

## Excerpts of Corona College's Title IX Policy

### Jurisdiction

The College must investigate a formal complaint unless it is determined that:

- The conduct alleged in the Formal Complaint would not constitute Sexual Harassment as defined in the Title IX Policy, even if proved;
- The conduct did not occur in the College's education program or activity and/or the College does not have control of the Respondent; and/or
- The conduct did not occur against a person in the United States.

In this case, the Formal Complaint alleges conduct that, if true, may constitute Sexual Harassment under the Nondiscrimination Policy. Further, the conduct was reported to have occurred on campus, in the United States, between two students. Finally, Complainant was (and still is) a student of the College at the time of filing the Formal Complaint. Therefore, the College must investigate this case, and it is appropriate to refer it to the Sexual Harassment Resolution Process for adjudication.

### Relevant Excerpts from the Nondiscrimination Policy

#### Section IV.C. Sexual Harassment

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##### 1. Sexual Assault

Sexual Assault is engaging or attempting to engage in one of the following activities with another individual without consent or where the individual cannot consent because of age or temporary or permanent mental or physical incapacity:

- (1) Sexual intercourse (anal, oral, or vaginal), including penetration with a body part (e.g., penis, finger, hand, or tongue) or an object, however slight;

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#### Section IV.C. Sexual Harassment

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**Consent:** Consent is granted when a person freely, actively and knowingly agrees by word or action at the time to participate in a particular sexual act with a particular person. Consent exists when

mutually understandable words and/or actions demonstrate a willingness to participate in mutually agreed-upon activity at every stage of that sexual activity. Reasonable reciprocation can be implied. Consent can be withdrawn once given, as long as the withdrawal is clearly communicated through words or actions. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the College to determine whether this Policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or they are disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this Policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing and informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.