give Consent and impair a person's ability to determine whether Consent has been given.