

INTERIM POLICY

Effective Date: August 14, 2020

Authority: [Title IX of the Education Amendments of 1972](#)

Approved By: President Sabah Randhawa

- | | | |
|-----------|---|--|
| Revises: | POL-U1600.04
Appendix A

Appendix B | Preventing Sexual Harassment & Responding to Sexual Misconduct
University Catalog, WWU Policies on Equal Opportunity/Affirmative Action, Sexual Harassment, Reasonable Accommodation

University Catalog, Sexual Misconduct Policy |
| See Also: | PRO-U1600.02

PRO-U1600.03
PRO-U1600.05
PRO-U1600.02A
POL-U1600.06

POL-U5615.01
POL-U5315.20
WAC 615-21 | Ensuring Equal Opportunity and Prohibiting Discrimination and Retaliation
Accommodating Persons with Disabilities
Implementing Affirmative Action
Discrimination Complaint Procedure
Prohibiting Consensual Intimate Personal Relationships between Supervisors and Supervisees

Responding to Campus Violence or Threats of Violence
Bringing Children to Campus
Student Conduct Code
Code of Faculty Ethics
Annual Security and Fire Safety Report |

POL-U1600.04

PREVENTING AND RESPONDING TO SEXUAL HARASSMENT UNDER TITLE IX

This policy applies to all employees and all persons participate in Western Washington University education programs and activities to the extent provided by law, regardless of sexual orientation or gender identity. This policy applies to all Western Washington University locations (e.g. Bellingham campus, satellite locations, Lakewood); locations in the United States where Western Washington University programs are taking place (e.g. field trips, away sporting events); and Western Washington University-sponsored transportation (e.g. buses or vans to off-campus events).

Preamble:

Western Washington University (WWU) prohibits sex discrimination, which includes sexual assault. WWU is committed to preventing, addressing, and responding to sex discrimination under Title IX. Sexual harassment can have a serious impact on the quality of the educational and/or work

POLICY

experience. All students and employees have a right to educational and workplace environments free from sex harassment. Therefore, WWU adopts policies and programs aimed at preventing and responding to sex harassment and prohibits retaliation against individuals who file or participate in sex harassment complaints, as outlined in Title IX. This policy is restricted to allegations of sexual harassment, as that term is defined in 34 C.F.R. §106.30. Nothing in this policy limits or otherwise restricts WWU's ability to investigate and pursue discipline based on alleged violations of other federal, state, and local laws, their implementing regulations, and other University policies prohibiting gender discrimination, including POL-U1600.02, through processes set forth in WWU's Code of Student Conduct, employment contracts, employee handbooks, and collective bargaining agreements.

This policy and its associated procedures govern all reported acts of sexual harassment alleged to have occurred on or after August 14, 2020. Reports of sexual harassment alleged to have occurred prior to August 14, 2020 will be governed by the policy in force at the time the alleged acts occurred.

Definitions:

Coercion: unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Complainant: an individual who is at the time of the complaint participating in the educational program of or employed by the University and who is alleged to be the victim of conduct that could constitute sexual harassment.

Consent: knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

Education Program or Activity: locations, events, or circumstances in which WWU exercised substantial control over both the Respondent and the context in which the alleged sexual harassment occurred. It also includes any building owned or controlled by a student organization officially recognized by WWU.

POLICY

Force: the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent.

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent

Formal Complaint: a writing submitted by the Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that WWU conduct an investigation.

Grievance Procedure: the process WWU uses to initiate, informally resolve, and/or investigate allegations that an employee or student has violated Title IX provisions prohibiting sex discrimination, including sexual assault.

Respondent: an individual who is at the time of the complaint participating in the educational program of or employed by the University and who has been reported to be the perpetrator of conduct that could constitute sex discrimination including sexual assault while a student or employee of the University.

Retaliation: intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated, or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.

Sexual Harassment: sexual harassment occurs when a Respondent engages in the following discriminatory conduct on the basis of sex:

- A) Quid pro quo harassment- A WWU employee conditioning the provision of an aid, benefit, or service of WWU on an individual's participation in unwelcome sexual conduct.
- B) Hostile environment- Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to WWU's educational programs or activities or WWU employment.
- C) Sexual assault- Sexual assault includes the following conduct:
 - i. Nonconsensual Sexual Intercourse- Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

POLICY

- ii. Nonconsensual sexual contact- Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.
- iii. Incest- Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen (18).
- iv. Statutory Rape- Consensual intercourse between a person who is eighteen (18) years of age or older, and a person who is under the age of sixteen (16).
- v. Domestic Violence- Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed 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, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of Washington, 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 State of Washington, RCW 26.50.010.
- vi. Dating Violence- Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person (i) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (ii) where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship;
 - The type of relationship; and
 - The frequency of interaction between the persons involved in the relationship.
- vii. Stalking- Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for their safety or the safety of others; or (b) suffer substantial emotional distress.

Summary Suspension: An emergency suspension of a student Respondent pending investigation and resolution of disciplinary proceedings pursuant to the procedure and standards set forth in WAC 516-21-260.

Supportive Measures: non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or Respondent regardless of whether the Complainant or the Title IX Coordinator has filed a formal complaint. Supportive measures restore or preserve a party's access to WWU's education programs and activities without unreasonably burdening the other party, as determined through an interactive process between the Title IX Coordinator and the party. Supportive measures include measures designed to protect the safety of all parties and/or WWU's educational environment and/or to deter sexual harassment or retaliation.

POLICY

Supportive measures may include, but are not limited to:

- counseling and other medical assistance,
- extensions of deadlines or other course-related adjustments,
- modifications of work or class schedules,
- leaves of absence,
- increased security or monitoring of certain areas of campus, and
- imposition of orders prohibiting the parties from contacting one another in housing or work situations. Determinations about whether to impose a one-way no contact order must be made on a case-by-case basis.

Title IX Administrators: Title IX Coordinator, Title IX investigators, the Student Conduct Officer, Student Conduct Committee members, Decision Makers, Appeals Panel and University-provided advisors assigned to the parties by the University during Title IX disciplinary proceedings.

Title IX Coordinator: The WWU administrator responsible for processing Title IX complaints and conducting and/or overseeing formal investigations and informal resolution processes under this Grievance Procedure.

1. **WWU Does Not Discriminate on the Basis of Sex in its Programs and Activities and Will Not Tolerate Sex Discrimination, Including Sexual Harassment and Assault**

WWU prohibits discrimination on the basis of sex, including sexual harassment and sexual assault, dating violence, domestic violence, and stalking under Title IX. Further, Title VII of the Civil Rights Act of 1964, the Violence Against Women Reauthorization Act and the Washington State Law Against Discrimination require WWU to stop, remediate, and prevent discrimination on the basis of sex. Sex discrimination, including sexual assault, may be cause for discipline even if it does not rise to the level of a violation of Title IX. Sex discrimination which does not violate Title IX may still be a violation of Title VII, the Violence Against Women Reauthorization Act, and the Washington Law Against Discrimination, and WWU may take disciplinary action where warranted under those statutes.

2. **The University is Committed to a Comprehensive Educational and Training Program to Promote Awareness of and Prevent Sex Harassment, Including Sexual Assault**

- A) The Executive Director of the Office of Civil Rights and Title IX Compliance is Western's Title IX Coordinator. The Executive Director is responsible for providing mandatory initial and refresher Sexual Harassment Prevention Training (SHPT) for University employees. New employees should complete this training within their first six month of employment.
- B) SHPT includes information on Title IX obligations and the nature and consequences of sexual harassment, including sexual assault, and discusses reporting options, resources, and procedures for handling complaints.
- C) The Vice Presidents and Deans are responsible for ensuring that their employees complete the mandatory SHPT and refresher training.

POLICY

- D) The University provides sexual violence primary prevention and awareness training to new, matriculated students and new employees. The Director, Prevention and Wellness Services is responsible for implementing this training for students and the Executive Director, Office of Civil Rights & Title IX Compliance is responsible for implementing this program for employees. Consistent with Western's culture and values, participation in these programs is mandatory.
- E) Office of Civil Rights & Title IX Compliance (CRTC), University Police, Division of Enrollment and Student Services, Human Resources, and other offices promote awareness of and provide additional communication about and training in the prevention of sexual harassment, including sexual assault, in implementing an ongoing prevention and awareness campaign for students and employees.
- F) Primary prevention and awareness training for incoming students and new employees, and an ongoing prevention and awareness campaign, include the following: A statement that University prohibits sexual harassment, including sexual assault; the definition of these offenses; the definition of consent; safe and positive options for bystander intervention; information on risk reduction; information about the prevention of sexual harassment, including sexual assault; and information about relevant investigative and disciplinary procedures at the University.

3. The University and the Community Offer Support and Resources for Persons Affected by Sexual Harassment, Including Sexual Assault

- A) Supportive measures and reporting options are provided for individuals affected by sexual harassment, including sexual assault, whether or not a formal complaint is made. If supportive measures are not provided, the Title IX Coordinator must document in writing why this decision was clearly reasonable under the circumstances.
- B) Confidential support resources are available to students through services provided by WWU psychologists, mental health counselors, survivor advocates, and health care professionals; confidential support resources are available to employees through the Employee Assistance Program. Reports to some off-campus support personnel may also be legally privileged, such as reports to clergy, private legal counsel, or health care professionals.
- C) When sexual harassment, including sexual assault, complaints involving students are made to the Title IX Coordinator, supportive measures for both complainant and respondent will be coordinated through the Office of Student Life.
- D) Supportive measures taken by WWU on behalf of parties to a Title IX matter will be shared by WWU only to the extent reasonably necessary in order to carry out the terms of the protective measure or accommodation.

POLICY

4. The University Provides a Comprehensive Response System for Reporting and Addressing Sexual Harassment, Including Sexual Assault

- A) The response system is available to students, employees, and others on campus affected by sexual harassment, including sexual assault. Individuals have the right to file a criminal complaint and an institutional discrimination complaint simultaneously. Complaints against anyone to whom this policy applies may be made to the Title IX Coordinator.
- B) The investigation of complaints of sexual harassment, including sexual assault, is conducted by Title IX Administrators who, as relevant to their roles in these processes, receive annual training which includes, but is not limited to:
- the definition of sexual harassment under this policy and associated procedures,
 - the scope of WWU's educational programs and activities,
 - how to conduct an investigation,
 - how to serve impartially without prejudice of facts, conflicts of interest, or bias,
 - use of technology employed during an investigation or hearing,
 - the relevance of evidence and questions,
 - trauma-informed interviewing techniques, and
 - effective report writing.
- C) Any person may report sexual harassment, including sexual assault, whether or not the reporting party is the person alleged to be the victim of conduct that could constitute a violation of Title IX. The report can be made at any time, including during non-business hours, to WWU's Title IX Coordinator, who also serves as the Executive Director of the Office of Civil Rights and Title IX Compliance.

Executive Director of the Office of Civil Rights and Title IX Compliance
Office of Civil Rights and Title IX Compliance
Western Washington University
Old Main 345; MS 9021
516 High Street
Bellingham, WA 98225
(360) 650-3307 (voice) or 711 (Washington Relay) crtc@wwu.edu

- D) The Title IX Coordinator is responsible for:

Accepting and processing all Title IX reports, referrals, and formal complaints.

Executing and submitting a formal complaint when appropriate and necessary.

Handling requests for confidentiality.

Determining, during the Grievance Procedure:

- whether a Formal Complaint should be dismissed either in whole or in part, and if so,

POLICY

- providing notice to both parties about why dismissal was necessary or desirable, and
- referring the complaint to the appropriate disciplinary authority for proceedings outside the jurisdiction of Title IX.

Maintaining accurate records of all complaints, reports, and referrals, and retaining investigation files, complaints, reports, and referrals in compliance with the applicable records retention schedules or federal or state law, whichever is longer.

Conducting investigations or assigning and overseeing investigations.

Engaging in an interactive process with both parties to identify and provide supportive measures that ensure during the investigation and disciplinary processes that the parties have equitable access to education programs and activities and are protected from further discrimination or retaliation.

Upon completion of an investigation, issuing or overseeing the issuance of a final investigation report to the parties and the appropriate disciplinary authority in compliance with this Grievance Procedure.

Recommending non-disciplinary corrective measures to stop, remediate, and/or prevent recurrence of discriminatory conduct to disciplinary authorities and other WWU administrators.

Overseeing the investigation of all complaints of sex discrimination, including sexual misconduct, which fall under Title IX.

- E) Before imposing discipline, WWU is responsible for gathering and presenting evidence to a neutral and unbiased decision maker establishing responsibility for a Title IX violation.
- F) The standard of evidence used by the Title IX Coordinator in investigating all allegations of discrimination from students and employees is the preponderance of the evidence, that is, it is more likely than not that the allegations made by the complainant are true.
- G) WWU shall treat both the Complainant and Respondent equitably by providing Complainant with remedies against Respondent who has been found responsible for sexual harassment through application of the institution's Title IX grievance and applicable Title IX disciplinary procedures and by providing Respondent with Title IX procedural safeguards contained in this Title IX Grievance Procedures and in the applicable Title IX disciplinary procedures.
- H) The investigator shall base investigation results on all relevant evidence, including both exculpatory and inculpatory evidence.
- I) Formal and informal resolutions will be pursued within reasonably prompt timeframes with allowances for temporary delays and extensions for good cause shown. Good cause supporting a request for an extension includes, but is not limited to: a party, a party's advisor, or a witness being unavailable, concurrent law enforcement activity, and the need for language assistance or accommodation of disabilities. Both parties will receive written

POLICY

notice of any temporary delay or extension for good cause with an explanation of why the action was necessary.

- J) The Chief of 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 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 to the appropriate law enforcement agency. University Police may be contacted by calling 360-650-3911 in an emergency, or 360-650-3555 to make a non-emergency report. University Police are located in the Campus Services Building, 2001 Bill McDonald Parkway. WWU officials and offices may assist victims in reporting to law enforcement if the victim chooses.

5. **The University Takes Action Towards Violators of this Policy**

A respondent found responsible for engaging in sex discrimination, including sexual assault, may receive discipline.

Students found responsible may receive sanctions which include, but are not limited to, 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; expulsion from WWU.

An employee found responsible may receive sanctions which include, but are not limited to, training; written reprimand; leave without pay; reduction in job responsibilities or demotion; loss of title; termination of employment.

As outlined in the Student Code of Conduct, when an investigation is conducted involving a student respondent, the CRTC or their designee will provide a copy of the written report of findings to the student conduct officer. The student conduct officer will consider this report and make a finding as to whether the code was violated and impose sanction(s) as appropriate.

When an investigation is conducted involving an employee, the CRTC or their designee will provide a copy of the written report of findings to Human Resources, the Vice President of the organizational unit in which the respondent is employed, and to the employee's supervisor. Human Resources will refer the matter to the hearing body as appropriate.

- 6) **All Members of the University Community Are Responsible for Preventing Sexual Harassment. Including Sexual Assault**
- 7) **Employees Must Report Sex Discrimination, including Sexual Assault**

Employees have a duty to promptly report to the Title IX Coordinator any known or suspected incidents of sex discrimination, including sexual misconduct, with the exception of those employees statutorily excluded from this responsibility (confidential resources). Students and

POLICY

visitors are encouraged to report any known or suspected incidents of sex discrimination, including sexual misconduct.

8) **The University Prohibits Retaliation**

The University prohibits retaliation or encouraging others to retaliate against anyone reporting or believed to have reported a violation of this policy. Retaliation will be considered as a separate action, under POL-U1600.02, whether or not the original complaint is substantiated. WWU will take responsive action if retaliation occurs.