

WAC 516-21-180 Sexual misconduct. Sexual misconduct is a violation of the code and includes nonconsensual sexual contact, sexual exploitation, and sexual violence (sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination). See also WAC 516-21-110 Harassment (other than sexual harassment or discriminatory harassment), WAC 516-21-115 Discrimination or discriminatory harassment, WAC 516-21-060 Conduct that harms or threatens, WAC 516-21-188 Stalking, WAC 516-21-184 Dating violence, and WAC 516-21-186 Domestic violence.

(1) Consent to any sexual activity must be clear, knowing, and voluntary. Anything less is equivalent to a "no." Clear, knowing, and voluntary consent to sexual activity requires that, at the time of the act, actual words or conduct demonstrate clear permission regarding willingness to engage in sexual activity and the conditions of such activity. Silence or passivity is not consent. Consent is ongoing and can be withdrawn at any time. Even if words or conduct alone seem to imply consent, sexual activity is nonconsensual when:

(a) Force or coercion is threatened or used to procure compliance with the sexual activity;

(i) Force is the use of physical violence, physical force, threat, or intimidation to overcome resistance or gain consent to sexual activity.

(ii) Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to obtain consent from another. When an individual makes it clear through words or actions that they do not want to engage in sexual contact, want to stop, or do not want to go past a certain point of sexual interaction, continued pressure beyond that point may be coercive. Other examples of coercion may include using blackmail, extortion, or a position of power to overcome resistance or gain consent to sexual activity.

(b) The person is asleep, unconscious, or physically unable to communicate their unwillingness to engage in sexual activity; or

(c) The person lacks the mental capacity at the time of the sexual activity to be able to understand the nature or consequences of the act, whether that incapacity is produced by illness, the influence of alcohol or another substance, or some other cause. When alcohol or drugs are involved, a person is considered incapacitated or unable to give valid consent if they cannot fully understand the details of the sexual interaction (i.e., who, what, when, where, why, and how), and/or they lack the capacity to reasonably understand the situation and to make rational, reasonable decisions.

(2) Sexual assault is attempted or actual nonconsensual penetration, no matter how slight, of the vagina or anus by any body part or object; or of another's vagina, anus, or mouth by a penis. Sexual assault is also nonconsensual sexual contact or any intentional sexual touching, however slight, with any object or body part, by one person against another person's intimate parts (genitals or genital area, breast, or buttock (clothed or unclothed)). This includes any intentional bodily contact of one's own intimate area with another person.

(3) Sexual exploitation occurs when a person takes nonconsensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses explained above.

(4) Use of alcohol or other drugs is not a valid defense to a violation of this policy.

(5) Sexual misconduct represents a range of behaviors; it can occur between strangers or acquaintances, including individuals involved in an intimate or sexual relationship. Sexual misconduct can be committed by individuals or groups of individuals directed to one or more people and can occur between people of the same or different sex. See also *University Policy U1600.04 Preventing and Responding to Sexual Harassment Under Title IX*.

[Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 22-01-075, § 516-21-180, filed 12/10/21, effective 12/11/21. Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-180, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-180, filed 12/9/11, effective 1/9/12.]