


FACULTY RESPONSIBILITIES RELATED TO STUDENTS WITH DISABILITIES

WASHINGTON STATE  UNIVERSITY

APRIL 14, 2022




DISCLAIMER

- This program is for educational purposes only and is not to be regarded as legal advice.
 - The scenarios and situations described in the course have been fabricated for the purpose of illustrating specific learning objectives and are not intended as categorical evidence of discrimination or discriminatory harassment.
 - All allegations of discrimination and harassment require careful analysis and thorough investigation.
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COURSE OBJECTIVES

- Review relevant WSU Policies and Procedures
 - Identify issues that implicate discrimination and discriminatory harassment on the basis of disability
 - Understand your responsibilities as an employee
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UNIVERSITY ACCESSIBILITY STATEMENT

- WSU is committed to fostering an inclusive and accessible environment for all students, staff, faculty, and visitors who participate in WSU's programs or services. WSU will ensure that students, faculty, staff, and visitors have access to university facilities, technology, and information needed to have an equal opportunity to succeed in their education, employment, and community activities.
- WSU is committed to complying with state and federal laws regarding individuals with disabilities, including Sections 504 of the 1973 Rehabilitation Act (Section 504), the Americans with Disabilities Act of 1990 (ADA), the ADA Amendments Act of 2008 (ADAAA), Washington State Office of the Chief Information Officer Policy 188, and Washington State RCW 49.60.

RESPONSIBILITIES OF THE ADA COORDINATOR

- Assuring the university's compliance with the Americans with Disabilities Act and other laws pertaining to persons with disabilities.
- Providing referrals, resources, advice, services, and compliance information to students and employees.
- Collaborating with other university offices, government agencies, and external advocacy groups to develop university policies and procedures to accommodate persons with disabilities and to prevent and respond to discrimination on the basis of disability.
- Developing and maintaining investigative procedures and processes to resolve complaints and inquiries from university offices, students, and employees.
- Making determinations about allegations of discrimination and non-compliance under the ADA and other applicable laws regarding discrimination on the basis of disability.

RIGHTS FOR INDIVIDUALS WITH DISABILITIES

- Request Reasonable Accommodations (defined on next slide)
- Protected Medical Leave
- Use of a trained service animal

Questions? Supervisors and Employees should ask Human Resource Services

For Questions about Student Accommodations consult with your campus Access Center staff.

REASONABLE ACCOMMODATIONS

- **Employees – HRS Disability Services**

- Any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions – *US Department of Justice*

- **Students – Campus Access Services Unit**

- Modifications or adjustments to the tasks, environment, or to the way things are usually done that enable individuals with disabilities to have an equal opportunity to participate in an academic program – *US Department of Education*

WSU'S ACADEMIC ACCOMMODATIONS PROCESS

- A student contacts the Access Center/Access Services to request academic accommodations
- An Access Advisor/Coordinator meets with the student to discuss barriers to their participation in their academic program, asks the student to provide any necessary medical documentation, and then discusses potential options for reasonable accommodation.
- The Access Advisor/Coordinator notifies the student's instructor(s) of the student's requested accommodations.
- The faculty member:
 - Promptly implements the requested accommodations,
 - Promptly directs any clarifying questions about the requested accommodations to the Access Advisor/Coordinator before implementing the accommodations, or
 - Promptly works with the Access Advisor/Coordinator to discuss any reasonable alternatives, as part of the interactive process.

THE INTERACTIVE PROCESS

Collaboration between a student, a faculty member, and an Access Advisor/Coordinator to discern what, if any, accommodations may be reasonable

- Faculty are required to implement accommodations that are reasonable for the specific student and the specific course.
- When students request accommodations that are not reasonable, faculty are not required to go to the ends of the earth to identify reasonable accommodations. **Faculty are required to make good faith attempts to identify reasonable accommodations through the interactive process.**
- A faculty member does not determine whether a student has a valid disability requiring accommodation. A faculty member should neither request nor accept medical documentation from a student, nor should a faculty member ask for details about a student's disability.

THE ACCESS ADVISOR/COORDINATOR
NOTIFIES FACULTY OF
ACCOMMODATIONS THAT ***MIGHT*** BE
REASONABLE.

FACULTY HELP DETERMINE WHAT
ACCOMMODATIONS ***ARE*** REASONABLE.

WHAT MAKES AN ACCOMMODATION REASONABLE?

- It addresses barriers to the student's access to their academic program, as determined by the student and their Access Advisor/Coordinator.
- It does not fundamentally alter the core requirements of the course.

Examples (not hard and fast rules)*:

1. A course includes one group project and four individual assignments. A student with ADHD requests an accommodation for independent work on the project. The faculty member implements the accommodation.
2. A lab course includes experiments using noxious chemicals. An immunocompromised student requests an accommodation for remote learning. The faculty member is concerned about the request and contacts the Access Advisor/Coordinator to discuss.
3. In a public speaking course, the only graded components of the course require students to give three oral presentations. A student with anxiety requests an accommodation to submit written reports instead. The faculty member is concerned about the request and contacts the Access Advisor/Coordinator to discuss.

** All requests for accommodation must be individually considered under the totality of the specific circumstances at hand.*

HOW IS FUNDAMENTAL ALTERATION DETERMINED?

- Essential requirements are the core learning outcomes (including skills and knowledge) all students must demonstrate, with or without accommodations, which are part of a larger, interconnected curriculum related to a program or degree.
- Factors to be considered:
 - Nature and purpose of the program?
 - Relationship of the supposed requirement to the functional elements of the program?
 - Exceptions or alternatives permitted?
 - Required in similar programs in other institutions?
 - Essential to a given vocation for which the program is preparing students?
 - Required for licensure or certification in a related occupation or profession?
- If a faculty member reasonably believes an accommodation constitutes a fundamental alteration, an ad hoc committee including persons such as the faculty member, department chair, associate dean, Access Advisor, ADA Coordinator, or others with knowledge of the academic area, related licensing requirements, applicable accreditation standards, the student's disability, and accommodation methods, make the determination.

PREGNANT AND PARENTING STUDENTS

- Discrimination based on pregnancy or related conditions is prohibited under EP 15 and Title IX.
 - It is illegal to prevent students from participating in educational programs, including extracurricular activities.
 - Doctor-recommended absences due to pregnancy or childbirth are excused.
 - Students are allowed to return to the same academic and extracurricular status as before medical leave began and have opportunities to make up any missed work.
- **At times, pregnancy complications may constitute a disability and require accommodations under the university's academic accommodations process.**

ACCESSIBILITY

- Digital Accessibility
 - Review Executive Policy 7 and take the [WSU Web Accessibility Training](#).
- Classroom materials
 - Should be accessible in general but must be produced in an accessible format if a student requests a reasonable accommodation.
 - Intellectual property concerns do not trump a student's right to equal access to the course. If faculty make materials available to other students, they must be available to students with disabilities, too.
 - Students who record lectures or receive lecture notes/PowerPoints as accommodations sign Content and Materials Usage Agreements stating that they will not share materials received as accommodations.



Compliance and Civil Rights

WASHINGTON STATE UNIVERSITY

EXECUTIVE POLICY 15

WSU POLICY PROHIBITING DISCRIMINATION AND HARASSMENT

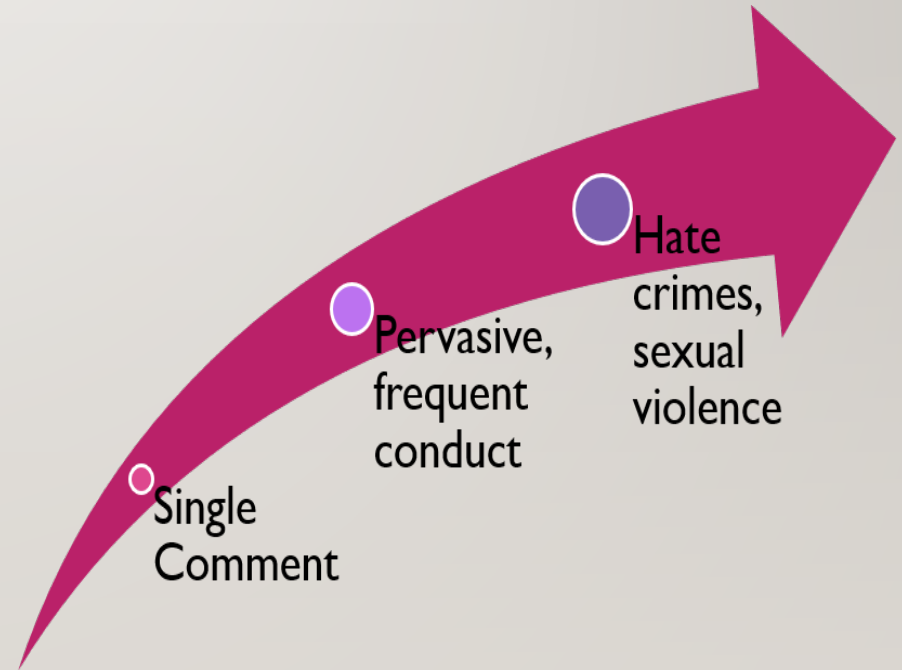
- Applies to all students, faculty, staff, or others having an association with WSU.

PROTECTED CLASS CATEGORIES

- Race
- Sex/Gender
- Age
- Sexual Orientation
- Gender Identity/Expression
- Color
- Genetic Information
- Physical, Mental, or Sensory Disability, including use of a trained service animal
- Veteran or Military Status
- Creed
- National or Ethnic Origin
- Religion
- Marital Status
- Immigration or citizenship status, except where distinctions or differential treatment are authorized by federal or state law, regulation, or government contract

DISCRIMINATION

Unfair different treatment of, or behavior towards, another based on that person's membership in a protected class, or their perceived membership in a protected class.



GENERAL APPLICATION OF POLICY

- WSU activities, programs, or events
- On Campus
- Off Campus
 - Where it may interfere with or limit someone's work, academic performance, living environment, personal security, or participation in WSU activities.
- Unlawful acts that result in a guilty plea conviction of a felony

PROHIBITED CONDUCT

- Sexual Harassment
 - Stalking
 - Domestic/Dating Violence
 - Sexual Assault
- Retaliation
- Interference
- False Statements
- Disparate Treatment
- Disparate Impact
- Discriminatory Harassment
- Violation of Discrimination Law

Complete definitions for prohibited conduct are available in [EP 15](#).

WSU'S RESPONSE TO DISCRIMINATION

- **Where conduct may be a violation of EP 15**
 - **Formal grievance process**
 - Resolution agreement
 - Investigative and Disciplinary procedures
- **Where conduct may not rise to the level of a violation**
 - Education
 - Support and resources
 - Alternative resolution processes

VIOLATION OF POLICY

Assess the totality of
the circumstances:

- Severity
- Frequency of the conduct
- Status of the reporting and responding party and their relationship to each other
- Physicality
- Threats or endangerment
- Whether or not the conduct could be reasonably considered protected speech or serving some other lawful purpose.

DISPARATE TREATMENT

Intentionally or knowingly treating someone differently

Examples:

1. A supervisor does not allow Dao to give presentations, **because** Dao has a visible disability.
2. A supervisor refuses to hire Katie, the most qualified applicant, **because** he knows Katie will need reasonable accommodations for her disability.

DISPARATE IMPACT

Unintentional discrimination resulting from a policy or practice

Example:

1. A student organization requires members to attend all meetings to remain in good standing. However, a medical disability prevents Claude from attending all the meetings. Although the policy was not intentionally discriminatory, it would have resulted in a discriminatory outcome.
2. An employee group that provides leadership development to members requires new members to be sponsored by an existing member. The members tend to sponsor members who are similar to them, resulting in disproportionate representation in the group.

DISCRIMINATORY HARASSMENT

- A form of speech (written, verbal, expressive conduct)
- Balances your right to be protected from harassment with your right to protected speech
- Severe or pervasive, and objectively offensive, speech is not protected
- Where it does not rise to that level, there may be other ways to respond

Examples:

1. A coworker regularly tells Frank, a disabled veteran, he was only hired to fill a quota, and he stole a job meant for someone “normal.”
2. A research coordinator frequently sends articles to Mona, an autistic coworker, suggesting that Mona’s parents abused her by vaccinating her and, thereby, causing her autism.

VIOLATION OF DISCRIMINATION LAW

Any action that would be a violation of any Washington state or federal discrimination law is also a violation of EP 15.

Examples:


1. A faculty member refuses to allow Brian's trained, well-behaved service animal into a lecture hall. Service animals are allowed in most public spaces under state and federal law.
2. Mateo is approved by Human Resource Services for protected leave due to a temporary medical condition. Annoyed that the office is short-staffed while Mateo is on leave, the supervisor reorganizes the department, giving Mateo's duties to another employee and when Mateo returns, assigns him to a lower-level position.

COMMON EXCUSES FOR VIOLATIONS

- Sometimes faculty deny or ignore requests for reasonable accommodations because:
 - They simply do not want to implement any accommodations,
 - They generally believe students who need accommodations cannot keep up with the rigor of their courses, or
 - They do not believe students who need accommodations will be successful in the workforce.
- **Failure to implement reasonable accommodations or engage in the interactive process violates EP 15 and federal law.**
 - WSU employees who violate students' rights open up themselves and the university to liability. WSU may elect not to represent or indemnify employees who knowingly engage in misconduct or act in bad faith (See BPPM 10.15).
 - Employees may also be subject to disciplinary action.



POTENTIAL
RESPONDING
PARTY

- STOP the behavior immediately!
 - Review WSU Policy Prohibiting Discrimination and Harassment
 - Contact your supervisor
 - Contact Compliance & Civil Rights or Human Resource Services
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EMPLOYEE REPORTING REQUIREMENTS

- **Most employees must report information about incidents involving sexual harassment or sexual misconduct to CCR.**
 - See exclusionary list in EP 15.
- **Supervisors must also report all incidents of discrimination, including misconduct on the basis of disability.**
 - Other employees are encouraged to report.

REPORTING / FILING FORMAL COMPLAINT

Reports and formal complaints can be made to CCR at:

- In-person: French Administration, Room 225
- Email: ccr@wsu.edu
- Online: [File a Complaint](#)
- Phone: 509-335-8288
- Postal Mail: PO Box 641022, Pullman, WA 99164-1022

WSU REPORTING OPTIONS

- Individuals can share information with WSU Compliance & Civil Rights (CCR) for two different purposes:
 - **Reporting**
 - Anyone can report discrimination or harassment to CCR.
 - Will trigger:
 - Outreach from CCR to the complainant with information on supportive measures and how to file a formal complaint
 - Opportunity for a consultation
 - **Formal Complaint** – requests a formal grievance process
 - Can be filed by the complainant or by the Lead Title IX Coordinator.
 - Complaint is reviewed under EP 15
 - Can lead to a Resolution Agreement or Investigation
- Individuals can also report crimes to campus security or campus police.

QUESTIONS?

Visit [the CCR website](#) or contact the ADA Coordinator,
ada.coordinator@wsu.edu.