IS IT SEXUAL MISCONDUCT?: Educational Scenarios

Saint Louis University is committed to educating its community about the importance of creating and maintaining a safe, inclusive, and respectful educational environment. Any report of alleged sexual misconduct will be pursued by Saint Louis University to the extent possible.

The educational scenarios below have been created to help clarify what a violation of the sexual misconduct policy might look like in the real world. In real life situations there are always more details and circumstances that make each situation unique. These scenarios have not been created from any cases at Saint Louis University, they are fictional and do not represent any specific persons. The details of actual cases are safeguarded and the privacy of students involved in sexual misconduct cases is of the utmost importance. These scenarios are provided as a starting point for discussion and learning.

Trigger warning: These scenarios describe situations that some readers may find disturbing.

1. **Alex and Dakota**: Alex and Dakota have been seeing each other casually for about two months. One day, Alex invites Dakota over so that they can hang out. The two begin to make out in Alex’s room. Alex tries to undress Dakota. Dakota stops Alex before Alex can remove Dakota’s underwear. Alex and Dakota continue to kiss. Alex tries to remove Dakota’s underwear again, and Dakota stops Alex from doing so. Alex tries again to remove Dakota’s underwear, and this time Dakota does not stop Alex. Dakota lies still while Alex has intercourse with Dakota. Afterwards, Dakota and Alex lie in bed until Alex has to leave for class.

Did Alex have consent to have intercourse with Dakota?

Dakota stopped Alex from going further and Alex continued to go further. Silence (or lack of resistance) is not the same thing as getting a ‘yes’ or some form of clear communication that indicates the other person is a mutual partner in the sexual activity. Even though Dakota did not shout out or physically stop Alex, Alex did not gain Dakota’s consent to have sexual intercourse. **This is a violation of the Sexual Misconduct Policy.**

2. **Carlee and Jonas**: Carlee and Jonas met during freshman orientation and hit it off. Both students like to go out to parties and are not looking for a serious relationship during their first couple of years of college. Carlee and Jonas occasionally hook up with each other during the Fall semester. One night, Jonas texts Carlee around 2AM and asks if she wants to get together. This is consistent with previous instances where Jonas and Carlee have hooked up. Carlee tells Jonas to come over so they can hook up. Jonas arrives, and the two begin to kiss and take each others’ clothes off. Carlee and Jonas are just about to have sexual intercourse when Carlee’s friends knock on
the door. Carlee is asked to help take care of a friend who is very drunk and needs some help. Carlee leaves and is gone for a few hours. When Carlee returns Jonas is waiting for Carlee in Carlee’s bed, naked. Jonas starts to take Carlee’s clothes off when Carlee gets into bed.

Do Jonas and Carlee need to talk to each other about what they want to do next or can they pick up right where they left off?

Although prior to Carlee leaving the room the two had agreed upon what sexual activity was to take place, things may have changed. The best course of action would be for Jonas to stop and check in with Carlee about what they want to do next. Jonas should not assume that Carlee’s consent from a few hours ago is still good. Just because the two have a history of hooking up does not give someone a ‘blank check’ with regard to consent. Consent must be obtained for each sexual experience.

3. **Nico and Lena:** Nico and Lena are dating. One night, they go back to Nico’s apartment after going out to dinner and movie. Nico and Lena together decide to engage in sexual intercourse, with each person affirmatively communicating their desire and willingness to perform oral sex on each other followed by intercourse. The two engage in mutually agreed upon sexual activity; afterwards Lena spends the night. In the morning, Lena wakes up and overhears a conversation between Nico and one of Nico’s apartment mates, Julian. Julian and Nico are talking about Nico and Lena’s sexual experience and Lena realizes that Nico let Julian watch them have sex last night. Lena is horrified and not sure what to do.

Is this a violation of the Sexual Misconduct Policy?

Lena did effectively consent to sexual activity but Lena did NOT consent to having a third party watch their encounter. Nico and Julian could both be found responsible for having violated the Sexual Misconduct Policy. **The Sexual Misconduct Policy encompasses a wide range of behaviors – any sexual contact without consent is a violation of that policy.** In this instance, both Nico and Julian knowingly took these actions and did not ask for Lena’s consent. This scenario is a form of sexual exploitation, which is covered in the Sexual Misconduct Policy.

4. **Mischa and Riley:** Mischa and Riley dated in high school for two years, but broke up several months before going off to college. A few weeks into the semester, Riley notices that Mischa keeps showing up places where Riley is hanging out. At first, Riley thinks it is coincidental and brushes it off. After a few more times, Riley confronts Mischa and tells Mischa to leave them alone. A few days later, Riley gets a message from a friend who tells Riley that there is a fake Facebook profile of Riley who is trying to ‘friend’ all of Riley’s contacts and is posting nasty status updates with things like ‘My name is Riley and I give STDs to people.’ This fake profile uses Riley’s real pictures that have been copied off of Riley’s actual Facebook page. Riley also learns that the person who started the fake Facebook page messaged a few of Riley’s friends asking for information about Riley. Riley reports the fake profile, which gets taken down after a
couple of days. Then, Riley starts to get missed calls from private numbers at all hours of the day and night. Riley is starting to get scared. A mutual friend tells Riley that Mischa told them they are the one who created the fake Facebook profile.

**Is Mischa’s behavior a violation of the Sexual Misconduct Policy?**

*Yes. Stalking and intimate partner violence are covered under the policy.* Mischa and Riley may no longer be together, but Mischa’s repeated actions are serious and are causing Riley fear. Stalking may take the form of in-person actions (following someone, learning someone’s schedule and showing up where they are repeatedly, asking others about the person, etc) but it can also take the form of cyber-stalking or cyber-bullying (when gender based or relationship based). Mischa’s actions may also constitute other policy violations under Community Standards.

5. **Shay and Remy:** Shay and Remy are not in any official ‘relationship’ but will occasionally hang out and hook up. One night, Shay meets up with Remy at a party. The two dance together, take a couple of shots together, and are generally having fun. As the night goes on, Remy and Shay continue to drink. Remy starts taking more shots and Shay declines, saying they have had enough. Shay gets Remy a couple of drinks, which Remy gladly accepts. Another friend tells Remy they have had enough and that Remy should probably go home for the night. Remy is slurring words slightly and seems a bit off balance but can walk. On the way home, Remy starts to feel sick and acts like they might vomit. Once home, Shay and Remy engage in sexual intercourse. In the morning, Remy has little memory of the experience and is shocked when Shay says that they had sex and that Remy was really into it.

**Was effective consent obtained?**

Although Shay tells Remy that Remy was really into having sex, Remy has little to no memory of what happened. *In all likelihood, Remy was past the point of being able to effectively consent to sexual activity because of Remy’s intoxication level.* Shay had knowledge of Remy’s level of intoxication due to several factors throughout the night. Remy displayed signs of having had too much to drink and even had a friend who identified Remy as being past the point of just having had a few drinks. Based on what happened and the behaviors displayed, Shay should have known that Remy was very intoxicated and should not have engaged in sexual intercourse with Remy that night. Even though Shay was drinking too, it was clear that Remy was far more intoxicated. Alcohol use does not mean that a victim ‘asked for it.’

6. **Skylar and Amari:** Skylar and Amari have been in an exclusive relationship for almost 12 months. Skylar and Amari have not had sexual intercourse with each other. Amari has told Skylar that it’s important for them to wait until a relationship is more serious to introduce that level of physical intimacy. One the night of their one-year anniversary, Skylar and Amari start to get physically intimate with each other. Amari stops Skylar before things get really heated, but Skylar pressures Amari to have intercourse. Skylar tells Amari that they are in love, and that it’s OK, and that it’s important for Skylar’s
needs to have sexual intercourse. Amari is clearly conflicted and tells Skylar ‘I’m really not sure, I don’t think we should go any further.’ The two continue to kiss and touch each other while naked. Skylar eventually holds Amari’s hands down and has sexual intercourse with Amari. When they are finished, Amari lies in bed not speaking. Skylar attempts to cuddle with Amari and tells Amari how much they love Amari. From that point forward, Amari consents to having sexual intercourse with Skylar on a regular basis.

Did Skylar gain effective consent from Amari on the night of their anniversary for sexual intercourse?

No. Don’t let a relationship status muddy the waters of consent. Amari did not consent to sexual intercourse with Skylar and expressed hesitation, reluctance, and a lack of consent. The two are in a committed relationship but that does not change the fact that Skylar needed to have effective consent to engage in sexual intercourse. In fact, Skylar even used a level of physical force to engage in sexual intercourse with Amari. Being in a relationship with someone does not erase the need to have consent for sexual activity. The fact that Amari then went on in later days to consent to sexual intercourse with Amari does not lessen the severity of what happened on their anniversary night. It does not make what happened OK or mean that Amari wanted to have sexual intercourse that night.

7. Avery, Quentin, and Jordana: Avery, Quentin, and Jordana are in the same economics class and study together before big tests. One night while the group is taking a study break, Quentin and Jordana start talking about some of the women in their class. Quentin and Jordana come up with nasty nicknames for a few of the women and gossip about one of the women who they think is trying to flirt with the instructor for a better grade. Later that night Avery sees multiple postings on the social media application ‘yik yak’ about the same people Quentin and Jordana were talking about. One of the women lives on Avery’s floor and Avery overhears her talking to the RA about the postings. Later that week some pornographic pictures with the female student and economics instructor’s face photoshopped on them start circulating around the floor and showing up in community bathrooms. Avery feels confident that Quentin and Jordana are behind these actions, but Avery is unsure what to do since Avery is not the victim or subject of the harassing actions.

Is the behavior described above a potential violation of the Sexual Misconduct Policy?

The Sexual Misconduct Policy covers sexually harassing behaviors. Sexual Misconduct is an umbrella term, meaning that it is inclusive of all unwanted sexual contact including sexual harassment. There does not have to be actual physical contact for the behavior to be considered sexual misconduct. In this case, there have been repeated harassing actions that are sexually based, sexually explicit, or otherwise sexually degrading/humiliating. Avery does not have to be the victim in order to report this situation. This type of behavior can be damaging to many in the community and fosters a sexually abusive and harassing environment.