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*The discipline of learning. The art of caring.*

**Sexual and Gender-Based Harassment, Interpersonal Violence  
and Other Sexual Misconduct (SIM)**

**Policy and Procedure**

**March 2022**

Western University of Health Sciences  
Sexual and Gender-Based Harassment, Interpersonal Violence, and Other Sexual Misconduct (SIM)  
Policy and Procedure

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## I. POLICY STATEMENT

WesternU, consisting of its various colleges of graduate health sciences, and its clinical centers wherever located (collectively “WesternU”), is an institution founded upon the principles of compassion, excellence, and humanism.

*Consistent with these values, WesternU is committed to providing a safe and non-discriminatory educational and working environment for all members of the WesternU community. Consistent with state and federal and local laws, WesternU strictly prohibits discrimination or harassment in its programs and activities on the basis of race, color, national origin, ancestry, sex, gender, gender identity or expression, sexual orientation, disability, age, religion, medical condition, veteran status, or any other characteristic protected by law.*

**This policy specifically addresses all forms of sex discrimination, including sexual harassment and other related acts referred to within this policy as Prohibited Conduct.** WesternU does not discriminate on the basis of sex in its educational programs or activities, including admissions and employment. Prohibited Conduct, for purposes of this policy, includes but is not limited to acts such as sexual assault, dating violence, domestic violence, and stalking (collectively referred to as Prohibited Conduct in this policy). Please refer to WesternU’s Non-Discrimination, Anti-Harassment, Anti-Retaliation policy/procedure for information that governs other forms of discrimination or harassment, including retaliation.

WesternU has adopted appropriate grievance procedures to ensure that prompt and appropriate administrative action is taken to address reports, formal Complaints and to eliminate the recurrence of Prohibited Conduct. This policy is published in its entirety on WesternU’s Title IX website and included as a reference in WesternU Catalog, which is available to all students and employees. This policy is also circulated annually to all employees.

This policy is intended to promote student safety and the wellbeing of all members of the WesternU community. It is the responsibility of each member of WesternU to positively contribute to the WesternU community in a manner that fosters an environment free from Prohibited Conduct. All members of the WesternU community are encouraged to take reasonable and prudent actions to prevent or stop an act of Prohibited Conduct. Additionally, any member who takes such action will be supported by WesternU and protected from retaliation. All members of WesternU have the right to fully participate in all WesternU programs and activities and be free from unlawful discrimination or harassment. WesternU also prohibits against any form of retaliation against a person, who under good faith, reported a violation under this policy or who participated in any investigation or proceeding under this policy.

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This policy strictly prohibits the specific forms of behavior that may violate Title IX of the Education Amendment of 1972 (Title IX); applicable provisions of Violence Against Women Reauthorization Act of 2013 (VAWA); applicable portions of the Title VII of the Civil Rights Act of 1964 (Title VII); Jeanne Clery Disclosure of Security Policy and Campus Crime Statistics Act (Clery Act), the Campus Sexual Violence Elimination (Campus SaVE) Act, applicable provisions of Senate Bill 493, and other related local, state, and federal laws, regulations or statutes. Further this policy is intended to conform with the specific compliance requirements detailed in such laws, regulations, and statutes, which may be satisfied through practice, where appropriate, and/or memorialized by policies and procedures. WesternU reserves the right to amend this policy to ensure compliance, as necessary. In the event of a modification which impacts the campus at large, an appropriate update to the campus community will be issued.

On a case-by-case basis, exceptions to or modifications of the procedures can be made by the Provost if required for fairness or practical necessity. Exceptions must be made in writing and notice provided to both the Complainant and Respondent. ***This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such codes generally.***

## **II. STATEMENT ON CONSENSUAL RELATIONSHIPS**

WesternU strongly discourages consensual relationships (i.e., romantic or sexual) between faculty and students, staff and students, persons in a supervisor/supervisee employment relationship, or between students who have an authority relationship over other students or are within a small group, such as a course, student organization, or program cohort.

Relationships with an inherent power differential may result in a lack of meaningful, affirmative consent between parties and an actual or perceived conflict of interest. WesternU expressly prohibits any form of Prohibited Conduct of employees or students when a previous consensual relationship ceases to exist or when such a relationship is rejected by one of the parties. Accordingly, WesternU strongly recommends that such relationships be avoided.

Consensual relationships are considered Prohibited Conduct when they are found to compromise WesternU's educational mission or otherwise is disruptive to workplace operations. If the relationship is nevertheless not avoided, the person in the authority position is strongly recommended to report the relationship to his or her department head, Dean, or the Office of the Provost immediately. Failure to report the relationship or any significant delay in reporting may be cause for disciplinary action. If an individual is in doubt concerning a possibility of a violation of this policy, it is recommended that they consult with their Department Chair or Dean. Confidentiality shall be protected to the fullest extent possible.

WesternU may take actions as it deems appropriate to address situations it becomes aware of that involve romantic and/or sexual relationship involving imbalance of supervisory authority or responsibility, including but not limited to: transferring or moving one of the involved parties to another position or assignment or altering responsibilities or authority. WesternU also encourages consideration of romantic and/or sexual relationships and how they may impact the broader workplace or learning environment. Employees and Students are strongly advised to establish clear boundaries to prevent inappropriate relationships from forming and for communicating directly and/or seeking assistance with communicating about issues of inappropriate pursuit or personal boundary violations. Moreover, pursuing romantic and/or consensual relationship with patients is generally unacceptable. Employees or students discovered to have used or plans to use information contained in confidential records to pursue or establish consensual relationships will be subject to discipline.

### **III. STATEMENT ON TRUTHFULNESS**

Deliberately and knowingly providing false and/or malicious information/statements under this policy or procedure is prohibited and will be subject to appropriate disciplinary action. For students, intentionally providing false information during a WesternU proceeding or to a WesternU official may be considered a violation of the WesternU Standards of Student Conduct. For employees, intentionally providing false information may be considered a violation of Professional Code of Conduct.

## **IV. SCOPE AND JURISDICTION**

This policy, and its related procedure, is applicable to and available for use by the following eligible persons:

- Students, who are registered or enrolled at WesternU (as defined by our catalog.)
- Employees, which includes staff or faculty who are full time, part time, seasonal or temporary classifications; and
- Third Parties, which includes applicants for admissions or employment (who do not otherwise meet the definition of Students or Employees identified above), contractors, vendors, visitors, guests, employees of or individuals associated with businesses or organizations participating in cooperative work or academic programs with the University, and other third parties within WesternU's control.

This policy (and its companion Procedure) covers acts of Prohibited Conduct which are defined within this policy that are committed by or against students, employees or third parties when:

- Occurs against an eligible person within the United States, and
- Conduct in relation to a WesternU education program or activity, includes locations, events, or circumstances over which the recipient exercised substantial control over both the Respondent and the context in which the Prohibited Conduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by WesternU.

Further, this policy (and its companion Procedure) also allows WesternU to take reasonable steps to respond to each incident of Prohibited Conduct (e.g. Title IX and Non-Title IX sexual harassment, gender-based harassment, sexual assault, sexual exploitation, stalking, intimate partner violence (dating/domestic violence), retaliation, complicity and other sexual misconduct) involving individuals subject to institutional policies that occur in connection with any educational activity or other program of the University. This includes incidents that occurred outside of those educational programs or activities, whether they occurred on or off campus, if, based on the allegations, there is any reason to believe that the incident could contribute to a hostile educational or work environment or otherwise interfere with a student's access to education.

## V. DEFINITION OF TERMS

WesternU utilizes the following relevant terms and terminology in this policy and procedure:

1. **Actual Knowledge** means notice of sexual harassment or allegations of sexual harassment or other Prohibited Conduct reported to a Title IX Coordinator or any WesternU Official.
2. **Advisor** refers to the individual who assists the parties during the Grievance Process. Further information regarding the role of Advisor can be found in the **Advisor section below**.
3. **Complainant** refers to the individual who is alleged to be the victim of conduct that could constitute sexual harassment.
4. **Consent** is defined in the **Affirmative Consent and Incapacitation** Section.
5. **Decision-Maker** refers to the individual(s) responsible for making a Determination of Responsibility in the Grievance Process.
6. **Determination of Responsibility** refers to a step in the grievance process in which the Decision-Makers(s), after a review of evidence and based on the Standard of Evidence, determine whether the Respondent is responsible or not responsible for the policy violation(s) in question.
7. **Eligible Person** includes but is not limited to (a) students who are registered or enrolled at WesternU (as defined by WesternU's catalog), including applicants for admission; (b) employees, which includes staff or faculty who are full time, part time, seasonal or temporary classifications, including applicants; and (c) contractors, vendors, visitors, guests and third parties within WesternU's control (Third Parties). Please see **Scope and Jurisdiction** for further information.
8. **Exculpatory Evidence** means any evidence that is favorable to the Respondent that shows or tends to show the Respondent is not responsible for the allegation of sexual harassment.
9. **Formal Complaint** means a document filed by a Complainant (containing the Complainant's physical or digital signature or otherwise indicates the identity of the Complainant as individual filing the Formal Complaint) or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that WesternU investigate the allegation of sexual harassment. At the time of filing a Formal Complaint for Track 1 cases, 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. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not considered a Complainant or otherwise a party to the matter.
10. **Grievance Process** refers to the formal procedures adopted by WesternU to provide prompt and equitable resolution of student and employee complaints alleging Prohibited Conduct. Generally, this includes, once a Formal Complaint is filed, a) Investigation, b) Hearing; c) Appeal. Please refer to the companion procedure for additional details.
11. **Hearing Officer** refers to the individual tasked with the responsibility of adjudicating the hearing in the Grievance Process. This individual may be an external party and may be referred to as the Chair.

12. **Inculpatory Evidence** Any evidence that shows or tends to show that the Respondent engaged in the allegation of sexual harassment.
13. **Informal Resolution** means an alternative dispute resolution, such as mediation, that does not involve a full investigation or hearing, to resolve a Formal Complaint, provided:
  - a. Written notice is provided to both Parties disclosing the allegations, requirements of the informal resolution process including the circumstances which preclude both parties from resuming a Formal Complaint arising from the same allegations once resolved
  - b. Provides an opportunity for either party to withdraw from the process, prior to resolution concluding, and resuming the Grievance Process for the Formal Complaint
  - c. Parties voluntarily agree, in writing
  - d. The matter does not involve allegations of an employee engaging in Prohibited Conduct against student
14. **Investigator** refers to the individual designated to conduct the investigation of a Formal Complaint.
15. **Nonbinary** is a general term for people whose gender identities fall outside of the binary conception of woman or man (or male or female). Nonbinary people may or may not identify as transgender.
16. **Non-Consensual Sexual Contact** refers to any intentional touching of a person's breast(s), buttock(s), groin, genitals, or other intimate parts without affirmative consent. Touching may be over or under clothing and may include the Respondent touching the Complainant, the Respondent making the Complainant touch the Respondent or another person, or the Respondent making the Complainant touch the Complainant's own body.
17. **Private Parts** refers to a person's sexual organs, anus, breast(s), buttock(s), groin/genitals, or other intimate body parts
18. **Remedies** refer to those actions issued against a Respondent after a Determination of Responsibility following a grievance process, and which are designed to restore or preserve equal access to the WesternU's education program or activities.
19. **Respondent** means an individual who has been reported to be the perpetrator of Prohibited Conduct under this policy.
20. **Responsible Employee (also referred to as Employees with a Duty to Report)** is an employee who has the authority to take action to redress sexual harassment or assist with providing supportive measures to students, or who has the duty to report suspected Prohibited Conduct to the Title IX Coordinator. Please see the **Responsible Employees** section for further details.
21. **Retaliation** is defined in the **Prohibited Conduct** section.
22. **Sex Stereotype** refers to an assumption about a person's appearance or behavior or about an individual's ability or inability to perform certain kinds of work or attain certain levels of academic achievement based on a myth, social expectation, or generalization about the individual's sex (or gender, including gender identity and/or nonbinary status).
23. **Sexual Harassment** is defined in the **Prohibited Conduct** section.

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24. **Standard of Evidence** refers to a preponderance of the evidence (i.e., whether, based on the evidence presented, it is more likely than not that the Respondent committed each alleged violation).
25. **Supportive Measures** refers to any non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment or other Prohibited Conduct. Please see the **Supportive Measures and Title IX Interventions** section for more information.
26. **Third Party** refers to any individual who is not a WesternU employee or student.
27. **Title IX Coordinator** refers to the designated WesternU employee(s) whose responsibility it is to coordinate WesternU's compliance with Title IX regulations. These responsibilities include, but are not limited to the following:
- a. Receiving reports of Title IX violations.
  - b. Implementing Supportive Measures and Title IX interventions.
  - c. Facilitating the Grievance Process.
  - d. Dismissal of formal complaints that do not rise to the level of sexual harassment. In these instances, the matter may be referred to another process if it meets the definition of Prohibited Conduct.
  - e. Implementing remedies.
  - f. Record-keeping
28. **WesternU Official** is an official who has the authority to institute corrective action on behalf of WesternU and serves as an Official with Authority under Title IX. Persons who serve in this role are:
- a. Members of the Senior Leadership Team
  - b. Campus Security Director
  - c. Manager of Campus Security
  - d. Academic Deans of WesternU Colleges
  - e. University Student Affairs Deans and Associate Vice Presidents
  - f. Title IX Coordinator and Deputy Coordinators.
29. **Witness** is any person(s) who can be called upon to provide relevant information about an allegation in which they are not the Complainant or Respondent.

## VI. TITLE IX COORDINATOR

Under Title IX of the Education Amendments of 1972:

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 educational program or activity receiving federal financial assistance.

The Title IX Coordinator is responsible for the monitoring of WesternU's compliance with Title IX, Violence Against Women's Act (VAWA), and SB 493; ensuring appropriate educational training; coordinating WesternU's investigation, response, and grievance procedures of all reported concerns; and ensuring the implementation of reasonable and appropriate **Supportive Measures/Title IX Interventions** to eliminate Prohibited Conduct, prevent recurrences of Prohibited Conduct and remedy its effects.

The Title IX Coordinator is available to meet with any student, applicant, employee or third party to discuss this policy and its accompanying procedures. WesternU has also designated Deputy Title IX Coordinators. If the Title IX Coordinator is not available, cannot perform the tasks as described in the procedures, or is the Investigator in the case, the Deputy Title IX Coordinator assumes the role of Title IX Coordinator, as the Interim Title IX Coordinator, as necessary. WesternU will ensure that the Title IX Coordinator, the Deputy Title IX Coordinators, Investigators, Decision-Makers, and other appropriate involved parties receive appropriate training to ensure the effective handling of their responsibilities. ***Training materials utilized can be located at <https://www.westernu.edu/hr/title-ix/>.***

The Title IX Coordinator is also responsible for managing WesternU's training program which is designed to ensure that all parties associated with the Title IX process (e.g., Title IX Coordinators, Investigators, Decision-makers, etc.) receive appropriate and competent training on all regulatory requirements associated with Title IX, VAWA, and SB 493, which includes but is not limited to:

- the definition of sexual harassment and other Prohibited Conduct,
- the scope of the WesternU's education program or activity,
- how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable,
- how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias,
- technology to be used at a hearing and on issues of relevance of questions and evidence,
- relevancy of questions and evidence about the Complainant's sexual predisposition or prior sexual behavior,
- issues of relevance to create an Investigative Report that fairly summarizes relevant evidence,

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- trauma-informed investigatory and hearing practices and shall understand how the institution's grievance procedures operate,
- how to mitigate implicit bias and racial inequities, both broadly and in educational disciplinary processes.

**The Title IX Coordinator and Deputy Title IX Coordinators can be contacted by telephone, email, or in person during regular business hours:**

California:

**Dr. Valyncia C. Raphael, Title IX Coordinator**

Director, Employee Relations  
Office of Human Resources  
309 E. Second Street  
Pomona, CA 91766  
(909) 469-5372  
[vraphael@westernu.edu](mailto:vraphael@westernu.edu)

**Dr. Beverly Guidry**

Deputy Title IX Coordinator  
Senior Vice President for University  
Student Affairs  
Student Services Center  
309 E. Second Street  
Pomona, CA 91766  
(909) 469-5341  
[bguidry@westernu.edu](mailto:bguidry@westernu.edu)

Oregon:

**Dr. Mirabelle Fernandes Paul**

Deputy Title IX Coordinator  
Assist. Vice President for University  
Student Affairs – WesternU Oregon  
200 Mullins Drive  
Lebanon, OR 97355  
(541) 259-0220  
[mfernandespaul@westernu.edu](mailto:mfernandespaul@westernu.edu)

**Mr. Rick Leeper**

Deputy Title IX Coordinator  
Assistant Vice President  
WesternU Oregon  
200 Mullins Drive  
Lebanon, OR 97355  
(541) 259-0202  
[rleeper@westernu.edu](mailto:rleeper@westernu.edu)

**Concerns or complaints about WesternU's application of Title IX, VAWA, Title VII, Clery Act, and SB 493 may be addressed to:**

Mail or Fax:

**California**

Office of Civil Rights  
San Francisco Office  
U.S. Department of Education  
50 Beale Street, Suite 7200

San Francisco, CA 94105-1813  
T: (415) 486-5555  
F: (415) 486-5570  
E: [OCR.SanFrancisco@ed.gov](mailto:OCR.SanFrancisco@ed.gov)

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**Oregon**

Office of Civil Rights  
Seattle Office  
U.S. Department of Education  
915 Second Avenue, Room 3310

Seattle, WA 98174-1099  
T: (206) 607-1600  
F: (206) 607-1601  
E: [OCR.Seattle@ed.gov](mailto:OCR.Seattle@ed.gov)

Online Reporting: If you wish to fill out a complaint form online with the OCR, you may do so at: <http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>.

**Inquiries involving employees may also be referred to:**

**California**

California Department of Fair and Employment and Housing  
320 West 4<sup>th</sup> Street, 10<sup>th</sup> Floor  
(800) 884-1684 or (800) 700-2320  
[www.dfeh.ca.gov](http://www.dfeh.ca.gov)  
Los Angeles, CA 90013

United States Equal Employment Opportunity Commission  
Roybal Federal Building  
255 East Temple Street, 4<sup>th</sup> Floor  
Los Angeles, CA 90012  
(800)699-4000 or (213)894-1000  
[www.eeoc.gov](http://www.eeoc.gov)

**Oregon**

United States Equal Employment Opportunity Commission  
San Francisco District Office (for Oregon)  
350 The Embarcadero, Suite 500  
San Francisco, CA 94102-1260  
(800) 669-4000  
[www.eeoc.gov](http://www.eeoc.gov)

## **VII. SUPPORTIVE MEASURES & TITLE IX INTERVENTIONS (NON-PREGNANCY/LACTATION)**

The Title IX Coordinator, upon receipt of a report of alleged Prohibited Conduct, will contact the Complainant to discuss the availability of Supportive Measures and explain the process for filing a Formal Complaint. Supportive Measures, sometimes referred to as interim measures, refers to any non-disciplinary, non-punitive, individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent. They can be temporary or on-going and can be implemented before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient’s educational or employment environment, or deter Prohibited Conduct.

Supportive measures for students may include but are not limited to, the following: temporary “no contact” directive, academic scheduling arrangements and adjustments and referrals to external support organizations (i.e., Center Against Rape and Domestic Violence, CARDV). For employees, supportive measures may include but are not limited to the following temporary “no contact” orders, change in work schedules, or other adjustments to work/academic locations, assignments, living/lodging or transportation arrangements, and referrals to our Employee Assistance Program (EAP).

Even in the absence of a formal complaint or report, in fulfillment of the University’s obligation to ensure equal access to its education programs and activities, the University may implement supportive measures/Title IX Interventions. This includes the consideration and response to requests for assistance relating to prior incidents of Prohibited Conduct that could contribute to a hostile educational environment or otherwise interfere with a student’s access to education where both individuals are, at the time of the request, subject to the University’s policies.

In situations unrelated to a grievance process, the Title IX Coordinator may provide Title IX interventions to prevent or remedy the effects of discrimination, harassment, and sexual violence, including but not limited to: dating, domestic violence, stalking, or other sexual misconduct.

Once imposed, the University will take necessary action to enforce the implemented supportive measures/interventions in a confidential manner (to the extent possible). For example, violations of no contact directives will be referred to appropriate student or employee conduct processes for enforcement. The Title IX Coordinator may collaborate with others within University when

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seeking supportive measures, however, the Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures/interventions. Anyone who becomes aware of an issue with, or has a concern about, the compliance with the imposed measures/interventions, should report this concern to The Title IX Coordinator or other designated contact.

## **VIII. CONFIDENTIALITY, PRIVILEGE, AND PRIVACY**

Confidentiality, in accord with the law, protects certain communications from disclosure without consent that occur within certain legally recognized privileged relationships (i.e., Attorney-Client, Physician-Patient, etc.). Therefore, when information is shared with a confidential resource or communication is shared with a professional with the same legal protection, subsequent disclosure is prohibited with any other individual except when applicable court law or court order permits such disclosure. In addition to legally recognized privilege, WesternU has designated resources that possess this protection under “Confidential Resources”.

Except as outlined under “Confidential Resources” or in the case of a privilege recognized under the law (examples of which include psychotherapist-patient; attorney-client, sexual assault counselor-victim; and domestic violence counselor-victim), any member of the WesternU community who knows of or has reason to know of Prohibited Conduct or allegations is encouraged to promptly inform the Title IX Coordinator.

WesternU does not require, allow, or otherwise will rely upon any questions or evidence that would seek evidence that is protected under a legally recognized privilege. Parties are encouraged to ensure against any inadvertent disclosures during the Title IX process, as such disclosures can be seen as a waiver of the privilege.

Privacy: Privacy means that information related to a report or formal complaint under this policy will be shared with a limited number of essential individuals who “need to know” any or all of the information to assist in support of the parties, or witnesses in the assessment, investigation, and resolution of the complaint. WesternU will make reasonable and appropriate efforts to preserve the privacy of all individuals involved in a report under this policy. If a Complainant, in making a report to a non-confidential resource, such as a Responsible Employee, requests confidentiality, the Complainant should be notified that it is not possible to guarantee confidentiality and directed to submit the request for confidentiality to the Title IX Coordinator for further review.

When confidentiality requests are made to the Title IX Coordinator, the University will, when appropriate and feasible, seriously consider whether granting such request would preclude a meaningful investigation or potential discipline of the potential respondent, or whether no investigation or disciplinary action be pursued to address alleged Prohibited Conduct. The University will weigh the request along with its responsibility to provide a safe and nondiscriminatory environment for all that are subject to its policies, including for the person making the request in addition to other considerations, including, but not limited to:

- Whether there are multiple or prior reports of sexual misconduct against the alleged respondent.
- Alleged respondent reportedly used a weapon, physical restraints, or engaged in battery.
- The alleged respondent is a faculty or staff member with oversight of students.

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- There is a power imbalance between the requestor complainant and alleged respondent.
- The requestor believes they will be less safe if their name is disclosed, or an investigation is conducted.
- Whether the University can conduct a thorough investigation and obtain relevant evidence in the absence of the requestor's cooperation.

Once the University has determined whether it can honor a confidentiality request, the University shall still take reasonable steps to respond to the requestor, consistent with the request, to limit the effects of the alleged Prohibited Conduct and prevent its recurrence without initiating formal action against the alleged respondent or revealing the identity of the requestor. These steps may include supportive measures or Title IX Interventions, or other steps deemed appropriate. The requestor shall be notified that the steps the institution will take to respond to the complaint will be limited by the request for confidentiality.

If the University determines that the confidentiality request cannot be honored, the requestor will be notified prior to taking any action, when possible and will take reasonable steps to provide any supportive measures or Title IX Interventions that might be appropriate under the circumstances. In the event the requestor requests that the University inform the alleged Respondent that a request was made not to investigate or seek discipline, the University will honor this request when possible.

## IX. CONFIDENTIAL RESOURCES

The following confidential resources are available for those unsure about whether to report formally or who are interested in seeking counseling in addition to (or without) making a formal report. While discussing allegations with a confidential resource may not result in an identifying report to the Title IX Coordinator, they may have reporting (or other) obligations under the law.

Optum Employee Assistance Program (services are available for students and employees)  
(800) 234-5465 -[www.liveandworkwell.com](http://www.liveandworkwell.com) (access code: westernu)  
Services: Counseling, Financial and legal advice, life balance support

### **Optum Provider Contact Information:**

#### **California**

Dr. Ana Couch, Dr. Luis Orozco  
Optum On-Site Providers

(626) 391-8508 | [anna.couch@optum.com](mailto:anna.couch@optum.com) (Couch)

(562) 219-4537 | [luis\\_orozco@optum.com](mailto:luis_orozco@optum.com) (Orozco)

Services: Counseling, coaching, and critical incident response services

#### **Oregon**

Lonny Bevill, Autumn Benton  
Optum On-Site Providers

(541) 905-5423 (Bevill) [lonny.bevill@optum.com](mailto:lonny.bevill@optum.com) (Bevill)

(952) 687-3720 | [autumn\\_benton@optum.com](mailto:autumn_benton@optum.com) (Benton)

Services: Counseling, coaching, and critical incident response services

**For a complete summary of available confidential resources, please visit our websites:**

#### **WesternU Title IX**

<https://www.westernu.edu/hr/title-ix/resources/>

#### **WesternU Employees**

<https://www.westernu.edu/hr/hr-benefits/>

#### **WesternU Students based in Pomona, CA**

<https://www.westernu.edu/students/students-services/students-services-counseling/>

#### **WesternU Students based in Lebanon, OR**

<https://www.westernu.edu/students-or/students-services-or/students-services-counseling-or/>

## **X. OTHER SUPPORTIVE RESOURCES**

There are numerous resources for both students and employees whether as a Complainant or Respondent, for support and guidance in relation to any report of Prohibited Conduct. Comprehensive information on available resources, including community resources, emergency, and on-going assistance; mental health services; reporting options and other available support are as follows:

- For Emergency Medical and police services: Call 911 or 9-911 (on campus)
- Local Police Assistance:
  - Pomona Police Department, 490 West Mission Blvd, Pomona, CA 91766, (909) 622-1241 or (909) 620-2155
  - Lebanon Police Department, 40 N. 2<sup>nd</sup> Street, Unit 100, Lebanon, OR 97355, (541) 451-1751
- Local Campus Security Assistance:
  - Pomona: Mon – Sun 7 days a week, 24 hours a day (909) 706-3000/or Ext. 3000 Imperial Guard Services
  - Oregon: Mon – Sun 7 days a week, 6 a.m. to 1 a.m. (541) 259-0301 or Ext. 0301, Premier Security’s direct line is (541) 968-4840.
- Local Medical Treatment:
  - Pomona Valley Hospital Medical Center  
1798 N. Garey Avenue  
Pomona, CA  
(909) 865-9500
  - San Antonio Regional Hospital  
999 San Bernardino Road  
Upland, CA  
(909) 920-4747
  - Samaritan Lebanon Community Hospital  
525 N. Santiam Highway  
Lebanon, OR  
(541) 258-2101

## **XI. RESPONSIBLE EMPLOYEES/ EMPLOYEES WHO HAVE A DUTY TO REPORT**

Responsible Employee means an employee who has the authority to take action to redress Prohibited Conduct or provide supportive measures to students, or who has the duty to report disclosures of suspected Prohibited Conduct to the Title IX Coordinator.

Responsible Employees includes, but is not limited to, those individuals with any of the following positions or substantially similar positions or job duties, regardless of the specific title the institution may attach to the position:

- Title IX Coordinator and Deputy Title IX Coordinators designated to comply with and carry out the institution's responsibilities to respond to reports of conduct prohibited by this policy.
- Faculty and associate faculty, teachers, instructors, or lecturers receiving payment from the University. Clinical faculty with unpaid appoints are not considered Responsible Employees, however, employees that manage preceptors, clinical faculty, and other faculty with unpaid appoints) are considered Responsible Employees.
- Teaching assistants and fellows, while performing the duties of employment by the institution.
- Laboratory directors, coordinators, or principal investigators.
- Rotations, internship, or externship directors or coordinators.
- Study abroad program directors or coordinators.

Responsible Employee does not include those individuals who are also any of the following:

- A therapist, victim advocate or other position with similar responsibilities, or other individual acting in a professional capacity for which confidentiality is mandated by law.

Individuals who are not deemed Responsible Employees shall inform each student who makes disclosures regarding Prohibited Conduct of the student's ability to report to a Responsible Employee and direct the student to those specific reporting resources.

Responsible Employees will undergo regular mandatory training regarding their obligation to prohibited conduct under this policy to the Title IX Coordinator. Failure to report disclosures of suspected Prohibited Conduct to the Title IX Coordinator could lead to discipline, up to and including termination.

## **XII. PROHIBITED CONDUCT**

The definitions of Prohibited Conduct below should be used for alleged misconduct that occurs on or after January 1, 2022. The definitions that should be used for alleged misconduct that occurred prior to January 1, 2022, are those in the policy in place at the time of the alleged misconduct. The following forms of Prohibited Conduct under this policy:

1. **TITLE IX SEXUAL HARASSMENT** - The following additional definitions apply for purposes of the definition of Title IX Sexual Harassment:

- A. *Title IX Quid Pro Quo*: An employee conditioning the provision of an aid, benefit, or service of WesternU on an individual's participation in unwelcome sexual conduct; or
- B. *Title IX Severe, Pervasive and Objectively Offensive*: Unwelcome conduct based upon one's sex determined by a reasonable person to be so severe, **and** pervasive, **and** objectively offensive that it effectively denies a person equal access to the WesternU's education program or activity; or
- C. A Student, Employee, or Third Party who engages in Sexual Assault, Domestic Violence, Dating Violence, or Stalking as defined herein; and
  - i. The alleged conduct was perpetrated against a person in the United States; and
  - ii. The conduct took place within WesternU's programs and activities (See Scope and Jurisdiction section).

Conduct that does not meet this strict definition for Title IX Sexual Harassment is still prohibited by this policy if it otherwise constitutes Prohibited Conduct as further detailed below.

- D. **TITLE IX SEXUAL ASSAULT** as defined in 20 U.S.C. 1092(f)(6)(A)(v), means any non-consensual sexual contact classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, which is defined as rape, fondling, incest, or statutory rape:
  - i. *Rape* is the penetration, or attempted 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 Affirmative Consent of the Complainant. Rape also includes the attempted penetration, no matter how slight, of the vagina or anus with any body part or object, or oral

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- penetration by a sex organ of another person, without the Affirmative Consent of the Complainant, with the present ability and the intent to commit Rape.
- ii. *Fondling* is the touching of the private body parts of another person for the purpose of sexual gratification, without the Affirmative Consent of the victim, including instances where the Complainant is incapable of giving Affirmative Consent because of their age or because of their temporary or permanent mental incapacity.
  - iii. *Incest* is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - iv. *Statutory Rape* is sexual intercourse with a person who is under the age of 18 years, the California statutory age of consent.
- E. *TITLE IX DATING VIOLENCE*, is conduct that constitutes violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based on parties' statements and with consideration of the following as defined in 34 U.S.C. 12291(a)(10), means by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- i. where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - 1. The length of the relationship.
    - 2. The type of relationship.
    - 3. The frequency of interaction between the persons involved in the relationship.
- F. *TITLE IX DOMESTIC VIOLENCE*, as defined in 34 U.S.C. 12291(a)(8), means 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 the jurisdiction receiving grant monies, 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 the jurisdiction.
- G. *TITLE IX STALKING*, as defined in 34 U.S.C. 12291(a)(30), means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
- i. fear for his or her safety or the safety of others; or

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ii. suffer substantial emotional distress.

2. **NON-TITLE IX MISCONDUCT** – Non-Title IX Misconduct is Prohibited Conduct that falls within the scope of this policy and the definitions below but that does not fall within the definition of Title IX Sexual Harassment, either due to the nature of the conduct or because it did not reportedly occur within a program or activity of WesternU in the United States. Such conduct is defined for purposes of this policy as:

A. Non-Title IX Sexual and Gender-Based Harassment:

- i. *Non-Title IX Sexual Harassment* unwelcome sexual advances, requests for sexual favors, and/or other unwelcome verbal, visual, or physical conduct of a sexual nature, made by someone, when one of the conditions outlined in (a), (b), (c) or (d), below, is present.
- ii. *Non-Title IX Gender-Based Harassment*: harassment based on sex (including sex stereotyping), gender, sexual orientation, gender identity (including transgender status), or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve contact of a sexual nature, when one of the conditions outlined in (a), (b), (c) or (d), below, is present.
  1. submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, or progress, or
  2. submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual, or
  3. the conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment, or
  4. submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

B. *Non-Title IX Sexual Assault*: Sexual Assault as defined in the Title IX Sexual Harassment definition above (rape, fondling, incest, statutory rape) that did not reportedly occur in a WesternU education program or activity in the United States.

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- C. *Non-Title IX Domestic Violence*: Domestic Violence as defined in the Title IX Sexual Harassment definition above that did not reportedly occur in a WesternU education program or activity in the United States.
  
- D. *Non-Title IX Dating Violence*: Dating Violence as defined in the Title IX as defined in the Title IX Sexual Harassment definition above that did not reportedly occur in a WesternU education program or activity in the United States.
  
- E. *Non-Title IX Stalking*: Stalking as defined in the Title IX Sexual Harassment definition above that did not reportedly occur in a WesternU education program or activity in the United States, or that otherwise fits within the definition of stalking but does not fall within the Title IX Stalking definition because the reported conduct is not directed at the alleged victim on the basis of sex.
  
- F. *Non-Title IX Sexual Misconduct*: includes sexual battery, sexual violence, and sexual exploitation defined as follows:
  - i. Sexual violence means physical sexual acts perpetrated against a person without the person’s affirmative consent, as defined in paragraph (1) of subdivision (a) of California Education Code Section 67386. Physical sexual acts include both of the following:
    - 1. Rape, defined as penetration, no matter how slight, of the vagina or anus with any part or object, or oral copulation of a sex organ by another person, without the consent of the victim.
    - 2. Sexual battery, defined as the intentional touching of another person’s intimate parts without consent, intentionally causing a person to touch the intimate parts of another without consent, or using a person’s own intimate part to intentionally touch another person’s body without consent.
  - ii. Sexual exploitation means a person taking sexual advantage of another person for the benefit of anyone other than that person without that person’s consent, including, but not limited to, any of the following acts:
    - 1. The prostituting of another person.
    - 2. The trafficking of another person, defined as the inducement of a person to perform a commercial sex act, or labor or services, through force, fraud, or coercion.
    - 3. The recording of images, including video or photograph, or audio of another person’s sexual activity or intimate parts, without that person’s consent.
    - 4. The distribution of images, including video or photograph, or audio of another person’s sexual activity or intimate parts, if the individual distributing the images or audio knows or should have

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known that the person depicted in the images or audio did not consent to the disclosure.

5. The viewing of another person's sexual activity or intimate parts, in a place where that other person would have a reasonable expectation of privacy, without that person's consent, for the purpose of arousing or gratifying sexual desire.
- 
3. **RETALIATION:** Retaliation is an adverse action taken against an individual for making a good faith complaint of Prohibited Conduct, filing a complaint or lawsuit under federal or state law or WesternU policy; or participating or refusing to participate in the grievance process related to any such allegations. Examples of adverse actions, may include, but are not limited to, the following acts: intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Title IX, its implementing regulations or this Policy. Engaging in retaliation for the purposes of discouraging others from engaging in activity protected under this Policy is prohibited and suspicions of this conduct should be immediately reported to the Title IX Coordinator. Individuals found to have engaged in retaliation are subject to disciplinary action.
  4. Possible Additional Charges of Prohibited Conduct:
    - A. **Grievance Process Abuse:** Any act(s) by a person(s) found to inhibits or disrupts this University grievance process including but not limited to, retaliation, intimidation, or harassment of witnesses, attempting to manipulate the process, or otherwise influence the impartiality of a representative of the Panel, and/or providing false or misleading information to WesternU Official.
    - B. **Complicity** – Any act that knowingly aids, facilitates, promotes, or encourages the commission of Prohibited Conduct by another person.
    - C. **Lesser Included Offenses:** An allegation of Prohibited Conduct which is a less serious, equally serious, or which does not require further evidence in addition to prove by a preponderance of the evidence than the type of violation(s) alleged.

### **XIII. AFFIRMATIVE CONSENT AND INCAPACITATION**

The expectations of our WesternU community can be summarized as follows:

In order for individuals to engage in sexual activity of any type with each other, there must be affirmative, conscious, and voluntary consent prior to and during sexual activity. Consent is sexual permission. Consent can be given by word or action. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Previous consent does not imply consent to sexual activity in the future. Silence or passivity – without actions demonstrating permission - cannot be assumed to show consent. Consent, once given, can be withdrawn at any time. There must be a clear indication that consent is not being withdrawn. Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex. Coercion happens when someone is pressured unreasonably for sex.

Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing. Under this policy, “No” always means “No,” and “Yes” may not always mean “Yes.” Anything but a clear, knowing, and voluntary consent to any sexual activity is equivalent to a “no.”

Under this policy and in accordance with federal and state law, WesternU recognizes that consent means the affirmative act or attitude pursuant to an exercise of free will. WesternU defines effective consent for specific sexual activity as (1) affirmative, (2) conscious, (3) voluntary; and (4) mutually understood.

Essential elements of effective affirmative consent include but are not limited to:

- **Freely and actively given**: Consent cannot be obtained through the use of force, coercion, threats, intimidation, or pressuring, or by taking advantage of the incapacitation of an individual.
- **Mutually Understood**: Communication regarding consent consists of mutually understandable words and/or actions that indicate clear and unambiguous willingness to engage in sexual activity. In the absence of clear communication or outward demonstration, there is no consent. Consent may not be inferred from silence, passivity, lack of resistance or lack of active response. An individual who does not physically resist or verbally refuse sexual activity is not necessarily giving consent.

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- Informed and Reciprocal: All parties have a clear and mutual understanding of the nature, extent, and scope of the act to which they are consenting and a willingness to do the same thing at the same time in the same way.

The following represent factors which may result in the disqualification of consent or render a determination of ineffective or involuntary consent:

- Force: This is the use of physical violence, threat of physical violence or intimidation (implied threats) to overcome an individual's freedom of will to choose whether or not to participate in a sexual activity. For the use of force to be demonstrated, there is no requirement that a Complainant resist the sexual advance or request; however, resistance by the Complainant will be viewed as clear demonstration of non-consent.
- Coercion: This is the improper use of pressure to compel an individual to initiate or continue sexual activity against his/her will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. A person's word 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 part does not engage in sexual activity.
- Incapacitation: Consent cannot be given by a person who is incapacitated. A person is incapacitated if s/he lacks the physical and/or mental ability to make informed, rational judgments (i.e., to understand who, what, when, where, why or how of the sexual interaction). Examples of incapacitation include unconsciousness, sleep, and blackouts. Incapacitation may result from the use of alcohol and/or drugs. Consumption of alcohol and drugs alone are insufficient to establish incapacitation. The impact of drugs and alcohol varies from person to person and the evaluation of incapacitation requires an assessment of how the consumption of alcohol and/or drugs impact an individual's decision-making ability; awareness of consequences; capacity to understand the fact, nature or extent of the sexual situation and their ability to make fully informed judgments. A person with a medical or mental disability may also lack the capacity to give consent.
- Alcohol and Other Drugs: Being intoxicated by drugs or alcohol does not diminish a person's responsibility to obtain consent from the other party before engaging in sexual activity. Factors to be considered include whether the person knew, or whether a reasonable person in the Respondent's position should have known, that the Complainant did not give, or revoked, consent; was incapacitated; or was otherwise incapable of giving consent.

## **XIV. REPORTING A PROHIBITED CONDUCT ALLEGATION OR FILING A FORMAL COMPLAINT**

Any WesternU community member who believes he or she has been subjected to Prohibited Conduct is encouraged to immediately report such concerns.

A Complainant can choose to report violations under this policy by:

- I. Contacting the Title IX Coordinator or Deputy Title IX Coordinators.
- II. Contacting Law Enforcement: A Complainant has the right to notify or decline to notify Law Enforcement. A Complainant can report immediately by calling:
  - Emergencies: 911 or 9-911 (on-campus)
  - Local Police:
    - California: Pomona Police Department – 490 West Mission Blvd, Pomona, CA 91766, (909) 622-1241 or (909) 620-2155
    - Oregon: Lebanon Police Department – 40 N. 2<sup>nd</sup> Street, Unit 100, Lebanon, OR 97355, (541) 451-1751Upon request, Complainants can be assisted with notifying law enforcement. Law enforcement can also assist with obtaining protective orders, including a restraining order.
- III. Filing a Complaint with an External Reporting Agency (***See Page 11***).

### **ANONYMOUS REPORTING**

An individual can exercise the option to file an anonymous complaint; however, doing so may limit WesternU's ability to adequately investigate and resolve the claim. If WesternU determines it cannot proceed with the information provided from the anonymous source, appropriate steps will be taken to the extent possible to respond to the complaint, to limit the effects of the alleged Prohibited Conduct and prevent its recurrence without initiating formal action against the alleged perpetrator or revealing the identity of the complainant, if known.

### **CONSIDERATIONS FOR FILING A FORMAL COMPLAINT**

A Complainant can simultaneously pursue any or all of the above options. The WesternU processes under this policy are separate and distinct from any criminal or external process. Thus, neither a decision by law enforcement regarding prosecution nor the outcome of any criminal or other external proceeding will be considered determinative of whether a violation of this policy has occurred.

There is no time limit for reporting Prohibited Conduct; however, WesternU's ability to appropriately respond to a possible violation may be diminished over time. If a Respondent is no longer a student or an employee or a third party, WesternU will provide appropriate Supportive Measures to assist the Complainant in identifying external reporting options and take reasonable and appropriate steps to eliminate Prohibited Conduct, prevent future reoccurrences and remedy its effects.

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The Complaint may be filed in person, by mail, or by electronic mail. In some instances, a Complaint may be signed by the Title IX Coordinator, which alleges a potential violation of this Policy and requests that WesternU investigate the allegation or allegations. Where the Title IX Coordinator signs a Complaint,

In order to protect the safety of the campus community, the Title IX Coordinator may decide to proceed with an investigation of Prohibited Conduct (that is, either Title IX Sexual Harassment or Non-Title IX Misconduct) even if a Complainant specifically requests that the matter not be pursued. WesternU may also initiate an investigation of potential violations of this policy even absent a formal complaint or identified Complainant or Respondent and even if a report has been withdrawn. If a Complainant requests that WesternU not investigate the alleged incident, the University may exercise its discretion to gather facts about the alleged incident in a manner that complies with the confidentiality requirements described in this policy. In determining whether to investigate the alleged incident(s), the University may consider factors including but not limited to:

- (1) the seriousness of the alleged incident;
- (2) whether the institution has received other reports of Prohibited Conduct committed by the Respondent(s);
- (3) whether the alleged incident poses a risk of harm to others; and
- (4) any other factors WesternU determines appropriate.

In these instances, a WesternU Official will attempt to contact the Complainant to discuss any concerns with the Complainant and seek to address and remedy barriers to reporting and/or participation based upon concerns about retaliation or other lack of clarity in understanding procedural options and potential outcomes. WesternU will seek resolution consistent with the Complainant's request, to the extent possible. Ultimately, the Title IX Coordinator will make a determination regarding the appropriate manner of resolution under the policy.

Filing a formal complaint to WesternU may result in a threat assessment and/or report of an annual crime statistic with the Complainant's name withheld (see section **XV. Information on Clery Reporting** for more details).

**IMPORTANCE OF PRESERVING EVIDENCE:** The preservation of evidence may strengthen investigations, which may result in a better chance of holding the accused responsible for the crime or obtaining a restraining order. Evidence may include the clothing you were wearing at the time, a record of threatening text messages and emails, or bodily fluids. Although it is best not to shower, if you have showered or changed clothes, you can still file a police report, go to a hospital to get a medical exam, (including a forensic medical exam from a Forensic Nurse Examiner, also known as Sexual Assault Nurse Examiner/SANE) or report the incident to WesternU (See section X, **Other Supportive Resources**).

## **XV. INFORMATION ON CLERY REPORTING**

Prohibited Conduct may be reported to local law enforcement, WesternU Student Affairs, Human Resources or Office of Security and Safety. For detailed information regarding the reporting of crimes or other Prohibited Conduct, please refer to the WesternU Annual Security Reports for the Pomona, CA and Lebanon, OR campuses at <https://www.westernu.edu/security/annual-security-report/>.

Pursuant to the Clery Act, WesternU includes statistics about certain offenses in its annual report on campus security and safety and provides that information to the United States Department of Education in a manner that does not include personally identifiable information about the involved individuals. The Clery Act also requires WesternU to issue timely warnings to the campus community about certain crimes that have been reported and may continue to pose a serious or continuing threat to employees and students. Consistent with the Clery Act, WesternU withholds any identifying information of the Complainant when issuing timely warnings to the campus community.

***Refer to the Jeanne Clery Act policy for additional information.***

## **XVI. GRIEVANCE PROCEDURE**

Upon notice to the Title IX Coordinator, the grievance process contained herein involves a prompt preliminary review to determine if there is reasonable cause to believe policy has been violated. If so, WesternU will initiate a confidential investigation that is thorough, reliable, impartial, prompt, and fair. The subsequent hearing process determines whether applicable policy has been violated. If so, WesternU will promptly implement effective remedies designed to end the discrimination, prevent its recurrence, and address its effects.

Notwithstanding the above, in compliance with California SB 493, regardless of whether or not a complaint has been filed under this policy, when WesternU becomes aware of possible Prohibited Conduct involving individuals subject to University Policy will conduct a prompt assessment to determine the appropriate response, including but not limited to: a prompt investigation to determine whether the alleged conduct more likely than not occurred, reasonable steps to end the harassment, or other steps to address the hostile environment, if one has been created, in order to prevent its recurrence, and address its effects.

WesternU reserves the right to make changes to this procedure as necessary and once those changes are posted online, they are in effect. As a member of the WesternU community, we encourage you to check online for the updated versions of all policies and procedures. If government regulations change in a way that impacts this procedure, this document will be construed to comply with government regulations in their most recent form.

## **XVII. PRELIMINARY REVIEW AND EMERGENCY REMOVAL**

Following receipt of a report or formal complaint, the Title IX Coordinator will conduct a preliminary review to determine if there is reasonable cause to believe this policy has been violated. This review may include contacting or attempting to contact the Complainant to discuss the need supportive measures and provide information about the grievance process options. As part of or in addition to the initial contact with the Complainant, the Title IX Coordinator will also gather information about the reported conduct to assess potential This review may also serve to help the Title IX Coordinator to determine appropriate Supportive Measures and assess confidentiality requests, if any (see section titled, Confidentiality, Privilege, and Privacy for more information about Responses to requests for confidentiality). As necessary, WesternU reserves the right to initiate a formal complaint without a formal complaint filed by the Complainant. The preliminary review may take up to 30 business days or more, depending on the scope and/or complexity of the allegations.

### **Emergency Removal:**

- **Student Respondents:** WesternU may remove a student Respondent from campus either entirely or partially on an emergency basis, provided that WesternU has conducted an individualized safety and risk analysis and determined that the immediate threat to the physical health or safety of any student or other individual arising from the allegations of Prohibited Conduct justifies removal. An emergency removal is not equivalent to a determination of responsibility or a sanction. Further, the University can remove a Respondent on an emergency basis whether a grievance process is underway or not. When an emergency removal occurs, WesternU will provide the Respondent notice and an opportunity to challenge the decision immediately following the removal in a “Show Cause” meeting.
  
- **Nonstudent Respondents:** WesternU may place a non-student Respondent on administrative leave during the pendency of the investigation and/or grievance process.

## **XVIII. DISMISSAL OF FORMAL COMPLAINTS**

Dismissal of Title IX Complaints: If the conduct alleged in the formal complaint 1) would not constitute Title IX Sexual Harassment as defined in the Prohibited Conduct section, even if proved, 2) did not occur in WesternU's education program or activity, or 3) did not occur against an Eligible Person as defined in Title IX, the Title IX Coordinator must dismiss the formal complaint with regard to that conduct for purposes of Prohibited Conduct under this policy and procedure.

Dismissal of a Title IX complaint does not prohibit the University from assessing whether the complaint may continue under applicable sections of Prohibited Conduct under this policy. Further the Complainant reserves the ability to submit an amended complaint that sets forth conduct that would constitute a Title IX violation. Further, in the event of a dismissed complaint, the University reserves the right to refer the complaint to the appropriate governing process, including but not limited to referring the matter to the respective college for conduct hearing or to Human Resources for review and action.

WesternU may also dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; the Respondent is no longer enrolled or employed by the recipient; or specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon a dismissal required or permitted pursuant to this section, the Title IX Coordinator must promptly send written notice of the dismissal and reason(s) therefore simultaneously to the parties.

## **XIX. INFORMAL RESOLUTION**

The goal of informal resolution is to address Prohibited Conduct, prevent recurrence, and remedy effects without completing the entire grievance process. Informal Resolution means an alternative dispute resolution, such as mediation that does not involve a full investigation or hearing, to resolve a Formal Complaint, provided:

- a. Written notice is provided to both Parties disclosing the allegations, requirements of the informal resolution process including the circumstances which preclude the parties from resuming a Formal Complaint arising from the same allegations once resolved
- b. Provides an opportunity for either party to withdraw from the process, prior to resolution concluding, and resuming the Grievance Process for the Formal Complaint
- c. Parties voluntarily agree, in writing
- d. The matter does not involve allegations of an employee engaging in Prohibited Conduct against student

**Not all allegations may be appropriate for Informal Resolution, particularly those allegations which involve Assault, Domestic Violence, Dating Violence or Stalking.** The Title IX Coordinator may be utilized to facilitate informal resolutions, as appropriate.

Participation in Informal Resolution is voluntary. WesternU may decline a request for Informal Resolution or terminate an ongoing Informal Resolution at any time. An individual is not required to follow the Informal Resolution process nor does the utilization of the Informal Resolution process preclude the availability of subsequent use of the Formal Resolution process should adequate resolution of the matter not be achieved. Parties may withdraw from Informal Resolution at any time prior to resolution and resume the formal complaint/grievance process

If the Informal process results in a resolution, then the matter will be considered closed. If resolution is not reached and the Title IX Coordinator determines that further action is required, or if the Respondent fails to comply with any of the terms of the agreed resolution, the matter will be referred to Formal Resolution.

## XX. FORMAL RESOLUTION & PROCEDURAL TRACKS

Basic Requirements: Formal Resolution of alleged misconduct is not an adversarial process between the complainant, the respondent, and the witnesses. As such, the complainant does not have the burden to prove, nor does the respondent have the burden to disprove, the underlying allegation or allegations of misconduct. The basic requirements associated with the facilitation of the entire grievance process includes:

- **Equity:** The equitable treatment of both the Complainant and Respondent
- **Presumption of Innocence:** Presumption that Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process
- **Objectivity:** WesternU will conduct trauma-informed and impartial investigation of complaints and utilize an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence.
- **Conflicts of Interests:** Ensure that any individual designated by a recipient as a Title IX Coordinator, Investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.
- **Disability Accommodations:** In the case of documented disabilities for which accommodations in the process are necessary, WesternU will make reasonable accommodations for the parties or witnesses when requested in advance.
- **Errors:** It is the responsibility of the Parties to bring any identified errors in the grievance process to the attention of WesternU so that we can correct the deficiency. Any failure to bring attention to an error will not be grounds for appeal unless such error was substantial and materially affected the outcome.
- **Timeframes:** WesternU will endeavor to adhere to the following timeframes, barring extenuating circumstances:
  - An investigation will be concluded within 90 business days.
  - Thereafter, the hearing of a matter will be concluded within 45business days.
  - Appeals once filed, will be resolved within 30 business days

In the event of a temporary delay in the investigation and fact-finding process that would change the prospective timeframes for the major stages of the complaint

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process, the parties will be notified in writing and notified of the basis of the delay. Appropriate basis for delay may include considerations such as the absence of a party, a party's Advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

WesternU will strive to provide periodic status updates on the investigation consistent with the timelines referenced above will be provided to the complainant and respondent. Parties may also reach out to the Title IX Coordinator for updates throughout the grievance process. To preserve the integrity of the grievance process, witnesses or other participants in the process may receive limited, if any, communication regarding the status of the case. WesternU will not unreasonably deny a student party's request for an extension of a deadline related to a complaint during periods of examinations or school closures.

**Procedural Tracks:** Formal Resolution is pursued when WesternU receives a Formal Complaint and/or the Title IX Coordinator determines this policy is applicable. Formal Resolution typically includes the following steps in the Grievance Process:

- 1. Investigation**
- 2. Hearing/Determination of Responsibility**
- 3. Appeals**

There are three possible sets of procedures ("Tracks") available for a Complaint. The determination of which procedure applies is decided by the Title IX Coordinator and is not appealable. This determination is based on a variety of factors. Any queries regarding the application of the Track should be directed to the Title IX Coordinator. Once a Track is determined to apply, the corresponding Track will govern the grievance process, even if the allegations include Prohibited Conduct that may fall under other Tracks .

Track 1 applies when the alleged conduct:

1. Meets the definition of Prohibited Conduct defined under Title IX – Sexual Harassment and which has not been dismissed or otherwise resolved, and
2. Occurred in the United States; and
3. Occurred in a WesternU program or activity as defined in Scope and Jurisdiction.

Track 2 applies when the alleged conduct:

1. The Complaint is against a Student;
2. Meets the definition of Prohibited Conduct defined under the Non-Title IX Misconduct and which has not otherwise resolved,

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3. The credibility of one (or both) of the parties, or any witness is central to the Determination of Responsibility; and
4. The student may be subject to serious disciplinary sanction (dismissal or suspension) if found in violation of University policy

Track 3 applies to all other Complaints under these procedures that allege a policy Violation. Under Track 3, the Investigator decides the Determination of Responsibility and there is no hearing under this policy. Typically, if a Track 3 matter involves a student Respondent, then upon the conclusion of the investigation, the matter may be referred to the respective College for handling under applicable student conduct policies. Similarly, Track 3 matters involving employee respondents that require corrective measures will be referred to Human Resources and the appropriate supervisor to implement the required sanction(s).

## XXI. INVESTIGATION

A. **Issuance of a Notice of Allegation(s):** Upon receipt of a formal complaint, the Title IX Coordinator will provide the following written notice to the parties who are known, simultaneously:

- a. Information pertaining to the Sexual and Gender-Based Harassment, Interpersonal Violence, and Other Sexual Misconduct Policy and Procedure.
- b. The identity and contact information of the appointed Investigator. If the parties have an objection to the Investigator, they must report their objection in writing to the Title IX Investigator as soon as possible.
- c. Notice of the allegations potentially constituting Prohibited Conduct, including sufficient details known at the time. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting Prohibited Conduct, and the date and location of the alleged incident, if known.
- d. Statement that the Respondent is presumed not responsible for the alleged conduct and that Determination regarding Responsibility is made at the conclusion of the Grievance Process, if applicable
- e. Notify the parties that they may have an Advisor of their choice, who may be, but is not required to be, an attorney.
- f. Notification that the parties will have the opportunity to inspect and review evidence during the investigation and resolution process, as provided in the procedures below.
- g. Inform the parties of the ***Statement on Truthfulness***.
- h. Notification that the parties will have an opportunity to identify witnesses and other evidence to assist in determining whether a policy violation has occurred. Any evidence available but not disclosed during the investigation might not be considered at a subsequent hearing. Inform the parties of the importance of preserving evidence and the prohibition against retaliation.
- i. Inform the parties of the applicable Procedural Track governing the complaint.

**Note:** If, during the course of the Investigation, additional allegations have been identified that were not included in the Notice of Allegation but should be investigated, WesternU will provide a notice to the parties, who are known, of the additional allegations.

B. **Initiation of Investigation:** In addition to the previously articulated expectations, all investigations will be facilitated according to the following (non-exhaustive) guidelines:

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- a. **Trained Investigator:** WesternU will appoint an appropriately trained individual(s) as the Investigator. WesternU reserves the right to utilize an external or internal Investigator.
- b. **Thorough, reliable, and impartial Investigation:** The Investigator's responsibilities include but is not limited to commencing a thorough, reliable, and impartial investigation.
- c. **Meeting Details and Updates:** The Investigator will provide the parties with notice of date, time, location, participants and purpose of investigative interviews or meetings with sufficient time to prepare for participation in the investigative interviews or meetings. The Investigator will provide updates on the status of the process.
- d. **Witnesses:** The Investigator will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- e. **Cross-Questions:** The Investigator shall provide both parties the opportunity to submit questions to ask of the other party(ies) and the witnesses. The Investigator shall pose the questions to the other party(ies) or the witness(es). The Investigator reserves the ability to rephrase or prohibit questions of either party or of any witness that are repetitive, irrelevant, or harassing. Information gathered by the Investigator through these questions are not necessarily shared with the party(ies) but are taken into consideration in facilitating the investigation.
- f. **Freedom to Present Evidence:** The Investigator will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- g. **Advisors:** The Investigator will provide the parties with the same opportunities to have others present, including the opportunity to be accompanied to any related meeting or proceeding by the Advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of Advisor for either the Complainant or Respondent in any Investigatory meeting, subject to the restrictions defined in the **Advisors Section**.
- h. **Evidence:** The Investigator shall provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the Investigator does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.
- i. **Report of Evidence Review:** For complaints that fall into Track 1 and 2 (See Formal Resolution Section), prior to completion of the Investigative

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Report, the Investigator will provide each party and the party's Advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy (i.e. Report of Evidence), and the parties must have at least 10 business days to submit a written response, which the Investigator will consider prior to completion of the Investigative Report.

- j. ***Investigative Report:*** For complaints that fall into Track 1 and 2 (See Formal Resolution Section, when deemed appropriate by the Investigator, the Investigator will prepare a final investigative report, which will fairly summarize relevant evidence and include as exhibits evidentiary materials as deemed appropriate by the Investigator. The parties may provide a written response to the report with 10 business days of issuance of the final investigative report. The Title IX Coordinator reserves the ability to reopen the investigation phase in the event new witnesses or evidence is presented or discovered after the investigative report has been issued. This ability aims to support that all relevant information in the case be properly considered by the investigator(s). The investigative report and the parties' written responses, if any, will be provided to the Hearing officer in advance of the hearing.
- k. ***Parallel Investigations:*** The WesternU's grievance process will not typically be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced. However, the WesternU may undertake a short delay (several days to weeks) in order to comply with a law enforcement request for cooperation (e.g.: to allow for criminal evidence collection) when criminal charges on the basis of the same behaviors that invoke this process are being investigated. The WesternU will promptly resume its process once notified by law enforcement that the initial evidence collection process is complete.
- l. ***Track 3 Complaints:*** For Complaints that are subject to Track 3, the Investigators will be responsible for the Determination of Responsibility.

## XXII. HEARING or DETERMINATION OF RESPONSIBILITY ("Tracks" Section)

### 1. TRACK 1 - TITLE IX HEARING – (See *Formal Resolution and Procedural Tracks* )

**A. Determination of Responsibility:** Upon the conclusion of an Investigation of a Formal Complaint alleging Title IX Prohibited Conduct, WesternU will provide a live hearing in order to make a Determination of Responsibility. The hearing will be facilitated according to the following:

- i. **Hearing Officer:** WesternU may appoint an appropriately trained individual(s) to serve as the Hearing Officer. The Hearing Officer may be an external individual, who will assist the Decision-Maker(s) in the adjudication of the hearing. The Hearing Officer may also be referred to as the Panel Chair.
- ii. **Decision-Maker(s):** The Hearing will be heard by a single Decision-Maker or a panel of Decision-Maker(s). Decision-Makers are selected from a pool of trained individuals. Members of the pool are trained in all aspects of the Title IX process. They receive annual training organized by the Title IX Coordinator, including a review of WesternU policies and procedures as well as applicable federal and state laws and regulations so that they are able to appropriately review evidence, understand the allegations and protect safety and promote accountability. All pool members are required to attend this annual training to be eligible to serve.
- iii. **Notice of Hearing:** WesternU will issue notice to the Parties simultaneously detailing the date, time, location, and purpose of the scheduled hearing(s) and pre-meeting(s). Both parties will be provided access to the evidence, list of witnesses, and Investigative Reports in advance of the hearing. Both parties are entitled to participate equally in the totality of the hearing.
- iv. **Pre-Meeting:** The Hearing Officer may meet with both parties prior to the scheduled hearing to exchange the names of witnesses who will be participating in the hearing and address other pertinent hearing details at least five (5) business days prior to the hearing.
- v. **Witnesses:** Any witness scheduled to participate in the hearing must have been interviewed first by Investigators (or have proffered a written statement) unless a justification exists to show that it was not reasonably available at that time or all parties consent to the participation of that witness in the hearing.

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- vi. **Conflicts of Interests:** The parties will be given a list of the names of each of the hearing panel members at least three (3) business days in advance of the hearing. All objections to any panelist must be raised in writing to the Hearing Officer as soon as possible. Hearing panel members will only be unseated if the Hearing Officer concludes that their bias precludes an impartial hearing of the allegation. The panelists will be given a list of the names of each parties and witnesses at least three (3) business days in advance of the hearing. Any panelist who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties and all witnesses in advance of the hearing.
- vii. **Physical Testimony- Witnesses:** The Hearing Officer, in consultation with the parties and Investigators, may decide in advance of the hearing that certain witnesses do not need to provide testimony at the hearing if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing. If available, and if requested by either party, a witness is expected to provide live testimony at the hearing.
- viii. **Participation of the Parties:** All parties have the responsibility and opportunity to, personally, present facts and arguments in full, during the hearing, though formal cross-examination of the other party and witnesses will not be used between the parties. *See Section xii. for further information regarding cross-examination.*
- ix. **Remote Participation:** Either party or any witness may request to answer the questions by video from a remote location. If alternative attendance or questioning mechanisms are desired, such as the Complainant not wanting to be in the same room as the Respondent for the hearing (screens, Skype, questions directed through the Hearing Officer, etc.), the parties should request them from the Hearing Officer at least three (3) business days prior to the hearing. The request will be approved provided that the Decision-maker(s) and Parties are able to simultaneously see and hear the party or the witness answering questions.
- x. **Order of Hearing:** Typically, a hearing will be facilitated in the following order:
  - 1. Investigator Presents the Report; and the Investigator may be Questioned by the Parties and Panel.
  - 2. The Parties Provide Relevant Evidence and Cross-Questioning
  - 3. Witnesses are Presented and Cross-Questioning
- xi. **Participation of the Investigator:** The Investigator(s) is expected to attend the first day of the hearing and may be asked to be present during the entire hearing process including deliberations, at the request of the Hearing Officer. The evidence contained in the Investigative Report are not

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binding on the panel, though any undisputed conclusions of the investigation report will not be revisited, except as necessary to determine sanctions/responsive actions.

- xii. **Direct Cross-Examination:** During a Track 1 hearing, each party's Advisor may ask the other party and any witnesses all relevant questions and follow-up questions, including challenging credibility on behalf of the respective party. Such cross-examination at the hearing must be conducted directly, orally, and in real time by the party's Advisor of choice and never by a party personally, subject to the restrictions in the Advisors Section.
- xiii. **WesternU Advisor:** If a party does not have an Advisor present at the hearing, WesternU will provide without fee or charge to that party, an Advisor of WesternU's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.
- xiv. **Support Persons:** In addition to an Advisor, each party will be authorized to bring one support person for moral support during the hearing, provided that the support person signs a confidentiality acknowledgement form. This individual is strictly prohibited from participating in any manner/fashion during this process. If the individual displays disruptive, disrespectful, or offensive behavior, they will be removed from the proceedings.
- xv. **Relevant Evidence:** Formal rules of evidence do not apply but in making determinations of relevance, the decision maker(s) may take guidance from the formal rules of evidence. Any evidence that the panel believes is relevant and credible may be considered. The Hearing Officer will address any evidentiary or relevancy concerns prior to and/or during the hearing, may exclude irrelevant or immaterial evidence and may ask the panel to disregard evidence lacking in credibility or that is improperly prejudicial. This includes requiring the parties to provide their proposed direct cross-examination questions for the other party or witnesses in advance of the hearing to the Hearing Officer for review. Both parties retain the right to object to the introduction of evidence protected by a recognized privilege, such as (but not limited to) the attorney-client privilege or the medical provider-patient privilege. The Hearing Officer will determine all questions of procedure and evidence. Anyone appearing at the hearing to provide information will respond to questions on his/her own behalf. Generally, the parties may not introduce evidence, including witness testimony, at the hearing that the party did not identify during the investigation and that was available at the time of the investigation. However, the decision maker(s) has/have discretion to accept for good cause, or exclude, such new evidence offered at the hearing.
- xvi. **Private Proceedings:** There will be no observers in the hearing, aside from

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the designated Advisors to the Parties or the Panel. The Hearing Officer may allow witnesses who have relevant information to appear at a portion of the hearing, separately, in order to respond to specific questions from the panel or the parties involved, and then be excused. Proceedings are private and confidential. All persons present at any time during the hearing are expected to maintain the privacy and confidentiality of the proceedings in accord with WesternU policy. While the contents of the hearing are private, the parties have discretion to share their own experiences if they so choose and should discuss doing so with their Advisors.

- xvii. **Character evidence:** The Panel may decline to hear from character witnesses if deemed irrelevant. In that event, the Panel may accept up to two (2) letters supporting the character of each of the parties.
- xviii. **Relevancy:** Only relevant cross-examination and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. This may occur prior to and/or during the hearing, including requiring the parties to provide their proposed direct cross-examination questions for the other party or witnesses in advance of the hearing to the Hearing Officer for review.
- xix. **Sexual Disposition or Prior Sexual Behavior:** Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
- xx. **Failure to Testify:** If a party or witness does not submit to cross-examination at the hearing, either because they do not attend the hearing, or they attend but refuse to participate in questioning or refuse to answer any question, the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions. However, the decision-maker(s) may consider or rely on statements otherwise made by parties or witnesses, even if those parties or witnesses do not participate in cross-examination at the live hearing in reaching a determination regarding responsibility.
- xxi. **Audio or Visual Recording:** Hearings (except for deliberations) are recorded for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are

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permitted. Panel members, the parties, and appropriate administrative officers of WesternU will be allowed to listen to the recording in a location determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

- xxii. ***Freedom to Present Evidence:*** WesternU will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- xxiii. ***Deliberations:*** The Decision-Maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. The Panel will base its determination(s) on a preponderance of the evidence (i.e., whether it is more likely than not that the responding party committed each alleged violation). If a responding party is found responsible, the Panel will recommend appropriate sanctions.
- xxiv. ***Impact Statement:*** Prior to the conclusion of the hearing, the parties may submit an impact statement to the Title IX Coordinator. The impact statement will only be made available to the decision maker(s) during deliberations if a Respondent is found responsible for violating WesternU policy. If the respondent is found not responsible, the statements will not be shared with the Decisions Makers.

**B. Issuance of a Notice of Outcome:** The Hearing Panel, will issue a written notice informing both parties simultaneously of their determination regarding responsibility within ten (10) business days from the conclusion of a Title IX Hearing (inclusive of deliberations), barring extenuating circumstances. The possible outcomes for each alleged violation are as follows: a) Responsible or b) Not Responsible.

To reach this determination, WesternU will apply the Standard of Evidence and include the following:

- i. Identification of the allegations potentially constituting Prohibited Conduct
- ii. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, methods used to gather other evidence, and hearings held.
- iii. Findings of fact supporting the determination.
- iv. Conclusions regarding the application of the WesternU conduct policies, as applicable.
- v. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the Respondent, and, if applicable,

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whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the Complainant; and

- vi. The recipient's procedures and permissible bases for the Complainant and Respondent to appeal.

The determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. The imposition of sanctions will take effect immediately and will not be stayed pending the resolution of any appeal.

## **2. TRACK 2 – NON-TITLE IX HEARING (See *Formal Resolution and Procedural Tracks*)**

**A. Determination of Responsibility:** Upon the conclusion of an Investigation of a Formal Complaint, WesternU will provide a hearing in order to make a Determination of Responsibility. The hearing will be facilitated according to the following:

- i. **Hearing Officer:** WesternU may appoint an appropriately trained individual(s) to serve as the Hearing Officer. The Hearing Officer may be an external individual, who will assist the Decision-Maker(s) in the adjudication of the hearing. The Hearing Officer may also be referred to as the Panel Chair.
- ii. **Decision-Maker(s):** The Hearing will be heard by a single Decision-Maker or a panel of Decision-Maker(s). Decision-Makers are selected from a pool of trained individuals. Members of the pool are trained in all aspects of the Title IX process. They receive annual training organized by the Title IX Coordinator, including a review of WesternU policies and procedures as well as applicable federal and state laws and regulations so that they are able to appropriately review evidence, understand the allegations and protect safety and promote accountability. All pool members are required to attend this annual training to be eligible to serve.
- iii. **Notice of Hearing:** WesternU will issue notice to the Parties simultaneously detailing the date, time, location, and purpose of the scheduled hearing(s) and pre-meeting(s). Both parties will be provided access to evidence, list of witnesses, and Investigative Reports in advance of the hearing. Both parties are entitled to participate equally in the totality of the hearing.
- iv. **Pre-Meeting:** The Hearing Officer may meet with both parties prior to the scheduled hearing to exchange the names of witnesses who will be

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- participating in the hearing and address other pertinent hearing details at least five (5) business days prior to the hearing.
- v. **Witnesses:** Any witness scheduled to participate in the hearing must have been interviewed first by Investigators (or have proffered a written statement) unless a justification exists to show that it was not reasonably available at that time or all parties consent to the participation of that witness in the hearing.
  - vi. **Conflicts of Interests:** The parties will be given a list of the names of each of the hearing panel members at least three (3) business days in advance of the hearing. All objections to any panelist must be raised in writing to the Hearing Officer as soon as possible. Hearing panel members will only be unseated if the Hearing Officer concludes that their bias precludes an impartial hearing of the allegation. The panelists will be given a list of the names of each parties and witnesses at least three (3) business days in advance of the hearing. Any panelist who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties and all witnesses in advance of the hearing.
  - vii. **Physical Testimony- Witnesses:** The Hearing Officer, in consultation with the parties and Investigators, may decide in advance of the hearing that certain witnesses do not need to provide testimony at the hearing if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing. If available, and if requested by either party, a witness is expected to provide live testimony at the hearing.
  - viii. **Participation of the Parties:** All parties have the responsibility and opportunity to, personally, present facts and arguments in full, during the hearing, though formal cross-examination of the other party and witnesses will not be used between the parties. *See Section I for further information regarding cross-examination.*
  - ix. **Remote Participation:** Either party or any witness may request to answer the questions by video from a remote location. If alternative attendance or questioning mechanisms are desired, such as the Complainant not wanting to be in the same room as the Respondent for the hearing (screens, Skype, questions directed through the Hearing Officer, etc.), the parties should request them from the Hearing Officer at least three (3) business days prior to the hearing. The request will be approved provided that the Decision-maker(s) and Parties are able to simultaneously see and hear the party or the witness answering questions.
  - x. **Order of Hearing:** Typically, a hearing will be facilitated in the following order:
    - 1. Investigator Presents the Report; and the Investigator may be Questioned by the Parties and Panel.

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2. The Parties Provide Relevant Evidence and Cross-Questioning
  3. Witnesses are Presented and Cross-Questioning
- x. **Participation of the Investigator:** Unless informed otherwise, the Investigator (s) is expected to attend the first day of the hearing and may be asked to be present during the entire hearing process including deliberations, at the request of the Hearing Officer. The evidence contained in the Investigative Report are not binding on the panel, though any undisputed conclusions of the investigation report will not be revisited, except as necessary to determine sanctions/responsive actions.
  - xii. **Direct Cross-Examination:** Cross-examination of either party or any witness shall not be conducted directly by a party or a party's advisor but will be facilitated by the Hearing Officer. The decision maker(s) reserve the ability to rephrase or prohibit questions of either party or of any witness that are repetitive, irrelevant, or harassing. The parties shall have the opportunity to submit written questions to the decision maker(s) in advance of the hearing. At the hearing, the other party shall have an opportunity to note an objection to the questions posed. The decision maker(s) reserve the ability to limit such objections to written form, and neither the decision maker(s) nor WesternU are obligated to respond, other than to include any objection in the record.
  - xiii. **Support Persons:** In addition to an Advisor, each party will be authorized to bring one support person for moral support during the hearing, provided that the support person signs a confidentiality acknowledgement form. This individual is strictly prohibited from participating in any manner/fashion during this process. If the individual displays disruptive, disrespectful, or offensive behavior, they will be removed from the proceedings.
  - xiv. **Relevant Evidence:** Formal rules of evidence do not apply but in making determinations of relevance, the decision maker(s) may take guidance from the formal rules of evidence. Any evidence that the panel believes is relevant and credible may be considered. The Hearing Officer will address any evidentiary or relevancy concerns prior to and/or during the hearing, may exclude irrelevant or immaterial evidence and may ask the panel to disregard evidence lacking in credibility or that is improperly prejudicial. This includes requiring the parties to provide their proposed direct cross-examination questions for the other party or witnesses in advance of the hearing to the Hearing Officer for review. Both parties retain the right to object to the introduction of evidence protected by a recognized privilege, such as (but not limited to) the attorney-client privilege or the medical provider-patient privilege. The Hearing Officer will determine all questions of procedure and evidence. Anyone appearing at the hearing to provide

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information will respond to questions on his/her own behalf. Generally, the parties may not introduce evidence, including witness testimony, at the hearing that the party did not identify during the investigation and that was available at the time of the investigation. However, the decision maker(s) has/have discretion to accept for good cause, or exclude, such new evidence offered at the hearing.

- xv. ***Private Proceedings:*** There will be no observers in the hearing, aside from the designated Advisors to the Parties or the Panel. The Hearing Officer may allow witnesses who have relevant information to appear at a portion of the hearing, separately, in order to respond to specific questions from the panel or the parties involved, and then be excused. Proceedings are private and confidential. All persons present at any time during the hearing are expected to maintain the privacy and confidentiality of the proceedings in accord with WesternU policy. While the contents of the hearing are private, the parties have discretion to share their own experiences if they so choose and should discuss doing so with their Advisors.
- xvi. ***Character evidence:*** The Panel may decline to hear from character witnesses if deemed irrelevant. In that event, the Panel may accept up to two (2) letters supporting the character of each of the parties.
- xvii. ***Relevancy:*** Only relevant cross- examination and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. This may occur prior to and/or during the hearing, including requiring the parties to provide their proposed direct cross-examination questions for the other party or witnesses in advance of the hearing to the Hearing Officer for review.
- xviii. ***Sexual Disposition or Prior Sexual Behavior:*** Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove affirmative consent. Where the investigator or decision maker allows consideration of evidence about a dating relationship or prior or subsequent consensual sexual relations between the Complainant as noted above, the mere fact that the Complainant and Respondent engaged in other consensual sexual relations with one another is never sufficient, by itself, to establish that the conduct in question was consensual. Before allowing the consideration of any evidence proffered pursuant to this

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Evidence section, the investigator or decision makers will provide a written explanation to the parties as to why consideration of the evidence is consistent with this section of the policy and procedure.

- xix. **Failure to Testify:** If a party or witness does not submit to cross-examination at the hearing, either because they do not attend the hearing, or they attend but refuse to participate in questioning or refuse to answer any question, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions. However, the decision-maker(s) may consider or rely on statements otherwise made by parties or witnesses, even if those parties or witnesses do not participate in cross-examination at the live hearing in reaching a determination regarding responsibility.
- xx. **Audio or Visual Recording:** Hearings (except for deliberations) are recorded for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted. Panel members, the parties, and appropriate administrative officers of WesternU will be allowed to listen to the recording in a location determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.
- xxi. **Freedom to Present Evidence:** WesternU will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- xxii. **Deliberations:** The Decision-Maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. The Panel will base its determination(s) on a preponderance of the evidence (i.e., whether it is more likely than not that the responding party committed each alleged violation). If a responding party is found responsible, the Panel will recommend appropriate sanctions.
- xxiii. **Impact Statement:** Prior to the conclusion of the hearing, the parties may submit an impact statement to the Title IX Coordinator. The impact statement will only be made available to the decision maker(s) during deliberations if a Respondent is found responsible for violating WesternU policy. If the respondent is found not responsible, the statements will not be shared with the Decisions Makers.
- xxiv. **Note:** WesternU reserves the ability to decide whether or not a hearing is necessary to determine whether any sexual violence more likely than not occurred. In making this decision, WesternU may consider whether the parties elected to participate in the investigation and whether each party had the opportunity to suggest questions to be asked of the other party or

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witnesses, or both, during the investigation.

**B. Issuance of a Notice of Outcome:** The Hearing Panel, will issue a written notice informing both parties simultaneously of their determination regarding responsibility within ten (10) business days from the conclusion of a Title IX Hearing (inclusive of deliberations), barring extenuating circumstances. The possible outcomes for each alleged violation are as follows: a) Responsible or b) Not Responsible.

To reach this determination, WesternU will apply the Standard of Evidence and include the following:

- i. Identification of the allegations potentially constituting Prohibited Conduct
- ii. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, methods used to gather other evidence, and hearings held.
- iii. Findings of fact supporting the determination.
- iv. Conclusions regarding the application of the WesternU conduct policies, as applicable.
- v. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the Respondent, and, if applicable, whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the Complainant; and
- vi. The recipient's procedures and permissible bases for the Complainant and Respondent to appeal.

The determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. The imposition of sanctions will take effect immediately and will not be stayed pending the resolution of any appeal.

### **3. TRACK 3 – NO HEARING – (See *Formal Resolution and Procedural Tracks*)**

Student Respondents: Under Track 3, the Investigator decides the Determination of Responsibility and there is no hearing under this policy. Typically, if a Track 3 matter involves a student Respondent, then upon the conclusion of the investigation, the matter may be

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referred to the respective College for handling under applicable student conduct policies. Similarly, a Track 3 matter involving an employee Respondent, will be referred to Human Resources and their respective supervisor for implementation of corrective action, if needed.

Employees & Third Parties: Upon the conclusion of the Investigation, a written notice (Notice of Outcome) will be issued informing both parties simultaneously of the determination regarding responsibility. The possible outcomes for each alleged violation are as follows: a) Responsible or b) Not Responsible.

To reach this determination, WesternU will apply the Standard of Evidence and include the following in the Notice of Outcome:

- i. Identification of the allegations potentially constituting Prohibited Conduct
- ii. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, methods used to gather other evidence, and hearings held.
- iii. Findings of fact supporting the determination.
- iv. Conclusions regarding the application of the WesternU conduct policies, as applicable.
- v. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any recommended disciplinary sanctions, and, if applicable, whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the Complainant; and
- vi. Appeal information

The determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. Depending on the status of the parties, the imposition of sanctions may occur separately from the issuance of the Notice of Outcome. Once implemented, sanctions, may typically will take effect immediately and will not be stayed pending the resolution of any appeal.

## XXIII. SANCTIONING

In determining an appropriate sanction, the decision maker(s) may work collaboratively with the appropriate stakeholders to appropriate sanctions for violations of this policy. Sanctions may be imposed independently or in combination with other sanctions or corrective actions and can be assigned to an individual student(s)/employee(s) or groups of student(s)/employee(s). Other considerations may include, but is not limited to:

- The nature and relative seriousness of the conduct (if a respondent is found responsible for multiple violations, this should be reflected in the sanction).
- Aggravating, mitigating, or compelling information provided during or contemporaneously with the grievance process:
  - Aggravating factors that warrant a more severe sanction may include but are not limited to: failure to cooperate with the investigation, providing false information, wrongful personal conduct during the course of the investigations and adjudicatory process (such as violating no-contact orders), use or threat of use of a weapon, the harm or deprivation of access/benefits/opportunities was abiding, extensive or irreparable, the totality of the behavior was exceptionally severe, persistent, or pervasive. the harassment was threatening, intimidating, or aggressive, the Respondent refuses to accept any culpability even when provided with overwhelming evidence of responsibility.
  - Mitigating factors that warrant a less severe sanction include, but are not limited to: relationship history of the parties, evidence of clearly erroneous or unintentional behavior or that the conduct was committed by mistake, demonstrations of responsibility for the conduct in question, demonstration of genuine contrition or remorse for one's behavior, commitment to reforming behavior in the future, adherence to directives, cooperation with the investigation, and reduced risk of recurrence or harm to the broader community, the impact or deprivation of access/benefits/opportunities was brief, temporary, minimal or trivial
- The impact of the respondent's actions on the individuals personally affected, the WesternU community, and WesternU's principles, namely the value of Humanism.
- A Respondent's previous disciplinary record (a violation of any sort at WesternU or elsewhere, may be taken into account when considering a sanction for the current violation.
- Whether the respondent represents a foreseeable risk of harm to others.
- What is needed to ameliorate any potential threat to the WesternU community.
- Any identified gaps in learning outcomes or professional development deficiencies exposed by the conduct for students/employees.

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- Any other factor that is reasonably dictated by the standards of fairness and equity Any other factor needed to reach a just and appropriate resolution in the case.

**Sample Sanctions:**

The following are the usual active or inactive sanctions that may be imposed upon students:

- *Required assessments, treatment, or educational workshops/training*
- *Probation*
- *Suspension*
- *Dismissal*
- *Other Actions:* In addition to or in place of the above sanctions, WesternU may assign any other sanctions as deemed appropriate.

Responsive actions for an employee who has engaged in Prohibited Conduct include:

- *Warning – Verbal or Written*
- *Performance Improvement/Management Process*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Loss of Oversight or Supervisory Responsibility*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions, WesternU may assign any other sanctions as deemed appropriate.

Third Parties: In accordance with applicable law, WesternU reserves the right to issue, among others, any of the following sanctions in any order in these circumstances depending on the facts:

- No-contact directive
- Restriction of University privileges
- Restrictions/limitations/ban on access to campus property;
- Discontinuation of relationship or association
- Referral for action under (an)other policy/ies

## XXIV. APPEAL

- A. **Request for Appeal:** For Track 1 and Track 2 matters, either party may file an appeal from a determination regarding responsibility, and from WesternU’s dismissal of a formal complaint or any allegations therein, on the following bases within seven (7) business days of receipt of notification of such actions:
- i. Procedural irregularity that affected the outcome of the matter; or
  - ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or
  - iii. The Title IX Coordinator, Investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; or
  - iv. The determination of responsibility was arbitrary or capricious.
- B. **Appeal Review:** Upon review of a received appeal, WesternU must notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties. WesternU must:
- i. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the Investigator(s), or the Title IX Coordinator;
  - ii. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
  - iii. Issue a written decision describing the result of the appeal and the rationale for the result; and
  - iv. Provide the decision simultaneously to both parties.

Appeal decisions will be issued within fifteen (15) business days from receipt of the document, barring extenuating circumstances. The Appeal Officer’s decision will be the final decision of the University. A student may remain in class or on clinical assignments/rotations pending the outcome of appeals, except in cases of summary suspension. Track 3 matters are not subject to this appeal policy.

## **XXV. ADVISORS**

All parties are entitled to an Advisor of their choosing to guide and accompany them throughout the grievance process. This individual may be a friend, family member, attorney, or any other supporter a party chooses.

Generally, an Advisor assists a party in the grievance process, which could include the review of any received Notices, reviewing relevant policies and procedures, assisting in the gathering of relevant evidence/information, assisting in the identification of relevant witnesses and/or affidavits, drafting of pertinent party/witness questions, accompanying the student to the Interviews and/or other related meetings/proceedings, reviewing a party's statements. In Track 1 hearings, advisors may conduct cross-examination of the parties and witnesses. An Advisor will be appointed by WesternU if a Track 1 Complainant or Respondent does not have an advisor for the hearing.

The following contains important guidelines governing the use of an Advisor in this process:

- Parties must advise the Investigator or Hearing Officer/Panel Chair of:
  - a. The identity of their selected Advisor at least five (5) business days before the date of their first meeting (if known). The parties must provide subsequent timely notice if they change Advisors at any time. WesternU expects that the parties will wish to share documentation related to the allegations with their Advisors. WesternU provides a consent form that authorizes such sharing, and it must be completed at the time of identification of the proposed Advisor.
  - b. For Track 1 Hearings, if a Party does not select or designate an Advisor, WesternU will provide an Advisor, of our choosing, at no cost to the party. WesternU cannot guarantee equal representation, meaning that if one party selects an Advisor who is an attorney, but the other party does not, or cannot afford an attorney, WesternU is not obligated or required to provide an attorney to the other party but, to provide an Advisor of WesternU's choice.
- People who will be called as witnesses may not serve as Advisors. Additionally, individuals who are substantively and materially involved in or associated with the Investigation/Resolution Process, including Title IX functions, may not serve as an Advisor.
- The parties are entitled to be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake, interviews, meetings, hearing, and appeals.

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- Advisors should help their advisees prepare for each meeting, and are expected to advise ethically, with integrity and in good faith.
- All Advisors are subject to the same WesternU rules, whether they are attorneys or not.
- Advisors may not present on behalf of their advisee in an Investigatory interview or meeting. Advisors may confer, quietly, with their student as necessary, as long as they do not disrupt the process. If there is a need for more involved discussion, a party may ask for a brief recess, for a reasonable amount of time (subjective to the Decision Makers), to consult with their Advisor. They should request or wait for a break in the proceeding if they wish to interact with WesternU officials.
- Advisors will typically be given a timely opportunity to meet in advance of any interview or hearing with the WesternU official(s) conducting the interview or meeting. This will allow Advisors to clarify any questions they may have and allows WesternU an opportunity to clarify the role the Advisor is expected to take.
- Advisors are expected to refrain from interference with the WesternU investigation and grievance process, with the exception of the Advisors conducting the cross-examination of the parties and witnesses in the Track 1 Hearing process. Any Advisor who steps out of their role in any meeting under this process will be warned once and only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of their role, the Advisor will be asked to leave the meeting. When an Advisor is removed from a meeting, that meeting will typically continue without the Advisor present. Subsequently, the Title IX Coordinator will determine whether the Advisor may be reinstated, may be replaced by a different Advisor, or whether the party will forfeit the right to an Advisor for the remainder of the process.
- The parties are not otherwise restricted from discussing and sharing information relating to allegations with others who may support them or assist them in preparing and presenting for the grievance process.
- Advisors are expected to maintain the privacy of the records shared with them by WesternU. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by WesternU. WesternU may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the WesternU's privacy expectations.
- WesternU expects an Advisor to adjust their schedule to allow them to attend WesternU meetings when scheduled. WesternU does not typically change scheduled meetings to accommodate an Advisor's inability to attend. WesternU will, however, make provisions

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to allow an Advisor who cannot attend in person to attend a meeting by telephone, video and/or virtual meeting technologies as may be convenient and available.

- No audio or video recording of any kind other than as required by institutional procedure is permitted during meetings with WesternU officials.

## **XXVI. ADDITIONAL PROVISIONS**

Effective Date of Policy and Procedure: This policy applies to all reports of Prohibited Conduct occurring on or after the effective date of this policy. Where the date of the Prohibited Conduct preceded the effective date of the policy, the prior policy governs; however, the procedures under this policy will be used to adjudicate all hearings/appeals instituted on or after the effective date regardless of when the actual incident or report occurred.

Coordination with Other Policies: This policy addresses discrimination on the basis of sex or gender as it relates to Title IX Sexual Harassment and Non-Title IX Misconduct as defined herein. Sex discrimination (not based on harassment or violence), and discrimination and harassment based on race, color, nationality or ethnic origin, age, disability, or other protected characteristics are governed by WesternU's Non-Discrimination, Anti-Harassment and Anti-Retaliation Policy. Additionally, there are other University policies that govern conduct of students, faculty, and staff, including but not limited to Standards of Student Conduct (University Catalog) and Professional Code of Conduct (Employee Handbook). Where reported conduct involves potential violation of both this policy and another University policy, the University may at its discretion choose to investigate other potential misconduct under the procedures set forth in this policy, instead of the procedures ordinarily used to address potential violations of such other University policies, so long as doing so does not or would not unduly delay a prompt, equitable resolution of the report.

Academic Matters: Generally, if a complaint sets forth facts that, if true, would materially adversely affect grades or academic performance, the related Student Performance actions will be held in abeyance pending the resolution of the related complaint under this policy.

Policy Limitations: WesternU believes that the legitimate exercise of supervisory responsibilities or academic functions within the WesternU, such as, but not limited to, the oversight of performance, conduct or academic management of faculty, staff or students shall not be considered discrimination, harassment, or retaliation. Additionally, general offensiveness of conduct, standing alone, is not sufficient for the conduct to constitute Prohibited Conduct. To constitute Prohibited Conduct, in the employment context, it must unreasonably interfere with a person's work performance or create an intimidating, hostile, or offensive work environment; in the education context, conduct must be so severe, persistent, or pervasive that it interferes with a student's ability to participate in or benefit from the University's educational programs or activities. As a result, a concern or complaint containing honest mistakes, isolated incidents (unless severe), petty slights, minor or trivial actions or conduct reasonably unlikely to do more than cause temporary anger or upset, or annoyances involving rude, discourteous, or non-collegial behavior will generally not rise to the level of a violation of this policy and may be referred to a Supervisor for appropriate corrective action.

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Good Faith Reporting Expectation: All WesternU community members who file a false report or who provide false information, in the absence of a good faith belief that the report or information is true, may be subject to disciplinary action or sanctions.

Truthful and Full Cooperation: It is the expectation of WesternU that all employees and students will fully participate and cooperate in the investigation, fact-finding, and/or resolution of any claim of discrimination, harassment, or retaliation. Additionally, it is the expectation that all involved parties, whether as a Complainant, Respondent, or witness, will provide truthful information in any report or proceeding under this policy. Failure to participate, cooperate or providing misleading information, in bad faith, or with a view to personal gain or intentional harm to another in connection with an incident of Prohibited Conduct is prohibited and may be subject to disciplinary actions or sanctions. Further, any failure to participate through completion of the investigation and Grievance Process may result in the testimony previously provided being excluded from consideration. Information received in connection with the filing, investigation and resolution of allegations will be treated as confidential except to the extent necessary to adequately investigate the claims or when compelled to do so by law. All persons involved in the process should observe the same standard of discretion and respect for the privacy of persons involved in the process.

Alcohol and Drug Use: WesternU will not pursue disciplinary action or sanctions against a Complainant or witness for the disclosure(s) of illegal personal consumption of drugs/alcohol where such disclosure is made in connection with a good faith report or investigation of Prohibited Conduct under this policy and such drug or alcohol use is not the subject of a pending investigation or complaint. Nothing herein shall limit the use of such information in deciding issues relevant to the allegation of Prohibited Conduct at issue. However, WesternU reserves the ability to take appropriate action if it is determined that conduct committed at or near the time of the incident was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.

Family Educational Rights and Privacy Act (FERPA): The privacy of student educational records will be protected in accordance with FERPA guidelines and WesternU's FERPA policy. FERPA continues to apply in the context of the enforcement of this policy, but if there is a direct conflict between the requirements of FERPA and the requirements of Title IX, such that the enforcement of FERPA would interfere with the primary purpose of Title IX to eliminate sex or gender-based discrimination, the requirements of Title IX override any conflicting FERPA provision(s).

Consideration of Classroom and Instructional Settings: WesternU recognizes that the classroom or other instructional settings (e.g., laboratory, office hours) present special issues related to academic freedom. Academic freedom protects the expression of ideas, even where the idea or its expression is perceived to be mature, controversial, explicit, graphic, or offensive. Nevertheless, conduct that would otherwise constitute a violation of this policy will not be exempt merely because it occurs in an instructional setting. Rather, the investigation will consider

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the legitimate pedagogical context, and will consider discipline-specific guidelines for professional practice as defined by the appropriate educational unit. Accordingly, if the conduct that was the basis for the complaint occurred in an instructional context, broad deference is given to the presentation or discussion in an instructional setting of sexual topics that are mature, controversial, graphic, or explicit shall not be considered sexual harassment even if some persons find these topics subjectively offensive when there is legitimate pedagogical basis for the presentation.

Outcome of Grievance Process: The outcome of a WesternU grievance process is part of the education record of the Respondent, if a student, and is protected from release under a federal law, FERPA. However, the WesternU observes the legal exceptions as follows:

Parties involved in a complaint involving sexual assault have a right to be informed of the outcome, essential findings, rationale, and any sanctions that may result, in writing, without condition or limitation, and without substantial delay between notifications to each party. The WesternU may release publicly the name, nature of the violation and the sanction for any individual who is found in violation of a WesternU policy that is a “crime of violence,” including: arson, burglary, robbery, criminal homicide, sex offenses, assault, destruction/damage/vandalism of property, intimate partner violence, stalking and kidnapping/abduction. In doing so, the WesternU will not release any information that could lead to the identification of the Complainant.

Policy Applicability: Persons of all Genders, Gender Identities, Gender Expressions, and Sexual Orientations can be victims of Prohibited Misconduct. Prohibited Misconduct can be committed by an individual known to the victim including a person the Complainant may have just met, i.e., at a party, introduced through a friend, or on a social networking website.

Past Sexual History/Character: The past sexual history or sexual character of a party will not be admissible by the other party in the investigation or evaluation unless such information is determined to be highly relevant [pertaining only to past or subsequent interactions between the parties that offer context]. Such information sought to be admitted will be presumed irrelevant, and any request to overcome this presumption by the parties must be reviewed in advance by the Title IX Coordinator. While previous conduct violations by the Respondent are not generally admissible as information about the present allegation(s), the Title IX Coordinator may supply previous determinations to the Decision-Maker(s) or appeals officer to consider as evidence of pattern and/or predatory conduct during the Title IX Hearing and/or appeals review.

Witness Participation: Witnesses are expected to cooperate with and participate in the WesternU resolution process. Any witness who declines to participate in or cooperate with the investigation may not be permitted to offer evidence or testimony at a later time in the process.

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Recordkeeping: In implementing these procedures, training records, records of all allegations, investigations, Supportive Measures/Interventions, informal or formal resolutions, appeal including without limitation any audio or video recording or transcript, will be kept by the Title IX Coordinator indefinitely in the electronic Title IX Coordinator database.

Student Withdrawal or Employee Resignation While Process Pending

Should a student decide to voluntarily withdraw and/or not participate in the formal grievance process, the process may proceed in the student's absence to completion. WesternU's records will reflect the student's withdrawal.

Should an employee Respondent resign while the grievance process is pending, the process may be completed based on the information available. WesternU's records will reflect the employee's resignation. If the investigation concludes that the preponderance of the evidence did not find the employee Respondent responsible of a policy violation, WesternU's response to any future inquiries regarding employment references for that individual may include that information as appropriate or allowed by law. Information provided regarding employment references for any employee. Resigned former employees found responsible of policy violations after their departure may warrant a status of ineligible for rehire.

## **XXXII. OTHER POTENTIALLY RELEVANT POLICIES AND PROCEDURES**

In the event that a report or formal complaint is dismissed under this policy/procedure for not meeting the definition of Prohibited Conduct, the Title IX Coordinator will refer the matter to the appropriate WesternU departments for review/handling under the applicable conduct policies, which include but are not limited to the following:

- a. WesternU's Non-Discrimination, Anti-Harassment, and Anti-Retaliation policy/procedure: <https://www.westernu.edu/hr/title-ix/policies-procedures/>
- b. Standards of Academic Integrity, Professionalism and Student Conduct: <https://www.westernu.edu/media/registrar/2020-2021-catalog-general.pdf>
- c. Employee Code of Professional Conduct: <https://www.westernu.edu/mediafiles/hr/employee-handbook.pdf>

## **XXVIII. BYSTANDER INTERVENTION**

WesternU encourages all members of the WesternU community to be Active Bystanders against sexual violence. Bystanders are those who witness inappropriate behaviors or harmful situations, such as sexual harassment or sexual violence. Bystander Intervention occurs when a bystanders make a choice to speak up or intervene in some way. Bystanders can have a powerful impact on sexual violence prevention.

The following information is based on Bystander Intervention research and can help members of the WesternU community learn to recognize the signs of danger and develop plans to keep each other safe. Commit to being an Active Bystander.

Research indicates that Bystander Intervention may reduce rates of sexual violence on college campuses. Although more research is needed on the efficacy of Bystander intervention as a social strategy, extant research by Salazar (2014) demonstrates that Bystander intervention strategies may:

- Encourage participants to identify potentially harmful situations and intervene more often
- engaged in less sexual violence perpetration
- retain greater legal knowledge of sexual assault, effective consent, subscribe to less rape myths,
- express greater empathy for rape victims and less negative date rape attitudes and less hostility toward women and less hyper-gender ideology
- possess greater intentions to intervene
- less positive outcome expectancies for nonconsensual sex
- more positive outcome expectancies for intervening
- Decrease comfort with other's inappropriate behaviors

Moreover, Kettrey et al. (2021) reviewed a sample of 19 studies (N = 7920) and found that bystander intervention training provided significant success in empowering participants in identifying situations that warrant intervention. Additionally, Jouriles et al (2018) reviewed 24 studies and found that bystander intervention programming had a slight effect of improved attitudes/beliefs (effect 0.27) and a moderate effect on increased bystander behavior (effect 0.39). They also found that although the effect diminished overtime, the effect was sustained in some instances in as much 3 months following the programming.

### **Simple steps to becoming an Active Bystander:**

- **Notice the situation.** Be aware of your surroundings.
- **Interpret it as a problem.** Do I recognize that someone needs help?
- **Feel responsible to act.** See yourself as being part of the solution to help.
- **Know what to do.** Educate yourself on what to do.
- **Intervene safely.** Act but be sure to keep yourself safe.

### **Common Bystander Intervention Strategies:**

1. **Direct** - Directly intervene verbally or physically in a situation.
2. **Delegate** – Enlist help from one or more people around you.
3. **Delay** - After the incident is over, check in with the person who was harmed to see if they need assistance.
4. **Distract** – Indirectly take action to divert attention away from the person causing harm to give the person experiencing harm time to move to safety.
5. **Document** – As soon as possible, take steps to document the situation (e.g., preserve notes, photos, video, etc.) in case it is needed for formal action.

### **Additional Considerations for How to Intervene Safely:**

When you choose to intervene, always consider options for action that maintain your personal safety. Here are a few options for consideration:

- **Intervene Early** – Taking action when the problem is small can prevent a situation growing into a bigger, more harmful issue.
- **Tell another person.** Being with others is a good idea when a situation looks dangerous.
- **Ask a person you are worried about if he/she is okay.** Provide options and a listening ear.
- **Distract or redirect individuals in unsafe situations.**
- **Ask the person if he/she wants to leave.** Make sure that he/she gets home safely.
- **Call the police (911)** or someone else in authority or yell for help

Remember that effective helping can mean that doing something may be better than doing nothing.

### Works Cited

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