

Defining Sexual Misconduct

Wtitleix.williams.edu/defining-sexual-misconduct

This page presents all sections of Williams' student Code of Conduct that pertain to sexual misconduct. For full information about sexual misconduct, including support and accommodation, reporting, investigation, informal resolution, and adjudication, and confidentiality and privacy, see titleix.williams.edu/for-students/

Williams College is committed to maintaining a learning and working environment that is free from sexual assault, sexual harassment and other sexual misconduct, remedying the effects of such misconduct when it occurs, and preventing its re-occurrence. The term "sexual misconduct" includes sexual assault, sexual harassment, Title IX sexual harassment, sexual exploitation, stalking, dating violence and domestic violence, all of which have more complete definitions below.

Coercion

Coercion is the use of pressure to compel another individual to initiate or continue sexual activity against an individual's will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include threatening to "out" someone based on sexual orientation, gender identity, or gender expression and threatening to harm oneself if the other party does not engage in the sexual activity.

Consent

Consent is a crucial part of both the Williams Code of Conduct and Massachusetts law. The Williams College Code of Conduct requires affirmative consent for all sexual activity.

Consent requires that at the time of the sexual contact, all participants use both words and conduct to communicate freely given approval or agreement, without coercion. Consent may not be inferred from silence or passivity. In addition, consent once given may be withdrawn at any time. If consent is withdrawn, whatever sexual contact is occurring must immediately stop.

Individuals are unable to give consent if they are:

- substantially physically or mentally impaired by illness, alcohol or drugs, and the other person knew or reasonably should have known of the substantial impairment
- forced, coerced, threatened or subject to intimidation
- physically incapable of communicating, asleep, or unconscious

Consent while under the influence of alcohol or drugs is valid consent unless the person is under the influence to the point of being substantially impaired.

Relationship Abuse

The use of physical force, coercion, threats, or sexual misconduct toward a partner in a current or former personal, intimate relationship constitute relationship abuse.

Psychological, verbal and/or emotional manipulation also constitute relationship abuse if it has the effect of creating fear*, isolation, or restriction of access to resources, education or work. Relationship abuse includes behaviors that are defined as dating and/or domestic violence for purposes of remedies under Massachusetts law, Title IX, and for Clery Act reporting.

The behaviors generally form an ongoing pattern of behavior, although one severe instance of physical or sexual abuse may be sufficient to establish relationship abuse.

Relationship abuse is directed primarily against a person who is or has been involved in a sexual, dating, domestic or other emotionally, romantically, and/or physically intimate relationship with the respondent, although the abuse may be directed toward the family members, friends, pets, or property of the targeted partner.

Examples of relationship abuse include, but are not limited to, situations in which the following behaviors are directed toward the targeted individual:

- Threats and intimidation: coercion and manipulation, including threats of self-harm, used to compel the targeted individual(s) to behave as directed; exhibiting extreme possessiveness or jealousy to control or compel the targeted partner(s) behavior; threatening to share information which could

damage the target's reputation or relationships with others to compel the targeted partner's behavior; threatening to harm the target's family, friends, pets, or property; threatening the target with physical or sexual harm;

- Isolation and restriction of freedom: isolating or confining the target for a substantial period of time; repeatedly depriving the target of personal freedom of movement or access to friends, family, or support systems;
- Resource abuse: forcible or coercive denial of use or access to owned or shared assets, or limiting or controlling access to education or work; words and/or actions aimed at manipulating the financial or legal situation of the target;
- Harm to property or pets: attempting to cause or causing damage or injury to property owned or controlled by the target, or the target's pets; interfering with the target's access to property they own or control, or their pets;
- Physical abuse: attempting to cause or causing the target bodily injury or offensive physical contact;
- Sexual assault, sexual exploitation, and sexual harassment as defined in the Code of Conduct;
- Stalking as defined in the Code of Conduct
- *In adjudication of cases, behavior that would cause a reasonable person to feel fear will be interpreted as constituting relationship abuse by this standard.

Non-Consensual Sexual Intercourse

Non-consensual sexual intercourse means any sexual penetration (anal, oral or vaginal), however slight, with any body part or object, by any person upon any other person, without effective consent.

Non-Consensual Sexual Contact

Non-consensual sexual contact means any sexual touching, however slight, with any body part or object, by any person upon any other person, without effective consent.

Preponderance of the Evidence

Preponderance of evidence is the standard of proof that the College uses in adjudicating cases of alleged sexual misconduct. It means "more likely than not." Where a person is alleged to have committed a particular act of sexual

misconduct, the allegation is established by a preponderance of the evidence when the evidence is such that it is more likely true than not true that the person committed the act.

Responsible Employee

Responsible employee means a college employee who has the duty to report sexual misconduct by a member of the College community.

Retaliation

Retaliation is harmful action taken against someone who has made a report, filed a complaint, provided testimony, assisted, or participated or refused to participate in any manner in a disciplinary investigation or process. It could also include actions taken against someone who has intervened as a bystander to stop or attempt to stop harassment, discrimination, or misconduct.

It can include intimidating, threatening, coercing, or discriminating against an individual because of their participation or failure to participate in a disciplinary process, or because they opposed behavior that was in violation of our Code of Conduct. Retaliation may also include bringing charges against someone for code of conduct violations that arise out of the same facts or circumstances as a report or complaint of sexual misconduct, such as for drug or alcohol use.

If the actions directed at that individual would deter a reasonable person in the same circumstances from reporting misconduct, participating in a disciplinary process, or opposing behavior in violation of our Code of Conduct, it is deemed retaliatory.

Sexual Assault

Sexual Assault means any non-consensual sexual intercourse or other non-consensual sexual contact, including all behaviors that are defined as sexual assault under Title IX.

Sexual Exploitation

Sexual exploitation occurs when a person takes nonconsensual, unjust or abusive advantage of another for his/her own advantage or benefit or to benefit or advantage anyone other than the one being exploited and that behavior does not otherwise constitute sexual misconduct. Examples of sexual exploitation

include prostituting another person, nonconsensual video or audiotaping of sexual activity, going beyond the boundaries of consent (such as letting your friends watch you have consensual sex), engaging in peeping tommery, knowingly transmitting STD or HIV to another person, and inducing incapacitation with the intent to sexually assault another person.

Sexual Harassment

Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, instruction or participation in other College activities; (2) submission to or rejection of such conduct by an individual is used as a basis for making academic, employment or personnel decisions affecting that individual; or (3) such conduct has the purpose or effect of creating an intimidating or hostile educational or working environment. See Williams sexual harassment policy statement. A separate definition of Title IX sexual harassment can be found below.

Sexual Misconduct

Sexual misconduct means any form of sexual assault, sexual harassment, sexual exploitation, dating or domestic violence, or stalking.

Stalking

Stalking refers to a pattern of conduct directed at a specific person that would cause a reasonable person to feel fear, or to fear for the health or safety of a person they are close to, such as a friend or family member, or to suffer substantial emotional distress, including all behaviors that are defined as stalking under Title IX. Stalking behaviors can include, but are not limited to:

- non-consensual communication including in-person communication, telephone calls, voice messages, text messages, emails, social media site postings or messages, instant messages, posting of pictures or information on websites, written letters, gifts, or any other communications that are undesired or place another person in fear
- following, pursuing, waiting, or showing up uninvited at a workplace, place of residence, classroom, or other locations frequented by the victim
- surveillance or other types of observation, whether by physical proximity or electronic means

- trespassing, for example in a victim's dorm room
- vandalism
- non-consensual touching
- direct physical and/or verbal threats against a victim or a victim's loved ones
- gathering of information about a victim from family, friends, co-workers, and/or classmates
- manipulative or controlling behaviors such as threats to harm oneself, or threats to harm someone close to the victim
- defamation or slander against the victim, for example by spreading rumors

Substantially Impaired

Substantially impaired means an individual lacks the ability to make informed, rational judgments and/or to coherently communicate those judgments. Substantial impairment may result from illness or from the use of alcohol and/or other drugs. Substantial impairment is a state beyond drunkenness or intoxication. The impact of alcohol and other drugs varies from person to person; however, warning signs that a person is or may be approaching substantial impairment may include (but are not limited to) slurred speech, vomiting, unsteady gait, combativeness, or unusual emotional volatility.

In May 2020, the Department of Education issued new regulations governing schools' response to certain types of sexual misconduct. Those regulations, which became effective August 14, 2020, require all colleges to use specific procedures in response to reports of what the Department calls sexual harassment. "Sexual harassment" is used by the Department as an umbrella term to cover all types of sexual misconduct that are addressable under Title IX of the Education Amendments of 1972. To avoid confusion, Williams' policies will use the term "Title IX sexual harassment" to refer to conduct defined as sexual harassment by the Department. It is important to remember that Title IX sexual harassment, which is defined below, represents only a subset of the broader conduct that is governed by Williams' sexual misconduct policies.

Title IX Sexual Harassment

Title IX sexual harassment is conduct on the basis of sex that occurs on or after August 14, 2020 and satisfies one or more of the following:

- (1) An employee of the college conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college's education program or activity; or
- (3) Sexual assault, dating violence, domestic violence, or stalking, as defined below.

"Sexual assault" means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the FBI.

"Dating violence" means violence committed by a person (A) who is or has been in a social relationship of an intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship.

"Domestic violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Massachusetts, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Massachusetts.

"Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for their safety or the safety of others or (B) suffer substantial emotional distress.

To be considered Title IX sexual harassment, the conduct described above must occur in a Williams education program or activity within the United States. A Williams "education program or activity" is a location, event, or circumstance over which the college exercises substantial control over both the respondent and the context in which the Title IX sexual harassment occurs.

All conduct that occurs abroad and much conduct that occurs off campus will fall outside the definition of Title IX sexual harassment and may instead be covered by the misconduct defined above or by other portions of the Williams Code of Conduct.

