

SEXUAL MISCONDUCT POLICY

CORNISH COLLEGE OF THE ARTS

Developed & Updated by
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President's Cabinet

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Cornish College of the Arts
Sexual Misconduct Policy

Policy Statement:

Cornish expressly prohibits all forms of sex-based discrimination including sexual harassment, sexual violence, stalking, sexual exploitation, and intimate partner violence, (collectively, “sexual misconduct”) committed by anyone on property owned or controlled by Cornish or at Cornish sponsored activities, events, or programs. This policy applies to all members of the Cornish community including faculty, staff, students, trustees, contractors, volunteers, and guests. This policy applies regardless of sex, gender, gender expression, gender identity, and sexual orientation. Sexual misconduct and retaliation will be promptly and fairly addressed and remedied according to the applicable Cornish resolution process.

Jurisdiction:

This policy applies to conduct committed on property owned or controlled by Cornish and at Cornish sponsored activities, events, and programs. All allegations, regardless of where they are alleged to have occurred, will be assessed to determine whether the conduct falls within the context of Cornish employment or educational activities, events, or programs. This policy may also apply when the Chief Equity Officer determines the alleged conduct implicates a substantial Cornish interest.

Respondents who are not members of the Cornish community or not subject to Cornish resolution processes may be subject to restrictions for failing to comply with this policy.

Disciplinary Standard:

Conduct is subject to disciplinary action when it creates a hostile environment. A hostile environment exists where conduct is so severe, persistent, or pervasive and objectively offensive that it unreasonably alters the condition of, or substantially interferes with, an individual’s employment or education benefits. Violations of this policy may result in sanctions up to and including, suspension, expulsion, or termination.

Allegations that do not rise to the level of a hostile environment may be addressed through various methods including, but not limited to, education, remedies, and/or training.

Requirement of consent:

Consent¹- clear, knowing, and voluntary permission by word or action to engage in sexual activity. As individuals may experience the same interaction differently, it is incumbent upon each party to determine that the other has consented before engaging in the activity. Consent may, however, be ratified by word or action at some point during or after the interaction if consent is not clearly provided prior to engaging in the activity.

¹ Washington defines consent as actual words or conduct indicating freely given agreement to have sexual intercourse or conduct at the time of the intercourse or contact. A link to Washington law can be found: <https://app.leg.wa.gov/rcw/default.aspx?cite=9A.44.010>

Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back without the need to explicitly obtain their consent to being kissed back.

Consent can be withdrawn once given, so long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual activity cannot be presumed to be consent for other sexual activity. Further, a current or previous intimate relationship is insufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on the parties involved in an incident. Rather, the burden is on Cornish 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.

Consent in relationships must also be considered in context. When parties consent to, for example, Bondage/Discipline, Dominance/Submission, Sadism and Masochism ("BDSM") or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying "no" may be part of kink and thus consensual. Accordingly, Cornish's evaluation of communication in kink situations will be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.²

In Washington, consent to sexual activity cannot be granted by a person under the age of 16. Accordingly, sexual activity between an adult and a person under the age of 16 may constitute a crime and could require a report to applicable child welfare agencies.

Incapacitation - a state in which a person lacks the capacity to give informed consent because they are helpless, asleep, unconscious, unable to adequately process information, disoriented, and/or unable to make informed, rational, and reasoned decisions. Incapacitation is not synonymous with intoxication, impairment, blackout, brownout, being drunk, or being "high."

Incapacitation is evaluated through consideration of all relevant indicators of a person's state. Incapacitation may be the result of the consumption of alcohol or drugs, temporary or permanent physical or mental health conditions, or involuntary physical restraint.

A violation of this policy involves an inquiry into whether a responding party engaged in sexual activity with a person they knew, or should have known to be incapacitated. An assessment of whether a respondent should have known of the incapacitation of the complainant is assessed using the objective standard of whether a reasonable person, in the same or similar circumstances, exercising sober, good judgment would have known.

² Consent definition largely taken from 2019 ATIXA 1P1P

Types of Sexual Misconduct:

Coercion - unreasonable conduct employed to compel someone to engage in sexual activity.

Sexual harassment - unwelcome sexual or sex/gender-based verbal, written, and/or physical conduct.³

Intimate Partner Violence (“IPV”) - also known as domestic or dating violence, is a pattern of abusive behavior (including verbal, physical, emotional, or financial) used by those who are involved or have been involved in an intimate relationship, to gain or maintain power and control over another intimate partner.⁴

Non-consensual sexual intercourse - any sexual intercourse, however slight, with any object, by a person upon another person, that is without consent and/or by force.

Non-consensual sexual contact⁵- any intentional sexual touching, however slight, with any object, by a person upon another person, that is without consent and/or by force.

Sexual intimidation - threatening a person with sex acts, with the intention to place them in fear of injury or death. The threat must be both specific and credible.

Stalking - repetitive and menacing pursuit, following, harassing, and/or interfering with the well-being and safety of another.

Sexual Exploitation - taking non-consensual or abusive sexual advantage of another for one’s own benefit or for the benefit of anyone other than the person being exploited, and does not otherwise constitute sexual misconduct under this policy. Sexual exploitation includes, but is not limited to:

- Voyeurism - observing or allowing third-parties to observe the private sexual activity of others without consent or viewing another’s intimate parts in a place where they have a reasonable expectation of privacy.
- Disseminating, recording, or transmitting private sexual images or audio without consent.
- Using, installing, or permitting the use or installation of a device for the purpose of recording another’s sexual activity, intimate body parts, or nakedness in a place where the person would have a reasonable expectation of privacy without consent.
- Prostituting others.

³ Writing includes electronic communication.

⁴ Washington state law defines domestic violence as almost any criminal act committed by a family or household member against another. Links to Washington state law can be found: <https://apps.leg.wa.gov/RCW/default.aspx?cite=10.99.020> and <https://apps.leg.wa.gov/RCW/default.aspx?cite=26.50.010>

⁵ Washington state law defines sexual contact as touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party. Links to Washington state law can be found: <https://app.leg.wa.gov/rcw/default.aspx?cite=9A.44.010>

- Exhibitionism - exposing one's intimate parts in non-consensual circumstances (excluding streaking).
- Unwelcome sexting.
- Engaging in sexual activity with another person while knowingly infected with a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the infection in advance.
- Administering alcohol or drugs to another person without their knowledge or consent for the purpose of engaging them in sexual activity.

Retaliation:

The adverse treatment of an individual because of their participation in the reporting, investigation, or resolution of an alleged violation of this policy.

Interim measures:

Interim measures are accommodations, agreements, arrangements, and services, afforded by Cornish after receiving notice of alleged policy violations but prior to the determination of formal outcomes. Failure to comply with interim measures is a violation of this policy.

Reporting:

All employees (except those whom Cornish has designated as confidential) who receive notice of a potential violation of this policy are expected to report all known details to the Chief Equity Officer within 24 hours of becoming aware of the report or incident.

Failure to report:

Failure of a non-confidential employee to report potential violations of this policy may be subject to disciplinary action for failure to comply.

