
PURDUE GRADUATE STUDENT SENATE

RESOLUTION No. FA22 – R005

Resolution Calling for Clarification of the Incapacitation Definition in the Title IX and Anti- Harassment Policy



Author(s): Eleanor Didonna, Lilli Ferguson, Grace Kowalski, Madisyn Arnold, Erin Burke, Amelia Williams, Morgan Oliverez

Sponsor(s): Kristin McPeake; Sophia Babcock; Izzy Weber; Robert Kim; Sydney Terrel; Brayden Johnson; Georgia Boyd; Erika Wheeler; Anna Hampton; Josh Mariani; Evan Chrise; Andrew Jensen; Katie Freund; Shreya Jain; Andrew Askounis; Eanna DeGuzman; Abidemi Aregbe; Addy Famuyiwa; Michael Brown; Mason Merkel; Shye Robinson; Parker Woodruff; Evan Adam; Gabriella Da Silva; Irene Scudder; Zoe Alexander; Purdue Panhellenic Association Executive Board; Jacob White, PGSG Senator, Computer Science

WHEREAS, Title IX is a federal law given to universities which protects individuals from discrimination based on sex in educational programs, including but not limited to sexual harassment and sexual violence; and

WHEREAS, Despite the fact that this regulation is given to the university, each educational institution has the ability to create policy within these guidelines to best serve students; and

WHEREAS, After the decision of Roe v. Purdue, it can be seen that the current definition of incapacitation is not clear, and without clear and consistent guidelines there is more room for error in the system¹; and

WHEREAS, Without clarifying the definition of incapacitation, all students may not understand what qualifies, leading to more confusion and perpetuating underreporting; and

WHEREAS, After a thorough review of the Code of Federal Regulations, Title 34, Subtitle B, Chapter 1, Part 106, there is no set definition of incapacitation by the federal government, making the definition up to the interpretation of the university²; and

¹ <https://www.courtlistener.com/docket/8172103/doe-v-purdue-university/#entry-144>

² <https://www.ecfr.gov/current/title-34/subtitle-B/chapter-1/part-106>

WHEREAS, It was found by reviewing the definitions of incapacitation of other peer and non-peer institutions that while definitions are similar, there was no one definition of incapacitation; and

WHEREAS, Ball State University in Muncie, IN has a thorough and clear definition of incapacitation that could be modeled by Purdue University; and

WHEREAS, Ball State University received federal financial assistance in Indiana, therefore their definition would fit all state and federal guidelines.

NOW, THEREFORE, BE IT RESOLVED, that Purdue reevaluate the “Incapacitated/Incapacitation” section of both the Title IX Harassment (III.C.4) and Anti-Harassment policy.

BE IT FURTHER RESOLVED That the current policy be rewritten to state the following, taken from the Ball State University Title IX Policy:

“Incapacitation is a state where someone cannot make informed, rational judgments and cannot consent to sexual activity. States of incapacitation can be temporary or permanent and include, but are not limited to unconsciousness, sleep, mental disability, or any other state in which a person is unaware that sexual activity is occurring.

Where alcohol or other drugs are involved, incapacitation is defined with respect to how the alcohol or other drugs consumed affected a person’s decision-making capacity, awareness of consequences, ability to make fully informed judgments, the capacity to appreciate the nature and quality of the act, or level of consciousness. In other words, a person may be considered unable to give effective consent due to incapacitation if the person cannot appreciate or understand the "who, what, when, where, why, and/or how" of a sexual interaction.

Incapacitation is a state beyond “under the influence,” drunkenness, or intoxication. The impact of alcohol and other drugs varies from person to person. However, warning signs that a person is approaching or has become incapacitated may include slurred speech, vomiting, walking with difficulty or with assistance, falling/stumbling, odor of alcohol, combativeness, or emotional volatility. Evaluating incapacitation also requires an assessment of whether a respondent was aware or should have been aware of the complainant’s incapacitation based on objectively and reasonably apparent indications of impairment when viewed from the

perspective of a sober, reasonable person in the respondent's position.

In determining whether consent has been given, the university will consider both (1) the extent to which a complainant affirmatively gives words or performs actions indicating a willingness to engage in sexual activity, and (2) whether the respondent knew or reasonably should have known the complainant's level of alcohol consumption and/or level of impairment. A respondent is not excused from responsibility under the influence of alcohol or other drugs and, therefore, did not realize the incapacity of the other person.

An individual who engages in sexual activity with someone the individual knows or reasonably should know is incapable of making a rational, reasonable decision about whether to engage in sexual activity is in violation of this policy."

BE IT FURTHER RESOLVED That this resolution be considered a joint resolution of the Purdue Student Government and the Purdue Graduate Student Government.

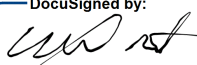
BE IT FURTHER RESOLVED That Purdue Student Government and Purdue Graduate Student Government shall jointly deliver this resolution to the University Senate for consideration.

BE IT FURTHER RESOLVED That this Resolution be delivered to the Purdue Office of Legal Counsel to verify that the enclosed policies are both legal and ethical.

BE IT FURTHER RESOLVED That Purdue Student Government and Purdue Graduate Student Government shall jointly deliver this resolution to Mitch Daniels, President of Purdue University; Jay Akridge, Provost of Purdue University; Dr. Beth McCuskey, Vice Provost for Student Life; Todd Wetzel, Assistant Vice Provost for Student Life.

BE IT FURTHER RESOLVED That Purdue Student Government and Purdue Graduate Student Government shall jointly deliver this resolution to the Title IX office within the Office of Institutional Equity.

PASSED, APPROVED, AND ADOPTED this 16th day of November 2022.

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President, PGSG

DocuSigned by:

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Senate Chair, PGSS

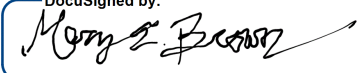
Certification

I, Mary Brown, Senate Clerk of the Purdue Graduate Student Senate, do hereby certify that the foregoing resolution was regularly passed and adopted by the Purdue Graduate Student Senate of Purdue University, at a regular meeting thereof held on the 16th day of November 2022 by the following vote:

AYES (40): Aeronautics and Astronautics - Krishna Bansibhai Thakkar
Agricultural and Biological Engineering - Mike Sserunjogi
Agricultural Economics - Haseeb Daudzai
Agricultural Sciences Education and Communication - Bryanna Nelson
Animal Sciences - Sarah Innis
Anthropology - Olivia Palepoi
Biochemistry - Steven McKenzie
Biological Sciences - Morgan Chaney
Botany and Plant Pathology - Ricky Critchfield
Chemical Engineering - Annie Sun
Chemistry - Solita Wilson
Civil Engineering - Agustin Quinones
Communication - Jonathan Martz (Acting Senator)
Comparative Literature - Marisa J Bryans
Computer Science - Jacob White
Curriculum and Instruction - Theodora Amuah
Doctor of Veterinary Medicine (DVM) - Alaunie Smiley
Earth, Atmospheric, and Planetary Sciences - Austin Blevins
Economics - Talha Cakir
Electrical and Computer Engineering - Somosmita Mitra
Engineering Technology - Pragatheiswar Giri
English - Marisa Yerace (Alternate, Acting Senator)
Environmental and Ecological Engineering - Kendrick Hardaway
Forestry and Natural Resources - Ken Yao Chong
Health Sciences - Sydney Stradtman
Horticulture and Landscape Architecture - Camila Ulloa Gomez
Hospitality and Tourism Management - Rachel Zhang
Human Development and Family Studies - Amy Loviska
Industrial Engineering - Utkuhan Genc
Languages and Cultures - Santiago Parra Giraldo
Materials Engineering - Daniel Sinclair
Mechanical Engineering - Meghavin Bhatasana
Nuclear Engineering - Stepan Ozerov
Philosophy - Mary Brown
Physics and Astronomy - Shayamal Singh
Public Health - Sidney Smith

- Purdue University Interdisciplinary Life Sciences (PULSe) - Lauren Wilbanks
Sociology - Reilly Kincaid
Speech, Language, and Hearing Sciences - Brooke Rodgers
Statistics - Imon Banerjee
- NAYS (1):** Food Science - Anaël Kimble
- ABSENT (8):** Biomedical Engineering - Michael Zimmerman
Ecological Sciences and Engineering (ESE) - Neha Shakelly
Interdisciplinary Biomedical Sciences (IBSC) - Antonia Susnjar
Management - Arindam Roy Chowdhury
Mathematics - Alexandra Cuadra
Political Science - Matthew Ellis
Technology, Leadership, and Innovation - Ralph Rivera
Veterinary Clinical Sciences - Ojo Oluwabunmi T.
- ABSTAINED (7):** Agronomy - Binod Gyawali
Aviation and Transportation Technology - Luigi Dy (Acting Senator)
Basic Medical Sciences - Siyuan Sun
Educational Studies - Stephanie Contreras
Engineering Education - Barbara Fagundes
Industrial and Physical Pharmacy - Pradnya Prakash Bapat
Nutrition Science - Qianyue Wang (Acting Senator)
Food Science - Anaël Kimble

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of November 2022.

DocuSigned by:

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Senate Clerk, PGSS