

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 Title IX Coordinator 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, 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.

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>

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.

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

² Consent definition largely taken from 2019 ATIXA 1P1P

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.

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, determined by a reasonable person to be so severe, pervasive, and objectively offensive, that it effectively denies a person equal access to Cornish's educational program or activities.³

Quid Pro Quo: an employee of Cornish, conditions the provision of an aid, benefit, or service of Cornish, on an individual's participation in unwelcome sexual conduct.

Dating Violence - violence, on the basis of sex, committed by a person, who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.

The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

*Dating violence does not include acts covered under the definition of domestic violence.

Domestic Violence - violence, on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Washington, or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Washington.

*To categorize an incident as domestic violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

Sexual Assault - Any sexual act directed against another person, without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent.

³ Writing includes electronic communication.

Rape: penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant

Sodomy: Oral or anal sexual intercourse with another person, forcibly, and/or against that person's will, or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age^[2] or because of temporary or permanent mental or physical incapacity

Sexual Assault with an Object: The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Fondling: The touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Incest: Non-forcible sexual intercourse, between persons who are related to each other, within the degrees wherein marriage is prohibited by Washington law.

Statutory Rape: Non-forcible sexual intercourse, with a person who is under the statutory age of consent of 16.

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.
- 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: Neither Cornish nor any member of the Cornish community may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, because the individual has made a report or complaint, testified, assisted, or participated, or refused to participate in any manner in an investigation, proceeding, or hearing.

Supportive measures:

Supportive 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 supportive measures is a violation of this policy.

Sanctions:

Cornish reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under 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 Title IX Coordinator within 24 hours of becoming aware of the report or incident.

Training:

All employees are required to complete Cornish provided online training regarding reporting obligations annually. Proof of completion shall be provided to your supervisor upon completion.

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.