

## WALSH UNIVERSITY

# **Sexual Misconduct and Interpersonal Violence Policy**

**Procedures for Students, Employees, and University Volunteers related to Institutional action in Cases of Sexual Misconduct, Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, Stalking, Retaliation and Other Forms of Interpersonal Violence or Sex Discrimination.**

### **What is Title IX?**

Title IX is part of the 1972 re-authorization of the Higher Education Act and that stipulates that “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.” Title IX requires all schools receiving federal financial assistance to take reasonable steps to create a safe, nondiscriminatory learning environment.

### **A. Policy Statement**

Walsh University prohibits all forms of sexual misconduct and interpersonal violence, including, but not limited to sexual harassment, sexual assault, domestic violence, dating violence, stalking, retaliation and other forms of interpersonal violence or sex discrimination. Such conduct violates Walsh University’s values and can cause disruption to the living, learning and work environment of students, employees, University volunteers, and other community members.

### **B. Policy Jurisdiction**

The *Walsh University Sexual Misconduct and Interpersonal Violence Policy* covers all students (prospective, continuing and transfer), employees, and University volunteers. As such, the University can investigate any reported violations of this policy that occur in the United States during a University-sponsored program, University-sanctioned activity, or otherwise directly affect the University’s working or learning environment, regardless of whether the reported conduct occurred on campus, off campus, or through virtual methods.

For every report, the Title IX Office will review the circumstances of the reported conduct to determine whether the University has jurisdiction over the parties involved and take steps within its control to eliminate, prevent, and address the reported conduct. If the Respondent(s) is not a member of the University community or is no longer affiliated with the University at the time of the report or at the time that an *Investigation of Institutional Formal complaints* is initiated (including when the Respondent(s) has graduated or left the University), the University typically is unable to investigate, sanction, or take disciplinary action.

Individuals impacted by sexual misconduct and/or interpersonal violence may contact the Title IX Office as detailed in “Section F. Disclosure and/or Reporting Options.”

### **C. Policy and Procedural Definitions**

For the purposes of determining whether a course of conduct constitutes a violation under this policy and its corresponding procedures, the relevant definitions are listed below.

- **“Employees”** are categorized as staff or faculty of Walsh University.
- **“Faculty”** of the University consists of those individuals with either faculty rank or status.

- **“Complainant(s)”** is an individual(s) who reportedly experienced sexual misconduct and/or interpersonal violence, regardless of whether such individual reports such sexual misconduct and/or interpersonal violence to the University or participates in the University’s conduct process for responding to reports of sexual misconduct and/or interpersonal violence described herein.
- **“Respondent(s)”** is the individual(s) or entity(s) alleged to have committed acts constituting sexual misconduct and/or interpersonal violence, regardless of whether such individual has entered into the University’s conduct process for responding to complaints of sexual misconduct and/or interpersonal violence described herein.
- **“Staff”** are employees of Walsh University (full-time, part time, or casual) where the majority of their work responsibilities are considered non-teaching activities of various types in support of the educational, research, and service programs of the University.
- **“Student”** is any person who is currently enrolled at Walsh University.
- **“Third Party Reporter(s)”** is any individual(s) who reports a violation of this Policy to the University and who is not also the Complainant(s).
- **“University Volunteer”** is any uncompensated individual who is authorized by a University department or division to perform service for or on behalf of the University, or to gain personal or professional experience.
- **“Formal Complaint”** is document filed by a complainant or signed by the Title IX Coordinator against a respondent and requesting that the recipient investigate the allegation of sexual harassment, sexual assault, domestic violence, dating violence, stalking, retaliation and other forms of interpersonal violence or sex discrimination. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.

### **Definitions of Prohibited Conduct**

- **“Dating Violence”** means violence committed by a person:
  - Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - Where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - 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. Any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

Note: Walsh University further expands the definition of dating violence to include a pattern of actual or threatened behavior used against a current or former dating partner to control them. Emotional, verbal and financial forms of dating violence are prohibited conduct, and Walsh University will investigate and adjudicate these types of incidents.
- **“Domestic Violence”** means a felony or misdemeanor crime of violence committed by current or former spouse or intimate partner of the victim.

- A person with whom the victim shares a child in common;
- A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies [under VAWA]; or
- 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 the jurisdiction.

Note: Walsh University further expands the definition of domestic violence to include a pattern of actual or threatened behavior used against a current or former spouse or intimate partner to control them. Emotional, verbal and financial forms of domestic violence are prohibited conduct, and Walsh University will investigate and adjudicate these types of incidents.

- **“Sexual Harassment”** means conduct on the basis of sex that satisfies one or more of the following:
  - (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct (i.e., Quid pro quo); or
  - (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 recipient's education program or activity; or;
  - (3) “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).
- **“Retaliation”** No recipient or other person 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, or because the individual has made a formal complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a formal complaint.
- **“Sexual Assault”** means any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent.
  - **Rape:** the 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 victim. This offense includes the rape of both males and females.
  - **Fondling:** the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
  - **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent.

- **“Stalking”** means engaging in a 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.
- **Sexual Exploitation** is knowingly, intentionally or purposefully taking advantage of the sexuality of another person without consent or in a manner that extends the bounds of consensual sexual activity without the knowledge of the other individual for any purpose, including sexual gratification, financial gain, or personal benefit. Examples of Sexual Exploitation include:
  - Observing another individual’s nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
  - Voyeurism;
  - Non-consensual streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved;
  - Non-consensual recording of individuals in locations in which they have a reasonable expectation of privacy, such as restrooms or locker rooms, regardless of whether the images captured reveal sexual activity or nudity;
  - Prostituting another individual;
  - Exposing one’s genitals in non-consensual circumstances;
  - Removal of a condom, without consent, during sexual intercourse;
  - Knowingly exposing another individual to a sexually transmitted infection or virus without that individual’s knowledge; and
  - Inducing incapacitation for the purpose of making another person vulnerable to nonconsensual sexual activity, e.g., by using alcohol or other drugs (such as Rohypnol or GHB).

## D. Walsh University Consent Standard

1. **Consent** is an agreement expressed through affirmative, voluntary words or actions, and mutually understandable to all parties involved, to engage in a specific sexual act at a specific time:
  - Consent must be ongoing and can be withdrawn at any time by involved parties.
  - Consent requires a mutual, clear and certain yes through body language, words, or actions.
  - Consent cannot be assumed based on the following:
    - Silence
    - Implied confirmation of interest
    - Initiation of sexual contact
    - The absence of a clear/certain yes
    - The absence of a clear/certain “no” through body language, words, and/or actions
    - The existence of a prior or current relationship
    - Prior sexual activity
  - a. **Consent cannot be coerced or compelled, including but not limited to the use of force, threat, deception or intimidation.**
    - i. **Coercion:** presenting a mentally and/or emotionally manipulative proposal for the purpose of persuading another person and/or party to act against their own interest and/or best judgement.
    - ii. **Force:** is the use or threat of physical violence, intimidation, or coercion to overcome an individual’s freedom of will to choose whether or not to participate in sexual activity. Such action would cause a person to fear for their physical or psychological well-being.