

Policy Prohibiting Discriminatory Harassment & Sexual Misconduct

Definitions

Revised May 2018

Wesleyan University

The following definitions supplement Wesleyan's Policy regarding discriminatory harassment and sexual misconduct.

Discriminatory Harassment

It is illegal to discriminate against someone on the basis of race, color, religion, national origin, or sex. Accordingly, the University recruits, hires, trains, promotes and educates individuals without regard to race, color, religion, national or ethnic origin, age, disability, veteran status, sex, marital status, sexual orientation, gender identity or gender expression. Under the Federal guidance and direction of Title II, Title IV, Title IX, ADEA, EPA, and ADA / Section 504, Wesleyan University administers all personnel action such as compensation, benefits, transfers, layoffs, return from layoffs, education, tuition assistance, and social and recreational programs without regard to race, color, religion, national or ethnic origin, age, disability, veteran status, sex, marital status, sexual orientation, gender identity or gender expression.

Contractors/Agents

This policy shall apply to all individuals affiliated with Wesleyan University, including employees of outside agencies such as those providing custodial, landscaping/grounds and/or dining services.

Consent and related concepts:

To sexual relationships, Wesleyan defines consent and the related concepts as follows:

- **Consent:**

- Sexual consent is when all parties agree to engage in sexual activity. Consent should always be mutual, voluntary and given without pressure, intimidation, or fear.
- Consent must be freely and affirmatively communicated between all individuals in order to participate in sexual activity or behavior. It can be expressed either by words or clear, unambiguous actions. It is the responsibility of the person who wants to engage in sexual activity to ensure consent of their partner(s).
- Consent must be obtained at each step and be present throughout the sexual activity - - at any time, a participant can communicate that they no longer consent to continuing the activity. If there is confusion as to whether anyone has consented or continues to consent to sexual activity, it is essential that the participants stop the activity until the confusion is clearly resolved.
- Silence, lack of protest, or no resistance does not indicate consent.
- Consent is not present if it results from the use of physical force, threat of physical force, intimidation, coercion, incapacitation or any other factor that would eliminate an individual's ability to exercise free will to choose whether or not to have sexual contact.
- A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Even in the context of a relationship, a willingness to engage in sexual activity must be freely and affirmatively communicated each time.

- **Coercion:**
 - Coercion is the use or attempted use of pressure and/or oppressive behavior, including express or implied threats, intimidation, or physical force, which places a person in fear of immediate harm or physical injury or causes a person to engage in unwelcome sexual activity. A person's words or conduct cannot amount to coercion unless they wrongfully impair the other's freedom of will and ability to choose whether or not to engage in sexual activity. Coercion also includes administering or pressuring another to consume a drug, intoxicant, or similar substance with the intent to impair that person's ability to consent prior to engaging in sexual activity.
- **Incapacitation:**
 - Incapacitation is defined as the inability, temporarily or permanently, to give consent, because an individual is mentally and/or physically helpless, unconscious, or unaware that the sexual activity is occurring. This may or may not be due to alcohol or other drugs (see below).
 - An individual who is incapacitated cannot consent to sexual activity.
- **Alcohol or Other Drugs:** The University considers any sexual contact while under the influence of alcohol or other drugs to be risky behavior. Alcohol and drugs impair a person's decision-making capacity, awareness of the consequences, and ability to make informed judgments.

Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual harassment, misconduct, or violence and does not diminish one's responsibility to obtain consent.

If there is any doubt as to the level or extent of the other individual's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.

- From the perspective of the reporting party, the use of alcohol or drugs can limit a person's ability to freely and clearly give consent.
- From the perspective of a responding party, the use of alcohol or drugs can create an atmosphere of confusion over whether or not consent has been freely and clearly sought or given.
- It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication. If there is any doubt as to the level or extent of the other individual's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.
- Warning signs of incapacitation may include one or more of the following: slurred speech, vomiting, unsteady gait, combativeness, emotional volatility, and/or sleeping.
- The perspective of a reasonable person will be the basis for determining whether a responding party should have been aware of the amount of the ingestion of alcohol or drugs by the reporting party, or of the extent to which the use of alcohol or drugs impacted a reporting party's ability to give consent.
 - For example, an individual who is in a blackout may appear to act normally and be giving consent, but may not actually have conscious awareness or the ability to consent to or later recall the events in question. The extent to which a person in this state affirmatively gives words or actions indicating a willingness to engage in sexual activity (and the person reasonably could not have known of the person's level of alcohol consumption and/or level of impairment) must be

evaluated in determining whether consent has been given.

Sexual misconduct: Wesleyan University prohibits all forms of sexual misconduct. Sexual misconduct refers to a broad spectrum of behavior encompassing sexual harassment and all forms of non-consensual sexual activity. For the purposes of this policy, the University prohibits the following specific forms of sexual misconduct: sexual assault, sexual exploitation, intimate partner violence, stalking, sexual harassment and retaliation. Sexual misconduct affects individuals of all genders, gender identities, gender expressions, and sexual orientation, and does not discriminate by racial, social, or economic background.

Sexual assault: Having or attempting to have sexual intercourse or sexual contact with another individual without consent. This includes sexual intercourse or sexual contact achieved by the use or threat of force or coercion, where an individual does not consent to the sexual act, or where an individual is incapacitated. Sexual assault includes the following acts:

Related to Non-consensual Sexual Penetration: Penetrating or attempting to penetrate another individual without their consent. This includes vaginal or anal penetration, however slight, with a body part or object, or oral copulation by mouth-to-genital contact.

Related to Non-consensual Sexual Contact: Having or attempting to have sexual contact with another individual without consent. Sexual contact includes kissing, touching the intimate parts of another, causing the other to touch one's intimate parts, or disrobing of another without permission. Intimate parts may include the breasts, genitals, buttocks, mouth, or any other part of the body that is touched in a sexual manner.

Sexual exploitation: An act or acts committed through non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any non-legitimate purpose. The act or acts of sexual exploitation are prohibited even though the behavior does not constitute one of the other sexual misconduct offenses. Examples include, but are not limited to: observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved; non-consensual streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved; prostituting another individual; knowingly exposing another individual to a sexually transmitted disease or virus without his or her knowledge; and inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

Intimate partner violence: Intimate partner violence, also referred to as dating violence, domestic violence and relationship violence; includes any act of violence or threatened act of violence against a person who is, or has been involved in, a sexual or dating relationship with that person. It may involve one act or an ongoing pattern of behavior. Intimate partner violence can encompass a broad range of behavior, including, but not limited to threats, assault, property damage, violence or threat of violence to one's self, one's sexual or romantic partner or to the family members or friends of the sexual or romantic partner. Intimate partner violence affects individuals of all genders, gender identities, gender expressions, and sexual orientation and does not discriminate by racial, social, or economic background.

The University will not tolerate intimate partner violence of any form. For the purposes of this policy, the University does not define intimate partner violence as a distinct form of misconduct. Rather, the

University recognizes that sexual harassment, sexual assault, sexual exploitation, stalking, harm to others, emotional and psychological abuse, harassing conduct, and retaliation may all be forms of intimate partner violence when committed by a person who is or has been involved in a sexual, dating or other social relationship of a romantic or intimate nature with the reporting party.

Stalking: A course of conduct directed at a specific person that would cause a reasonable person to: fear for their safety or the safety of others; or suffer substantial emotional distress. This includes cyber-stalking, a particular form of stalking in which electronic media is used to pursue, harass, or make unwelcome contact with another person. Stalking may involve individuals who are known to one another or have an intimate or sexual relationship, or may involve individuals not known to one another.

Sexual harassment: Sexual harassment is a form of discriminatory harassment occurring within an employment or educational context that federal and state law addresses with very specific provisions. In cases where sexual harassment is alleged, the University has a duty to act promptly, so as to assure that if such harassment is, in fact, occurring or has occurred, corrective action is taken and further harm is prevented.

According to the state of Connecticut unwelcome sexual advances, requests of sexual favors, and/or other verbal or physical contact of a sexual nature constitute sexual harassment when:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's academic or employment success,
- submission to or rejection of such conduct by an individual is used as the basis for academic or employment evaluation and decisions affecting such an individual, or
- such conduct has the purpose or effect of substantially interfering with an individual's work performance, or creating an intimidating, hostile, or offensive living, learning, or work environment.

The effect of sexual harassment will be evaluated based on the perspective of a reasonable person in the position of a reporting party. A single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to provide a hostile environment, particularly if the harassment is physical.

Retaliation: Acts or attempts to retaliate or seek retribution against the reporting party, responding party, or any individual or group of individuals involved in the investigation and/or resolution of an allegation; including subjecting a person to an adverse employment or educational action because they made a complaint under any portion of this policy or responded to, assisted or participated in any manner in an investigation under this policy. Any individual or group of individuals, not just a responding party or reporting party, can be guilty of retaliation. Retaliation may include continued abuse or violence and other forms of harassment.

Title IX Officer(s): Additionally, Title IX Officer(s), as directed by OCR, have responsibilities in Recruitment, Admissions, and Counseling. The Title IX Officer reviews materials used for counseling students, in terms of class, or career selection, or for counseling applicants for admissions, to ensure that the University does not use different materials for students based on sex and/or gender identity

or expression, or use materials that permit or require different treatment of students based on sex and/or gender identity or expression.