POLICY

POL-U1600.04 Preventing and Responding to Sex Discrimination, Including Sexual Misconduct

This policy applies to all students, employees, agents, groups, third parties, individuals, and organizations that use University facilities and persons who participate in University programs and activities to the extent provided by law, regardless of sexual orientation or gender identity. This policy applies to all Western locations (i.e., main campus, satellite locations, Lakewood); locations where Western activities are taking place (i.e., field trips, away porting events); Western sponsored transportation (i.e., buses to off-campus events); and off-campus non-Western sponsored events where the off-campus behavior creates a negative adverse impact back on campus.

Preamble:

Western prohibits sex discrimination, which includes sexual misconduct. Sexual harassment, gender harassment, and sexual violence are forms of sexual misconduct. Western is committed to preventing, addressing, and responding to sex discrimination. Sex discrimination, on or off campus, can have a serious impact on the quality of the educational and/or work experience. All students and employees have a right to work and educational environments free from sex discrimination. Therefore, Western adopts policies and programs aimed at preventing and responding to sex discrimination and prohibits retaliation against individuals who file or participate in sex discrimination complaints, as outlined in Title...
IX and Title VII. Western has numerous reporting options and resources for survivors of sexual misconduct, some of which are confidential and some of which have limited confidentiality as discussed below in Paragraph 2.

Definitions:

**Sex Discrimination:**
Disparate treatment or disparate impact based on an individual’s sex. This includes sexual misconduct in all its forms—sexual harassment, gender based harassment, and sexual violence, as well as other discrimination that treats or impacts people disparately on the basis of sex, gender, or gender identity.

**Consent:**
Means that at the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. (RCW 9A.44.010)

If coercion, intimidation, threats, or forcible compulsion is used there is no consent. If a person is mentally incapacitated or physically helpless or impaired such that a reasonable person would believe the incapacitated person cannot understand the fact, nature or extent of the sexual situation, there is no consent. This includes impairment or incapacitation due to alcohol or drug consumption, or being asleep or unconscious or because of an intellectual or other disability that prevents the person from having the capacity to give consent.

There is no consent when there is force, expressed or implied, or use of duress or deception. Coercion, forcible compulsion, or threat of either invalidates consent. Silence or an absence of resistance does not imply consent. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another person. Consent can be withdrawn at any time. Past consent to sexual activities does not imply ongoing future consent.

**Forcible Compulsion:**
Physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to herself or himself or another person, or in fear that she or he or another person will be kidnapped (RCW 9A.44.010)

**Sexual Intercourse:**
(a) Has its ordinary meaning and occurs upon any penetration, however slight, and (b) also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such a person is of the same or different sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes, and (c) also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of
another whether such persons are of the same or different sex. (See RCW 9A.44.010)

Sexual Contact:  
Any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party. (RCW 9A.44.010)

Mental Incapacity:  
That condition existing at the time of the offense which prevents a person from understanding the nature or consequences of the act of sexual intercourse or sexual contact whether that condition is produced by illness, defect, the influence of a substance or from some other cause. (See RCW 9A.44.010)

Physically Helpless:  
A person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act. (RCW 9A.44.010)

Family or Household Members::  
Spouses, domestic partners, former spouses, former domestic partners, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren. (RCW 26.50.010)

Retaliation:  
Any adverse action against any individuals because they have opposed discrimination (made a report or filed a complaint), responded to a complaint, served as a witness in an investigation, or participated in any manner in an investigation is strictly prohibited.

1. The University Does Not Discriminate on the Basis of Sex in its Programs and Activities and Will Not Tolerate Sex Discrimination, Including Sexual Misconduct.  
The University prohibits the crimes of sexual assault, dating violence, domestic violence, and stalking. Further, Title IX and Title VII require the University to not discriminate on the basis of sex. Sex discrimination, including sexual misconduct, is unacceptable and may be cause for discipline even if it does not rise to the level of a violation of law.
2. **The University is Committed to a Comprehensive Educational and Training Program to Promote Awareness of and Prevent Sex Discrimination, Including Sexual Misconduct.**

   A. The response system is available to students, employees and others on campus affected by sex discrimination, including sexual misconduct. Individuals have the right to file a criminal complaint and an institutional discrimination or disciplinary complaint simultaneously. Complaints against anyone to whom this policy applies may be made to the Vice Provost for Equal Opportunity/Title IX Coordinator or the police. Complaints against students by students may also be made to the Student Conduct Officer. As required by Title IX, the University will investigate reports of sexual violence even when no complaint is filed.

   B. Institutional discrimination and disciplinary complaints regarding sexual violence are conducted by officials who, as relevant to their roles in these processes, receive annual training on issues related to sexual assault, dating violence, domestic violence, and stalking, and how to conduct investigation and hearing processes that protect victims’ safety and promote accountability.

   C. Victims of sexual violence are encouraged to **preserve evidence** that may assist in proving the sexual violence occurred or may be helpful in obtaining a protection order from a court with jurisdiction.

   D. Vice Provost for Equal Opportunity/Title IXCoordinator investigates all discrimination complaints, including complaints of sex discrimination, including sexual misconduct. Western’s discrimination complaint procedure provides an administrative complaint process (not legal or criminal) for prompt, equitable and impartial investigation and resolution of sex discrimination complaints. [PRO-U1600.02A Discrimination Complaint Procedure](#)

   - The University will take steps to prevent recurrence of all forms of sex discrimination, and to correct its discriminatory effects on the complainant and others if appropriate. Interim measures may be taken to assist or protect the complaining individual(s) during the complaint process as necessary with the complainant’s consent (e.g., safety planning, arranging for changes in class schedule and/or living arrangements, counseling, modifying class requirements or testing schedules as needed, without penalty to the complainant).

   - Individuals who believe they have been discriminated against or are survivors of
sexual misconduct are encouraged to contact the Vice Provost for Equal Opportunity & Employment Diversity, who also serves as the Title IX Coordinator, Equal Opportunity Office, Western Washington University, Old Main 345, MS 9021, 516 High Street, Bellingham, WA 98225; (360) 650.3307 (voice) or 711 (Washington Relay); eoo@wwu.edu; or the Department of Education’s Office for Civil Rights.

- The standard of evidence used by the Title IX Coordinator in investigating allegations of discrimination is a preponderance of evidence (i.e., that it is more likely than not that the allegations are true).

E. **Chief, University Police** responds to and investigates all on-campus incidents of sexual misconduct when an individual seeks to file a criminal report. Off campus incidents are handled by the Bellingham Police or the police department with jurisdiction over the location where the alleged sexual misconduct occurred.

- When the survivor of a criminal act chooses to seek a legal remedy, they are encouraged to report all crimes of sexual violence to the appropriate law enforcement agency (typically either University or Bellingham Police). University Police may be contacted by calling (360) 650-3911 in an emergency or (360) 650-3555 to make a report, and are located in the Campus Services Building, 2001 Bill McDonald Parkway. University officials and offices, including the Title IX Coordinator (for anyone affected by sexual misconduct) or CASAS (for students) can assist victims in reporting to law enforcement if the victim so chooses. The standard of evidence used in criminal proceedings is proof beyond a reasonable doubt.

F. **Student Conduct Officer** responds to and investigates sexual misconduct. See WAC 516-21 for the Student Rights and Responsibilities Code. The procedures applicable in student conduct investigations provide for prompt, fair, and impartial investigation and resolution of sexual misconduct reports. The standard of evidence used by the Student Conduct Officer in investigating allegations of sexual misconduct is a preponderance of evidence (i.e., that it is more likely than not that the allegations are true). The Student Conduct Officer may take immediate interim measures in cases of sexual misconduct by imposing sanctions, including no-contact orders. The Student Conduct Officer may be contacted by calling (360) 650-3706, and is located in Viking Union 506.

G. When a report is investigated via the Discrimination Complaint Procedure or Student Conduct Code, or by University or local police, due process may mandate disclosure of
information provided by the complainant or respondent to the Title IX Coordinator/Equal Opportunity Office, Student Conduct Officer, or law enforcement with the other party and a limited number of witnesses.

H. When sexual violence is reported to the Title IX Coordinator, University Police, or the Student Conduct Officer, the University will keep the report confidential to the greatest extent possible while also providing protective measures and accommodations requested by the survivor and taking necessary action to keep other members of the campus community safe. If a survivor requests that their name not be revealed to the alleged perpetrator or requests that the University not investigate the report, the University will discuss with the survivor the limitations this places on the University’s ability to hold the perpetrator accountable. Personally identifying information regarding complainants/survivors of sexual violence contained in records maintained by the University regarding sexual violence will not be publicly disclosed except to the extent required by law.

3. The University Takes Action Towards Violators of This Policy

Anyone who is found to be in violation of this policy will be subject to a range of sanctions. As outlined in the Student Code of Conduct, possible sanctions for students are: warning; conditional status; loss of privileges; no-contact orders; requirement to engage in educational activities, assessment, counseling or treatment; requirement to provide restitution; campus housing relocation or termination; suspension or deferred suspension from the University, and; expulsion from the University. Possible sanctions for employees include written reprimand, leave without pay and termination of employment.

4. All Members of the University Community Ensure That Commitment to Preventing Sex Discrimination, Including Sexual Misconduct is an Integral Part of Western.

5. Employees Must Report Sexual Misconduct.

Employees have a duty to promptly report to the Vice Provost for Equal Opportunity, Title IX Coordinator, known or suspected incidents of sex discrimination, including sexual misconduct (except for those employees statutorily barred from sharing such information). Students and visitors are also encouraged to report this.

6. The University Prohibits Retaliation.

The University, based on civil rights law, prohibits retaliation or encouraging others to retaliate against anyone reporting or thought to have reported a violation of this policy. This means that any type of adverse action or behavior is prohibited against those who file a complaint or thirdparty
report, or otherwise participate in an investigative or disciplinary process. Retaliation will be considered independently, whether or not a complaint is substantiated. The University will take strong responsive action if retaliation occurs.