

Discrimination and Harassment Prevention

Section 7

Discrimination and Harassment Prevention

- WSU employees are required to take the WSU Discrimination and Harassment Prevention training via Percipio annually.
- This section is provided as a supplement to that, to help programs working with minors understand how the WSU Policy Prohibiting Discrimination and Harassment may impact their work.
- Compliance and Civil Rights is your resource for any questions about this policy.
 - ccr@wsu.edu
 - 509-335-8288
 - <https://ccr.wsu.edu>

Executive Policy 15

Executive Policy 15: WSU's Policy Prohibiting Discrimination and Harassment

- Prohibits discrimination and harassment based on race, sex/gender, age, sexual orientation, gender identity/expression, color, genetic information, creed, veteran or military status, national or ethnic origin, religion, marital status, disability (including the use of a trained service animal), and immigration or citizenship status, except where distinctions or differential treatment are authorized by federal or state law, regulation, or government contract.

Employee responsibilities

- Create a safe and inclusive environment
- Engage with fellow employees and program participants in a civil, professional, and respectful manner
- Consider whether certain topics are appropriate for the environment and audience
- Interrupt or stop the misconduct, if it is safe to do so
- Intervene on lower-level misconduct, often in consultation with CCR
- Report sexual harassment and sexual misconduct, including domestic violence, dating violence, stalking, and sexual assault to CCR. Supervisors should report all forms of discrimination.
- If asked by CCR, implement supportive measures for participants in the university's grievance process.

Employee responsibilities

- In some situations, you may not have a specific WSU requirement to report, but you should consider whether or not to report anyway.
- E.g. you learn that a program participant is experiencing harassment in another environment (e.g. an after school program)
- Ask yourself:
 - What type of harassment was described to you? How serious is it? Does it include verbal harassment or physical harassment?
 - Is the harassment ongoing or in the past?
 - Will the participant continue to be harmed if you don't report?
 - Are the parents aware?
 - What is the risk if you don't report?
 - Do you have other reporting requirements (e.g. your program operates out of a school and they have expectations for reporting misconduct)?

Employee responsibilities

What does this look like in real life?

- A program participant or colleague reports discrimination or harassment from someone affiliated with WSU to you.
- You need to let that person know you are required to report their concern to CCR, and that they will receive information about reporting and resource options from CCR.
- Report to CCR as soon as possible. You can report via email or on the web form, or if you would like to consult on next steps, you can call 509-335-8288.
- CCR will reach out to the potential complainant directly.
- *Note, if you are working in a school district, and you receive a report that a school district employee is engaging in discrimination or harassment, utilize their reporting protocol.*
- *Even if the person causing harm is not affiliated with WSU, you can always consult on next steps with CCR.*

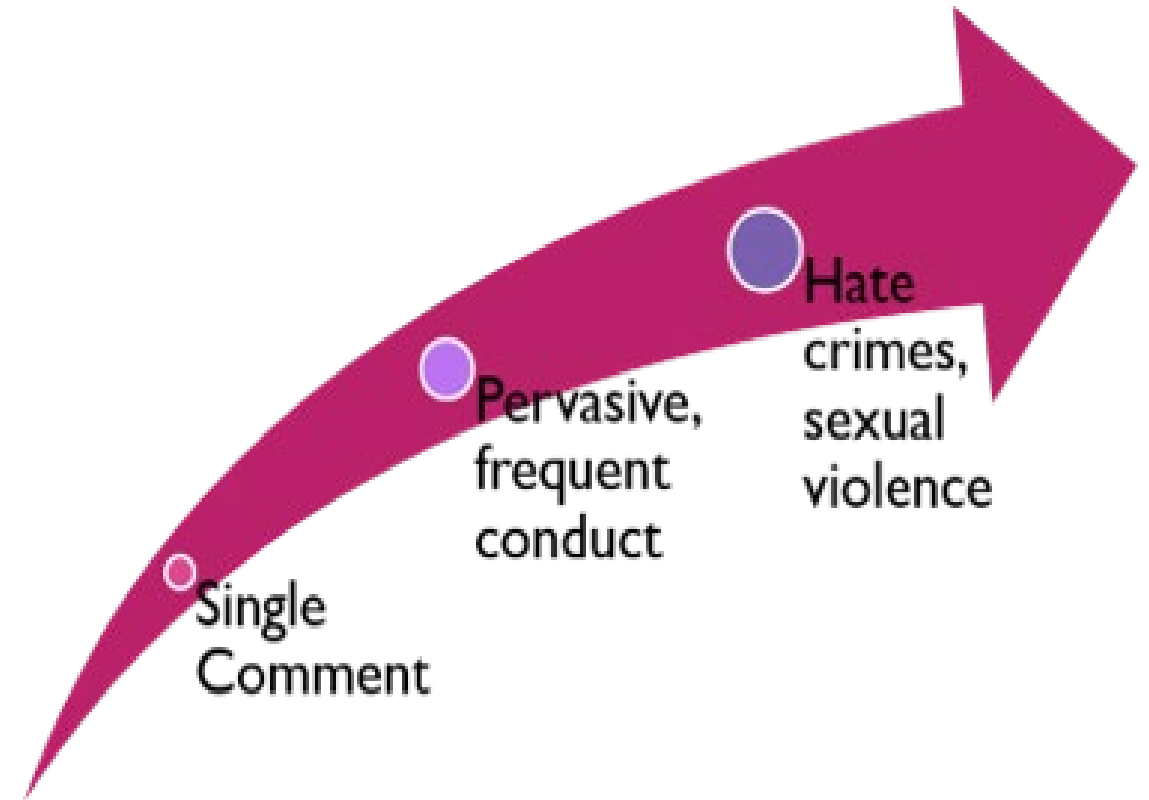
Employee responsibilities

Why is it important to report to CCR and to work with CCR on supportive measures?

- Reporting to CCR ensures that trained professionals can provide reporting and resource options to complainants and can help programs identify appropriate steps to support participants.
- WSU receives funding from the federal government. Agencies who receive federal funding must comply with specific laws and regulations governing the university's response to concerns of this nature.
- Failure to report or act in good faith can put employees, students, and others at risk for ongoing harm.
- Failure to report or act in good faith opens an employee and the institution up to liability.
- Indemnification may only be available to those who are acting in good faith.

Discrimination

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



Spectrum of responses

- Supportive measures
 - Work or academic management plans
 - No contact directives
 - Education/training
 - Safety assessments
 - Referrals to medical providers
 - Referrals to advocacy agencies
- Documentation and tracking
- Lower-level resolutions
 - Where possible, CCR will assist with resolving matters at the lowest-level, engaging in proactive steps to prevent concerns from escalating.
- Resolutions
- Investigations, possibly leading to discipline and sanctions

Application of policy

- CCR can address conduct that:
 - Occurs on WSU owned or WSU controlled property
 - Occurred in connection with WSU activities, programs or events
 - Has the effect of, or the potential to, unreasonably interfere with or limit an individual's work, academic performance, living environment, personal security, or participation in any activity at WSU;
 - Includes unlawful acts that directly affect WSU programs, community members, or property insofar as they materially and substantially interfere with the missions, functions, processes, and goals of the WSU community; or
 - Includes unlawful acts that result in a guilty plea to or conviction of a felony. CCR can also help individuals get connected with external agencies for misconduct happening outside of WSU's scope of authority.

Remember

- WSU is a state agency receiving federal funding.
- As such, WSU cannot discriminate in provision of services and programming, employment activities, recruitment, and academics.
- All WSU employees are responsible for ensuring services are provided without discrimination.

Recognizing discrimination and harassment

- It is important to recognize discrimination and harassment when you see it.
- Examples disclaimer: The following examples are provided for illustrative purposes only. Any allegations of discrimination and harassment would need to be reviewed on a case-by-case basis.

Recognizing discrimination and harassment

- Disparate treatment – intentionally or knowingly treating someone different
- Examples:
 - A tutoring program is developed just for girls.
 - A program refuses to hire an applicant, because of the applicant's sexual orientation.
 - A supervisor intentionally assigns public facing jobs to white employees and assigns people of color work in the back warehouse.
 - A program provides scholarships for students from one specific country.

Recognizing discrimination and harassment

- Disparate impact – unintentional discrimination, typically from a policy or practice
- Examples:
 - A program schedules all their meetings at a central administrative school district office. The office building does not have accessible parking. A parent volunteer with a physical disability is not able to attend.
 - A program facilitator utilizes a software program to share information with program participants. The software program is not accessible to those with visual impairments and a participant cannot review the information.
 - A program announces a policy requiring all employees to work at least one Saturday a month and that not doing so will result in termination, without thinking about a Jewish employee who can't work Saturdays because it is against their religion.

Recognizing discrimination and harassment

- Discriminatory harassment: typically a form of speech that is severe or pervasive, and objectively offensive, and based on a protected class
- Examples:
 - A program facilitator uses an offensive accent to regularly make jokes about people from Asia.
 - An employee frequently makes fun of an employee's turban and hair and makes references to terrorist organizations.
 - An employee regularly belittles and demeans another employee, and although the statements are not linked to their race, the employee is targeting the harassment towards the other person because of their race.

Recognizing discrimination and harassment

- Sexual harassment: unwelcome conduct on the basis of sex that is severe or pervasive, and objectively offensive
- Examples:
 - A program facilitator brushes up against a participant multiple times on purpose and stares at their body up and down.
 - A program facilitator tells a participant that they will receive special treatment if they engage in sexual activity.
 - An employee frequently makes insulting comments about someone's gender identity or sexual orientation.
 - A supervisor pressures an employee for dates or sex.
 - A program participant forwards suggestive and lewd emails to other participants frequently

Recognizing discrimination and harassment

- Sexual assault: any forcible and nonforcible sex offense, includes any form of sexual activity where consent is not given
- Examples:
 - An employee engages in sexual activity with a minor, who is unable to give consent under the law.
 - A program participant subjects another participant to sexual activity when the other participant is incapacitated due to alcohol consumption.
 - A program facilitator subjects a program participant to unwelcome sexual contact.

Recognizing discrimination and harassment

- Stalking: a course of conduct that causes a reasonable person to fear for their safety or other's safety, or to suffer substantial emotional distress
- Examples:
 - An employee's ex-partner follows them to work, sits in the parking lot all day, and sends them demands to meet.
 - A program participant expresses romantic feelings about another participant to everyone else in the program, checks in with others regularly to know the participant's location and activities, contacts their friends and family, and monitors them online.

Recognizing discrimination and harassment

- Dating violence or domestic violence: physical, financial, emotional harm
- Examples:
 - A partner threatens to harm their partner's pet, as a means of control.
 - A partner physically abuses their partner.
 - A partner controls all the finances and their partner's Immigration Visa.

Recognizing discrimination and harassment

- Retaliation: intimidation, threats, coercion, or discrimination to interfere with people's rights under EP 15 or because someone has participated in process under EP 15
- Examples:
 - A supervisor tells an employee that they will fire them if they report misconduct.
 - A program facilitator refuses to provide a participant with program materials because the participant reported misconduct involving the facilitator's friend.

Recognizing discrimination and harassment

- False statements: providing false statements in bad faith under EP 15
- Examples:
 - CCR is investigating a concern. A witness wants to protect someone and provides false information to CCR.
 - An employee wants to get back at their supervisor for a bad performance evaluation and files a false report with CCR.

Recognizing discrimination and harassment

- Violation of discrimination law
- Examples:
 - A program facilitator refuses to provide reasonable accommodations to a program participant
 - A supervisor demotes an employee when they take protected medical leave

Recognize and Report

- WSU employees should be aware of the different types of discrimination and harassment.
- If you learn of any concerns, report to CCR.
- If you aren't sure, you can always consult with CCR directly.
 - Email: ccr@wsu.edu
 - Phone: 509-335-8288
 - Web: <https://ccr.wsu.edu>

CCR Process

- Report:
 - Outreach to Complainant
 - Intake consultation
 - Consultation for 3rd party reporters
- Formal Complaint:
 - Resolution
 - Investigation, which may lead to discipline/sanctions

Supportive Measures are available for all participants, with or without a formal complaint

Other Resources

- WSU Resources:
 - Supervisors
 - Human Resource Services
 - University Ombuds
 - Campus safety/police
 - Employee Assistance Program (confidential)
- External Resources:
 - Law enforcement
 - Medical providers
 - Victim advocacy agency
 - Legal services
 - External agencies (OCR, EEOC, WHRC)

Process for receiving and implementing
reasonable accommodations due to a
disability

Section 6

WA State Definition - Disability

- The presence of a sensory, mental, or physical impairment that:
 - Is medically cognizable or diagnosable, or
 - Exists as a record or history, or
 - Is perceived to exist whether or not it exists in fact
- A disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether it limits the ability to work generally or work at a particular job or whether or not it limits any other activity

WA State Definition - Disability

- Impairments includes, but are not limited to:
 - Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin, and endocrine; or
 - Any mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Definition – Reasonable Accommodation

- **Students:** 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*
- **Employees:** Any modification or adjustment to a job or 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*

Definition – Reasonable Accommodation

- WA Law Against Discrimination prohibits discrimination in public accommodations and protects customer's "full enjoyment" of the services and privileges offered in public accommodations.
- Where WSU offers programs and activities to the public, the programs need to provide accessible services and reasonable accommodations, to the extent possible.
- The goal is to provide meaningful access to programs and facilities.

Examples of reasonable accommodations

- Provision of medication
- Computer hardware or software
- Ergonomic furniture
- Alternate break times
- Allow recording of a program or meeting
- Providing printed materials or guides
- Assistance of a note-taker
- Use of spelling or grammar assistive devices
- Space with reduced distractions for exams

Requests for reasonable accommodations

- Programs that work with minors may receive requests for reasonable accommodations.
- Programs should be prepared to receive and review these requests.
- Programs should include language in their promotional handouts or websites on how to request a reasonable accommodation. Some programs may be short in duration, so it may be helpful to include a timeframe to make the request:
 - E.g. “Requests for reasonable accommodations for a disability can be made to the program facilitator. Requests should be made no later than two weeks before the start of the program. The program will make attempts to facilitate later requests, but cannot guarantee an accommodation can be implemented in time if the request is late.”

Requests for reasonable accommodations

- A reasonable accommodation request involves an **interactive process**.
- Each request must be evaluated on an individual basis.
- Program facilitator is responsible for receiving the reasonable accommodation request.
- Collaboration between the requester and the program facilitator may be necessary to determine what, if any accommodations may be reasonable.
- Programs must make good faith efforts to accommodate.

Note, accommodations are provided without cost to the requester, so programs should budget for possible accommodation needs.

Requests for reasonable accommodations

- Some requests may require medical documentation
- For example, let's say a request comes in that simply states:
 - "I have a medical condition and will be injured if I lift heavy weights."
 - What does "heavy" mean?
 - Medical documentation would be helpful to identify the specific weigh limit for this individual, to make sure that WSU isn't unintentionally putting this person at risk.
- Medical documentation contains private health information and should be protected.

Requests for reasonable accommodations

- Many accommodations are relatively simple to provide, for example:
 - May require materials in writing, in addition to a meeting.
 - May need to meet in a location that is wheelchair accessible.
 - May need to have excused absences for medical appointments.
 - May need flexibility in arrival time or assignment deadlines.
 - May request accessible parking.

Requests for reasonable accommodations

- Some accommodations may require more consideration:
 - Accommodation request impacts the goals of the overall program (e.g. if the program has a learning objective that leads to a certificate, but the participant's accommodation request will impact their ability to meet the learning objectives)
 - Accommodation request is prohibitively expensive
 - Accommodation request requires the facilitator to create a new program
 - A minor provides you with their K-12 Section 504 evaluation – this may be specific to their school district's programming.
 - You may also receive information about accommodations from a school district, if you are working with a specific school. Program may need to verify if the school is already providing accommodation support or if the program also needs to identify support.

Request for reasonable accommodations

- Requests may not be reasonable if:
 - Results in an undue burden on the program (high bar)
 - Fundamentally alters the nature of the program
 - Compromises the safety of others participating in the program

Reasonable Accommodations

- In general, accommodations provide an opportunity for a person with a disability to have equivalent access to WSU programs and activities.
- They are not a “leg up.”
- WSU employees who receive accommodation requests should engage in the interactive process in good faith.
 - Not doing so creates an opportunity for legal action against the employee and the institution
 - Employees may also be subject to disciplinary action
- If you have questions or don't know how to handle a request, contact WSU's ADA Coordinator

Example

A fun summer program is developed to teach kids what it's like to be a journalist. Participants are given a number of sources to read through and must draft a news story. The participants are given limited time to mimic a real world newsroom's deadlines. Parents inform the program facilitator that a minor participant has a learning disability, which impacts their ability to read as quickly as other minors. They request an accommodation. What can the program do?

- Engage in the interactive process. Perhaps the program can identify less sources, provide the minor participant with reading materials ahead of time, or provide information in alternative formats (audio, video).

Example

A program participant who has a hearing disability requests a sign language interpreter. The program cannot find an interpreter for the specific dates/times the program occurs. What are some other alternatives?

- The program could provide more materials in writing.
- The program could identify a later program date that works for the interpreter.
- The program could provide a complimentary pass to the individual's family member who could sign for them.

Example

Parents sign up their child for the program and describe that the child was “kicked out” of several other programs due to behavioral issues, and they request an accommodation of additional staff to support the child. The program is worried about this information and wants to not accept the child. Is that appropriate?

- No – If the behavioral issues are rooted in a disability, the child is protected by the ADA, and the program must engage in an individualized assessment. The program should ask for specifics about the behavior issues to better understand the child’s needs. For complicated matters, the program can consult with WSU’s ADA Coordinator or with the WSU Division of the Attorney General’s Office.

Example

A program is marketed as an outdoorsy adventure program for minors. An applicant with a physical impairment requests wheelchair accessibility. However, of the 20 planned activities, there are two that require access to a project site by hiking on non-wheelchair accessible paths. Should the applicant be denied admission to the program?

- Not necessarily. The program can engage with the family and see if limited participation would be of interest to the minor. Creative solutions may also be available to broaden the minor's experience –
 - Bring a video camera to record the non-accessible hikes for the minor
 - Utilize Google Earth
 - Create an alternate adventure

Employee rights

- Employees with disabilities are also protected by state and federal laws
- Employees have the right to:
 - Request a reasonable accommodation from HRS Disability Services
 - Request protected medical leave through HRS Disability Services

Employee rights

- If an employee is out in protected leave:
 - Identify coverage for their position temporarily
 - Do not change their job or responsibilities
 - Do not speak negatively about their use of protected leave
- If an employee requests a reasonable accommodation:
 - Engage in the interactive process in good faith
 - If you have concerns about the requested accommodation, contact HRS Disability Services. Other reasonable alternatives may be available.

Example

- An employee who normally works 8am-5pm is experiencing a medical condition and requested an accommodation to shift their schedule to 10am – 7pm. HRS Disability Services receives the request and the supporting medical documentation and forward the request to the supervisor. What should the supervisor do?
 - The supervisor should review the request and the position description/job requirements. Let's consider two scenarios:
 - The employee's job is primarily discrete tasks that the employee works on independently on their computer. The requested accommodation does not interfere with the employee's ability to perform the responsibilities of their job. The accommodation should be implemented.
 - The employee's job requires the employee to sit at the front desk and check-in visitors. The office is open 8am – 5pm. The supervisor believes that the employee can be accommodated with a late arrival time, although they will have to identify someone to work from 8am-10am, but does not have work for the employee after 5pm. The supervisor should contact HRS Disability Services with this information as part of the interactive process. HRS Disability Services can consult with the supervisor and the employee on other options.

Example

- Employee A is out on protected leave due to a medical condition. While gone, the supervisor has Employee B cover Employee A's workload. Employee B does such a good job, that the supervisor decides to promote Employee B. When Employee A returns, the supervisor lets them know their job has changed and assigns Employee A lower-level work. What should Employee A do?
 - Employee A has been negatively impacted by the supervisor's decision, while they were on protected leave. Employee A has the right to file a complaint with CCR.

Proactive accessibility considerations

- Preparing accessible programming can help you be ready to respond to accommodation requests.
- Universal design helps individuals with disabilities, but also helps folks with different learning styles or those with English as a second language

Program considerations

- If you are preparing materials, it can be helpful to think about what a participant with physical, sensory, or cognitive challenges may benefit from.
 - **Physical:** Think of the required physical aspects of the task. What will make the environment accessible, keep the person safe and allow them to be an active participant? What equipment must be manipulated?
 - **Sensory:** Think of the room temperature, noise, fumes, odors, and allergies. Also consider the ability to speak and/or communicate, and the visual aspects of the task or assignment.
 - **Cognitive:** What memory and communication skills are needed? What is the level of the complexity of the task?

[Guidelines from Do-It Accommodation Model](#)

Example

- Your program is preparing a tutoring session for students. The session will utilize a whiteboard, a projector for video clips, and a hands-on working assignment with multiple steps. Consider the requirements:
 - **Physical:** fine motor skills, sitting, writing
 - **Sensory:** vision
 - **Cognitive:** complex thinking, attention span, writing, reading
- Think about what might be helpful to a participant with disabilities:
 - **Physical:** Alternative writing devices (speech to text, laptops), ergonomic/alternative seating
 - **Sensory:** Consider providing captions or transcripts for videos, providing video/whiteboard writing in another format for visually impaired, limiting external stimulation, not providing the written assignment until it is needed so it isn't distracting.
 - **Cognitive:** Consider providing instructions in smaller steps (e.g. steps 1-3, next steps 4-6), verifying with participants that they understand the instructions, checking in as steps are completed, focusing on self-esteem, identifying appropriate partners for assignments

Service animals

- Executive Policy 39: Service and Support Animal Policy
- Address:
 - Service Animals
 - Emotional Support Animals
 - Service Animals in-training
- Other relevant policies:
 - WAC 504-36-020: Control of animals:
 - Generally, animals are not permitted in WSU buildings
 - [Emotional support animals in university housing](#)
 - RCW 49.60.214: Misrepresentation of an animal as a service animal - \$500 fine

Service animals

- Service animals are animals that are trained to provide a disability-related service to a person with a disability. Service animals are trained and under the control of their handler.
- Emotional support animals (also called comfort animals, companion animals, or therapy animals) are not service animals and do not have the same rights.

Service animals

- WSU must allow service animals in most university buildings, programs and services.
- Service animals may be asked to leave if the animal poses an immediate or reasonably foreseeable risk or danger to people or property or if the presence of a service animal would “fundamentally alter” the nature of the services or programs provided to the public.
 - If the animal is out of control and the handler does not take effective action to control it, or if it is not housebroken, the animal may be excluded.
- Per EP 39, if an employee wants to bring a service animal to the workplace, they must request reasonable accommodation through HRS Disability Services.

Service animal etiquette

- Be polite to the service animal's handler, speak to them directly
- Do not ask a service animal's handler about their disability
- Do not pet a service animal. Ask the handler first, every time.
- Do not distract the service animal with treats, toys, or attention

Digital Accessibility

- WSU's University Web Accessibility Policy, Executive Policy 7:
 - WSU is committed to providing equal access to electronic and information technology (EIT) for all students, staff, faculty, and others with disabilities.
 - This includes the accessibility of instructional materials, documents, media, and other information provided through WSU's telecommunication products, websites, online learning services, software systems, and information kiosks.
 - Requires all newly developed or procured EIT to meet specific accessibility standards. Contact your IT partner for assistance as needed.
- Take the [WSU Web Accessibility Training](#)

Discipline and Dismissal for policy violations

Section 6

Policy Violations

- Violation of this policy may result in delay or termination of a program
- Individuals violating this policy may be subject to disciplinary action, up to and including termination
- Program Directors/Supervisors are responsible for ensuring their program complies with EP 14 at all times
- Direct any questions on EP 14 violations to compliance.risk@wsu.edu

Crisis and emergency response protocols for
specific programs

Section 6

Emergency Response

- Program Administrators must ensure program is registered as per EP14 requirements
- Each program is strongly encouraged to develop a crisis response plan for their day and overnight programs with the Office of Emergency Management ([OEM](#))
- Questions about emergency response plans can be directed to either compliance.risk@wsu.edu or emergencymanagement@wsu.edu

Specific risk and policies or procedures for overnight activities (when applicable)

Section 6

Overnight Camps and Programs Unique Risks

- Ensure proper registration of program and participants
 - Must provide parents with permission slip for their child to stay overnight
 - Must retain permission slip in accordance with record retention schedule
 - Must obtain emergency contact from parent/legal guardian
- Ensure sufficient housing and program staff are available for the number of overnight minors
- Programs may need to be flexible with room arrangements, given that parents may have diverse opinions about sleeping arrangements. A good practice is to ensure there are extra rooms, if needed.
- Conduct periodic checks and/or walkthroughs of high-risk, secluded, or enclosed areas, including bathrooms, hallways, stairwells, etc.

Overnight Camps and Programs Unique Risks

- Perform regular headcounts of staff and participants and report any missing or unaccounted minors to WSU PD or law enforcement
- Any questions about unique requests for overnight programs should be directed to CCR; ccr@wsu.edu; 509-335-8288

Specific risks and policies or procedures for hazardous activities, laboratory environments, field trips, transportation, or other

Section 6

Minors in Laboratories & around Hazardous Materials (High-Risk Activities)

- Minors under 15 years old are not allowed around hazardous, biological or radiological material
- Minors are not allowed to engage in prohibited or hazardous employment as required by state law. See [WAC 296-125-030](#) and [WAC 296-131-125](#)
- Minors between 15-17 years old may work with biological BSL-1 and BSL-2 agents under adult supervision
 - The project and minor's role must be submitted to the WSU Biosafety Committee for approval before research commences
 - The minor(s) must undergo safety training
- Minors must not perform duties requiring contact with bodily fluids
- Questions about identifying hazardous materials and/or research should be directed to the Biosafety officer at the Office of Research Assurances 509-335-1585, or EH&S

Radioactive Materials

- Federal laws mandate radiation exposure limits for minors to <10% of allowable adult exposure
- Minors must complete the radiation safety course before commencing activity
- Minors and parent/guardian must sign appropriate consent forms
- Direct any questions to the Radiation Safety Officer;
radsafe@wsu.edu; 509-335-7183

Transportation of Minors

- Program staff must not be alone with a minor in a vehicle
 - A minimum of two (2) adults/program staff is required in every vehicle transporting minors
- Whenever possible, chartered transportation is the recommended over university transportation when minors are involved
- All drivers of university vehicles must comply with the requirements of [SPPM 7.10](#)
- Minors under 13 years must not ride in the front seat of a vehicle [RCW 46.61.687](#)
- All passengers must always wear seatbelts [RCW 46.61.687](#)



Certificate of Completion

THIS CERTIFICATE IS AWARDED TO

FOR SUCCESSFUL COMPLETION OF THE REQUIRED:

Promoting Safe Interactions with Youth - EP 14 required Training Part 3

Supervisor Signature

_____/_____/_____
Date