

Westminster College prohibits sexual assault, sexual harassment, stalking and domestic violence.

A. PROHIBITED CONDUCT

SEXUAL ASSAULT: Sexual assault is 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:

- **Attempted or Actual Penetrations:** Having or attempting to have non-consensual vaginal, anal, or oral penetration, however slight, with any object or body part, with another person.
- **All Other Forms of Non-Consensual Sexual Contact:** Having or attempting to have any non-consensual, non-accidental touching of a sexual nature. This touching can include, but is not limited to, kissing or touching the private parts of another, or causing the other to touch the harasser's private parts.

Consent and related terms are defined in part B. of this section.

SEXUAL EXPLOITATION: Sexual exploitation is an act or omission to act that involves taking non-consensual, unjust, humiliating, or abusive sexual advantage of another, either for his or her own advantage or to benefit or advantage anyone other than the Complainant. Examples of sexual exploitation include but are not limited to the following:

- Creating a picture(s), movie(s), webcam, tape recording(s), graphic written narrative(s), or other means of memorializing sexual behavior or a state of undress of another person without the other's knowledge and consent;
- Sharing items described in the paragraph above beyond the boundaries of consent where consent was given. For example, showing a picture to friends where consent to view it was given for oneself only;
- Observing or facilitating observation by others of sexual behavior or a state of undress of another person without the knowledge and consent of that person;
- "Peeping Tom" or voyeuristic behaviors;
- Engaging in sexual behavior with knowledge of an illness or disease (HIV or STD) that could be transmitted by the behavior without full and appropriate disclosure to the partner(s) of all health and safety concerns;
- Engaging in or attempting to engage others in "escort services" or "dating services" which include or encourage in any way sexual behavior in exchange for money;
- Intentionally, knowingly, or surreptitiously providing drugs or alcohol to a person for the purpose of sexual exploitation; or
- Exposing another person to pornographic material without the person's advance knowledge or consent.

STALKING: Stalking is a pattern of repeated and unwanted attention, harassment, contact, or any other course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety, or the safety of others, or suffer substantial emotional distress. This includes cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used to pursue, harass, or make unwelcome contact with another person.

SEXUAL HARASSMENT: Sexual harassment is unwelcome sexual advances, requests for sexual favors, and other physical, visual, or verbal behavior of a sexual nature where:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or education; or
- Submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting the individual; or
- Such conduct has the purpose or effect of:
 1. Unreasonably interfering with an individual's academic or professional performance; or
 2. Creating an intimidating, hostile, or demeaning employment or educational environment.

A single isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need to show a repetitive series of incidents to provide a hostile environment, particularly if the harassment is physical.

Examples of potentially sexually harassing behaviors include, but are not limited to, the following:

- Unwelcome sexual advances, sexual innuendo, or requests for sexual favors in person, by phone, by electronic message or photo, written words or images such as graffiti, and social media postings;
- Unwelcome behavior of a sexual nature by a faculty member, coach, or other staff person directed towards a student, a colleague, or other community member;
- A person in a position of authority (such as a faculty member, coach, supervisor) suggesting that an educational or employment benefit will result from submission to some unwelcome behavior of a sexual nature or will be denied for refusal to engage in sexual activity;
- Repeated sexual remarks, offensive stories, remarks about sexual activity or experiences, sexual innuendoes or other suggestive comments that are unwanted and unwelcome by another;
- Displaying or showing pictures, cartoons, or other printed materials of a sexual nature in the workplace or in an educational setting where there is insufficient academic relevance;
- Exposing the private parts of one's body to another person, or in public forums.

INTIMATE PARTNER VIOLENCE: Intimate partner violence is also sometimes known as dating violence, domestic violence, or relationship violence. The College recognizes that sexual assault, sexual exploitation, sexual harassment, stalking, and retaliation may all be forms of intimate partner violence when committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. In general, intimate partner violence includes physically, sexually, and/or psychologically abusive behavior that arises in the form of a direct violent act, or indirectly as acts that expressly or implicitly threatens violence. Intimate partner violence also occurs when one partner attempts to maintain power and control over the other through one or more forms of abuse, including sexual, physical, verbal, or emotional abuse. Intimate partner violence affects

individuals without regard to gender or sexual orientation, and does not discriminate by racial, social, or economic background.

RETALIATION: Retaliation is defined as attempts or acts to seek retribution including, but not limited to, any form of intimidation, reprisal, harassment, or intent to prevent participation in College proceedings under this Policy. Retaliation may include continued abuse or violence, other harassment, and slander and libel. Retaliation may be committed by any individual or group of individuals, not just a Respondent or Complainant, and may be committed against the Complainant, Respondent, or any individual or group of individuals involved in the investigation and/or resolution of an allegation of sexual assault, sexual harassment, or other sexual misconduct.

B. DEFINITION OF CONSENT and related terms.

CONSENT: Consent is an explicitly communicated, reversible mutual agreement in which all parties are capable of making a decision. Consent is informed, voluntary, and actively given. Consent exists when all parties exchange mutually understandable affirmative words or behavior indicating their agreement to participate voluntarily in sexual activity.

The following further clarifies the meaning of consent:

- Each participant in a sexual encounter must obtain consent for all sexual activities. Consent to one form of sexual activity does not constitute consent to engage in all forms of sexual activity.
- Consent consists of an outward demonstration indicating that an individual has freely chosen to engage in sexual activity. Relying on non-verbal communication can lead to misunderstandings. Consent may not be inferred from silence, passivity, lack of resistance or lack of an active response alone. A person who does not physically resist or verbally refuse sexual activity is not necessarily giving consent.
- If at any time it is reasonably apparent that either party is hesitant, confused, or unsure, both parties should stop and obtain mutual verbal consent before continuing such activity.
- Consent may be withdrawn by either party at any time. Withdrawal of consent must also be outwardly demonstrated by words or actions that clearly indicate a desire to end sexual activity. Once withdrawal of consent has been expressed, sexual activity must cease.
- An individual who is physically incapacitated from alcohol or other drug consumption (voluntarily or involuntarily), or is unconscious, unaware, or otherwise physically impaired is considered unable to give consent. For example, one who is asleep or passed out cannot give consent.
- Individuals with a previous or current intimate relationship do not automatically give either initial or continued consent to sexual activity. Even in the context of a relationship, there must be mutually understandable communication that clearly indicates a willingness to engage in sexual activity.

COERCION: Consent is not effective if it results from the use or threat of physical force, intimidation, or coercion, or any other factor that would compromise an individual's ability to exercise his or her own free will to choose whether or not to have sexual contact. Coercion includes the use of pressure and/or oppressive behavior, including express or implied threats of harm or severe and/or pervasive emotional intimidation, which (a) places an individual in fear of immediate or future harm or physical injury or (b) causes a person to engage in unwelcome sexual activity. A person's words or conduct amount to coercion if 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 a drug, intoxicant, or similar substance that impairs the person's ability to give consent.

INCAPACITATION: An individual is incapacitated when he or she is not able to make rational, reasonable judgments and therefore is incapable of giving consent. Incapacitation is the inability, temporarily or permanently,

to give consent, because the individual is mentally and/or physically impaired due to alcohol or other drug consumption, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. In addition, an individual is incapacitated if he or she demonstrates that they are unaware of where they are, how they got there, or why or how they became engaged in a sexual interaction. Where alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. Some indicators of incapacitation may include, but are not limited to, lack of control over physical movements, being unaware of circumstances or surroundings, or being unable to communicate for any reason.

An individual in a blackout state may or may not meet the definition of incapacitation. Such an individual may appear to act normally, but later may not have recall of 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 other person is unaware – or reasonably could not have known – of the alcohol consumption or blackout, must be evaluated in determining whether consent could be considered as having been given.

ALCOHOL and OTHER DRUGS: The College considers sexual contact while under the influence of alcohol or other drugs to be risky behavior. Alcohol and other drugs impair a person's decision-making capacity, awareness of the consequences, and ability to make informed judgments. From the perspective of the Complainant, the use of alcohol or other drugs can limit a person's ability to freely and clearly give consent. From the perspective of a Respondent, the use of alcohol or other drugs can create an atmosphere of confusion over whether or not consent has been freely and clearly sought or given. The perspective of a reasonable person will be the basis for determining whether a Respondent should have been aware of the extent to which the use of alcohol or other drugs impacted a Complainant's ability to give consent.

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