

# Title IX: Discrimination on the Basis of Sex and Sexual Misconduct

## Civil Rights – Title IX

### CWU Policy 401-01

**Effective:** June 10, 2025

**Policy Review Date:** YEAR

**Policy Executive:** Chief of Staff

**Responsible Office/Unit:** Office of Civil Rights Compliance

#### Policy Statement:

#### Applicability:

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#### Content:

Policy

Appendix A - Supplemental Title IX Grievance Procedure

Appendix B – Supplemental Title IX Disciplinary Hearing Procedure

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- (1) Central Washington University is committed to providing a learning, working, and living environment that promotes personal integrity, civility, and mutual respect in an environment free of sex discrimination harassment, and retaliation.
- (2) Pursuant to Title IX of the Educational Amendments of 1972, CWU does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, including in admission and employment.
- (3) CWU prohibits members of its community from adopting or implementing any policy, practice, or procedure concerning any applicant for admission, student, applicant for employment, or employee's current, potential, or past parental, family, or marital status that treats them differently on the basis of sex.
- (4) To ensure compliance with Title IX and other federal and state civil rights laws, CWU has developed policies and procedures that prohibit sex discrimination in all its forms, including but not limited to: sexual harassment, sexual assault, and sexual violence by employees, students, and third parties.

(5) The supporting resources and policies are:

- A. [CWU Title IX website](#)
- B. [Title IX Investigation Procedures](#)
- C. [Employee Title IX Disciplinary Hearing Procedures](#)
- D. [Reporting Concerns and Employee Reporting Responsibilities](#)
- E. [Lactation Rooms](#)

(6) The Title IX Coordinator is the official designated by CWU to ensure oversight of compliance with Title IX and enforcing the Title IX policy and procedures.

- A. Title IX Coordinator  
John MacArthur  
Office: Barge 204  
Phone: 509-963-2050  
E-mail: [crc@cwu.edu](mailto:crc@cwu.edu)

(7) CWU encourages those who have experienced any form of sex discrimination to report the incident promptly, to seek all available assistance. The university takes complaints very seriously and will work with victims to ensure their safety and to remedy the situation. To file a report of discrimination, harassment, or retaliation, please visit the [Concern and Support Form](#) and select “Concern & Support in Response to Discrimination and/or Sexual Misconduct (Civil Rights Compliance & Title IX)”.

## History:

*Reviewed/Endorsed by: Cabinet: 04/24/2013; UPAC 05/01/2013; Responsibility: President's Office; Authority: Cabinet/UPAC; UPAC Review/Effective Date: 06/04/2014, 01/22/2019; 7/24/2024 (Interim Policy); 6/10/2025; Approved by: A. James Wohlpart, President*  
*Reformatted and Assigned new Policy Number - Previous Policy CWUP 2-35-015, June 2025*  
*Attached Procedure CWUR 3-45-061 as Appendix A and CWUR 3-45-062 as Appendix B, June 2025*

## Appendix A - Supplemental Title IX Grievance Procedure

### (1) Purpose.

- A. This Supplemental Title IX Grievance Procedure applies only to allegations of sexual harassment as that term is defined by the U.S. Department of Education in 34 C.F.R. §106.30. Nothing in this procedure limits or otherwise restricts the ability of Central Washington University (CWU) to investigate and pursue discipline based on alleged violations of other laws, regulations, or CWU policies prohibiting gender discrimination in education or employment.

### (2) Definitions.

- A. For purposes of this Supplemental Title IX Grievance Procedure, the following terms are defined as follows:
  1. “**Consent**” means 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. A person cannot consent if they are unable to understand what is happening or are 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.
  2. “**Complainant**” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
  3. “**Respondent**” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
  4. “**Formal Complaint**” means a writing submitted by the complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that CWU conduct an investigation.
  5. “**Education Program or Activity**” includes locations, events, or circumstances over which the CWU 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 CWU.
  6. “**Grievance Procedure**” is the process CWU uses to initiate, informally resolve, and/or investigate allegations that an employee or student has violated Title IX provisions prohibiting sexual harassment.
  7. “**Supportive Measures**” are 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 CWU’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 CWU's educational environment and to deter sexual harassment or retaliation. Supportive measures may include, without limitation, (i) counseling and other medical assistance, (ii) extensions of deadlines or other course-related adjustments, (iii) modifications of work or class schedules, (iv) leaves of absence, (v) increased security or monitoring of certain areas of campus, and (vi) imposition of orders prohibiting the parties from contacting one another in education or employment situations. Determinations about whether to impose a one-way no contact order must be made on a case-by-case basis. If supportive measures are not provided, the Title IX Coordinator must document in writing why this was clearly reasonable under the circumstances.

8. "**Summary Suspension**" means an emergency suspension of a student respondent pending investigation and resolution of disciplinary proceedings pursuant to the procedure and standards set forth in WAC 106-125-100.
9. "**Sexual Harassment**," for purposes of this Supplemental Title IX Grievance Procedure, occurs when a respondent engages in the following discriminatory conduct on the basis of sex:
  - a. Quid pro quo harassment. A CWU employee conditioning the provision of an aid, benefit, or service of CWU 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 CWU's educational programs or activities or CWU employment.
10. "**Sexual Assault**". Sexual assault includes the following conduct:
  - a. 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.
  - b. 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.
  - c. 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).
  - d. 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).
11. "**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.

12. ***"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:
  - a. The length of the relationship;
  - b. The type of relationship; and
  - c. The frequency of interaction between the persons involved in the relationship.
13. ***"Stalking"*** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (i) fear for their safety or the safety of others; or (ii) suffer substantial emotional distress.
14. ***"Title IX Administrators"*** are the Title IX Coordinator, Title IX investigators, the Student Conduct Officer, the Employee Conduct Officer, members of the Student Conduct Council or Employee Conduct Committee, as applicable, and advisors provided by CWU for the parties during Title IX disciplinary proceedings.
15. ***"Title IX Coordinator"*** is responsible for processing Title IX complaints and conducting or overseeing formal investigations and informal resolution processes under this Supplemental Title IX Grievance Procedure. Among other things, the Title IX Coordinator is responsible for:
  - a. Accepting and processing all Title IX reports, referrals, and formal complaints.
  - b. Executing and submitting a formal complaint when appropriate and necessary.
  - c. Handling requests for confidentiality.
  - d. Determining during this Supplemental Title IX Grievance Procedure (i) whether a formal complaint should be dismissed either in whole or in part, and if so, (ii) providing notice to both parties about why dismissal was necessary or desirable, and (iii) referring the complaint to the appropriate disciplinary authority for proceedings outside the jurisdiction of Title IX.
  - e. 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.
  - f. Conducting investigations or assigning and overseeing investigations.
  - g. 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 CWU education programs and activities or CWU employment and are protected from further discrimination or retaliation.

- h. 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 Supplemental Grievance Procedure.
- i. Recommending non-disciplinary corrective measures to stop, remediate, and/or prevent recurrence of discriminatory conduct to disciplinary authorities and other CWU administrators.

### **(3) Principles for Title IX Grievance Procedure**

- A. The respondent shall be presumed not responsible for the alleged conduct unless or until a determination of responsibility is reached after completion of the grievance and disciplinary processes.
- B. Before imposing discipline, CWU is responsible for gathering and presenting evidence to a neutral and unbiased decision maker establishing responsibility for a Title IX violation by a preponderance of the evidence.
- C. CWU shall treat both the complainant and respondent equitably by providing the complainant with remedies against a respondent who has been found responsible for sexual harassment through application of the institution's Title IX grievance and disciplinary procedures and by providing respondent with Title IX procedural safeguards contained in this Supplemental Title IX Grievance Procedure and in the applicable Title IX disciplinary procedures.
- D. The investigator shall base investigation results on all relevant evidence, including both exculpatory evidence (tending to show innocence) and inculpatory evidence (tending to show guilt).
- E. Formal and informal resolutions will be pursued within reasonably prompt timeframes, normally ninety calendar days, with allowances for temporary delays and extensions for good cause shown. Grounds for temporary delay may include, but are not limited to, scheduled breaks between academic terms. Good cause supporting a request for an extension includes, without limitation: 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 notice of any temporary delay or extension for good cause with an explanation of why the action was necessary.
- F. A student respondent found responsible for engaging in sexual harassment may receive discipline up to and including dismissal from CWU. A description of other possible disciplinary sanctions and conditions that may be imposed against students can be found in WAC 106-125-030.
- G. An employee found responsible for sexual harassment may receive discipline up to and including dismissal from employment. A description of possible disciplinary sanctions and conditions that may be imposed against employees can be found in the applicable CWU employment policies and collective bargaining agreements.
- H. Proceedings against a student respondent shall be conducted before the Student Conduct Council in accordance with the Supplemental Title IX Student Conduct Code Procedures under WAC 106-125-200 through 106-125-245.

- I. Proceedings against an employee respondent shall be conducted before the Employee Conduct Committee in accordance with the Supplemental Title IX Employee Disciplinary Procedures, See Appendix B.
- J. Title IX Administrators may not require, allow, rely upon, or otherwise use questions or evidence that seeks disclosure of privileged communications, unless the privilege has been effectively waived by the holder. This provision applies, but is not limited to, information subject to the following:
  1. Spousal/domestic partner privilege;
  2. Attorney-Client and attorney work product privileges;
  3. Privileges applicable to members of the clergy and priests;
  4. Privileges applicable to medical providers, mental health therapists, and counsellors;
  5. Privileges applicable to sexual assault and domestic violence advocates; and
  6. Other legal privileges identified in RCW 5.60.060.

**(4) Title IX Administrators – Free from bias – Training requirements**

- A. Title IX Administrators shall perform their duties free from bias or conflicts.
- B. Title IX Administrators shall undergo training on the following topics:
  1. The definition of sexual harassment under these procedures,
  2. The scope of CWU’s educational programs and activities,
  3. How to conduct an investigation,
  4. How to serve impartially without prejudgment of facts, conflicts of interest, or bias,
  5. Use of technology employed during an investigation or hearing,
  6. The relevance of evidence and questions, and
  7. Effective report writing.
- C. All Title IX Administrator training materials shall be available on CWU’s Title IX webpage.

**(5) Filing a Complaint.**

- A. Any employee, student, applicant, or visitor who believes they have been the subject of sexual harassment should report the incident or incidents to CWU’s Title IX Coordinator identified below. If the complaint is against the Title IX Coordinator, the complainant should report the matter to the President’s office for referral to an alternate designee.

B. Name: John MacArthur  
Title: Title IX Coordinator  
Office: 509-963-2050 / [john.macarthur2@cwu.edu](mailto:john.macarthur2@cwu.edu)

## **(6) Confidentiality**

- A. CWU will seek to protect the privacy of the complainant to the fullest extent possible, consistent with the legal obligation to investigate, take appropriate remedial and/or disciplinary action, and comply with federal and state law, as well as applicable CWU policies and procedures. CWU will attempt to honor a complainant's request for confidentiality, but cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX Coordinator.
- B. The Title IX Coordinator will inform and attempt to obtain consent from the complainant before commencing an investigation of alleged sexual harassment. If a complainant asks that their name not be revealed to the respondent or that CWU not investigate the allegation, the Title IX Coordinator will inform the complainant that maintaining confidentiality may limit CWU's ability to fully respond to the allegations and that retaliation by the respondent or others is prohibited. If the complainant still insists that their name not be disclosed or that CWU not investigate, the Title IX Coordinator will determine whether CWU can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the CWU community, including the complainant. Factors to be weighed may include, but are not limited to:
1. The seriousness of the alleged sexual harassment;
  2. The age of the complainant;
  3. Whether the sexual harassment was perpetrated with a weapon;
  4. Whether the respondent has a history of committing acts of sexual harassment or violence or has been the subject of other sexual harassment or violence complaints or findings;
  5. Whether the respondent threatened to commit additional acts of sexual harassment or violence against the complainant or others; and
  6. Whether relevant evidence about the alleged incident can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).
- C. If CWU is unable to honor a complainant's request for confidentiality, the Title IX Coordinator will notify the complainant of the decision and ensure that the complainant's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation in compliance with this Supplemental Title IX Grievance Procedure.
- D. If CWU decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX Coordinator will evaluate whether other measures are available to address the circumstances giving rise to the complaint and prevent their recurrence, and will implement such measures if reasonably feasible.

## **(7) Complaint Resolution.**

A. The Title IX resolution processes are initiated when the Title IX Coordinator receives a written formal complaint alleging that a respondent sexually harassed a complainant and requesting that CWU initiate an investigation. A formal complaint must be either submitted by the complainant or signed by the Title IX Coordinator on behalf of the complainant. Formal complaints submitted to the Title IX Coordinator may be resolved through either informal or formal resolution processes. CWU will not proceed with either resolution process without a formal complaint. For purposes of this Supplemental Title IX Grievance Procedure, the complainant must be participating or attempting to participate in a CWU education program or activity at the time the formal complaint is filed.

### **B. Informal Resolution:**

1. Under appropriate circumstances and if the impacted and responding parties agree, the parties may voluntarily pursue informal resolution during the investigation of a concern. Informal resolution is not appropriate when the allegations are subject to mandatory reporting obligations under applicable law, or involve an immediate threat to the health, safety or welfare of a member of the CWU community, or in cases where an employee is alleged to have sexually harassed a student.
2. If an informal resolution is appropriate, the impacted party and the responding party may explore remedies or resolution through:
  - a. Guided conversations or communications conducted by the Title IX Coordinator, other CWU representative, or a mutually agreed upon third party;
  - b. Structured resolution process conducted by a trained mediator; or
  - c. Voluntarily agreed on alterations to either or both of the parties' work or class schedules or student housing arrangements, as applicable.
3. If the parties agree to an informal resolution process, CWU will commence the process within ten calendar days after the parties agree to this option and conclude within thirty days of beginning that process, subject to reasonable delays and extensions for good cause shown. The informal process is voluntary. Either the impacted or responding party may withdraw from the informal resolution process at any time, at which point the formal investigation process will resume.
4. If either party fails to follow the voluntary agreements then the formal investigation process may resume.
5. If the impacted and responding party voluntarily resolve a report, CWU will record the terms of the resolution in a written agreement signed by both parties and provide written notice to both parties that the report has been closed.

### **C. Formal Resolution.**

1. Formal resolution means that the complainant's allegations of sexual harassment will be subjected to a formal investigation by an impartial and unbiased investigator. The investigator will issue a report of the investigation findings. Upon completion of the investigation, the

investigator will submit the final investigation report to the appropriate disciplinary authority to determine whether disciplinary proceedings are warranted.

## **(8) Emergency Removal**

- A. If a student respondent poses an immediate threat to the health and safety of the campus community or an immediate threat of significant disruption to CWU operations, the Student Conduct Officer may summarily suspend a respondent pursuant to WAC 106-125-100, pending final resolution of the allegations. Nothing in this Supplemental Title IX Grievance Procedure shall prohibit CWU from placing non-student employees on paid administrative leave pending final resolution of the allegations.

## **(9) Investigation Notices**

- A. Upon receiving a formal complaint and determining that the allegations, if proved, would constitute Title IX sexual harassment, CWU will provide notices to the parties containing the following information:
  1. Notice of formal and informal resolution processes. CWU will provide a description of CWU's grievance resolution procedures, including the informal resolution procedure.
  2. Notice of investigation. CWU will provide the respondent and the complainant with a notice of investigation in advance of the initial interview with the respondent to inform the complainant that CWU has commenced an investigation and to allow the respondent sufficient time to prepare a response to the allegations. The investigation notice will:
    - a. Include the identities of the parties (if known), a description of the conduct alleged constituting Title IX sexual harassment, and the time and location of the incident (if known).
    - b. Confirm that the respondent is presumed not responsible for the alleged conduct and that CWU will not make a final determination of responsibility until after the grievance and disciplinary processes have been completed.
    - c. Inform the parties that they are both entitled to have an advisor of their own choosing, who may be an attorney.
    - d. Inform the parties they have a right to review and inspect evidence.
    - e. Inform the parties about Student Conduct Code provisions and applicable employment policies that prohibit students and employees from knowingly submitting false information during the grievance and disciplinary processes.
  3. Amended investigation notice. If during the course of the investigation, CWU decides to investigate Title IX sexual harassment allegations about the complainant or respondent that are not included in the investigation notice, CWU will issue an amended notice of investigation to both parties that includes this additional information.
  4. Interview and meeting notices. Before interviewing or meeting with a party about Title IX allegations, CWU will provide the party with a written notice stating the date, time, location, participants, and purpose of the interview or meeting, with sufficient time, normally at least 48 hours in advance, for the party to prepare for the interview or meeting.

**(10) Investigation Process - Dismissal**

- A. Mandatory dismissal. The Title IX Coordinator will dismiss the Title IX allegations, if during the course of a formal investigation under this Supplemental Title IX Grievance Procedure, the investigator determines that the alleged misconduct in the formal complaint:
  - 1. Does not meet the definition of sexual harassment under Title IX, even if proved; or
  - 2. Did not occur in the context of a CWU education program or activity; or
  - 3. Occurred outside the United States.
- B. Discretionary dismissal. CWU may dismiss a Title IX claim in whole or in part, if:
  - 1. The complainant notifies the Title IX Coordinator in writing that they would like to withdraw the formal complaint in whole or in part;
  - 2. The respondent is no longer enrolled with or employed by CWU; or
  - 3. Specific circumstances prevent CWU from gathering evidence sufficient to complete the investigation of the Title IX allegations in whole or in part.
- C. The Title IX Coordinator will provide both parties written notice if Title IX allegations are dismissed with an explanation for the dismissal.
- D. Mandatory or discretionary dismissal of a Title IX claim does not preclude CWU from investigating and pursuing discipline based on allegations that a respondent violated other laws, regulations, or applicable CWU policies governing student and employee conduct.

**(11) Investigation Process – Consolidation of Formal Complaints**

- A. When multiple sexual harassment allegations by or against different parties arise out of the same facts or circumstances, CWU may consolidate the investigation of formal complaints, provided consolidation can be accomplished in compliance with confidentiality protections imposed by the Family Educational Records and Privacy Act (FERPA). This includes instances in which complainant and respondent have lodged formal complaints against one another or when allegations of sexual assault are lodged by a single complainant against multiple respondents, or when multiple complainants lodge sexual assault complaints against single or multiple respondents.

**(12) Investigation Process – Required Procedures. During the investigation, the investigator:**

- A. Will provide the parties with an equal opportunity to present relevant statements and other evidence in the form of fact or expert witnesses, including both and inculpatory evidence (tending to show guilt) and exculpatory evidence (tending to show innocence).
- B. Will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence, except when a no-contact order has been imposed based on an individualized and fact specific determination that a party poses a threat to the health, safety, or welfare of another party and/or witnesses, or when contact with a party or witness is prohibited

by court order. A no-contact order imposed by CWU shall be no broader than is necessary to protect the threatened party or witness and must provide the impacted party or their advisor with alternative means of gathering and presenting relevant evidence from the protected witness or party.

- C. Will allow each party to be accompanied by an advisor of their choosing, who may be an attorney, at any grievance related meeting or interview. The role of advisors during the investigation meetings or interviews will be limited to providing support and advice to the party. Advisors will not represent or otherwise advocate on behalf of the parties during the investigation process. An attorney representing a party must enter a notice of appearance with the Title IX Coordinator and the investigator at least five (5) days before the initial interview or meeting they plan to attend, so that CWU can secure its own legal representation, if necessary.
- D. The investigator will provide both parties and their respective advisors with an equal opportunity to review the draft investigation report and to inspect and review any evidence obtained during the investigation that is directly related to the allegations raised in the formal complaint, including both inculpatory and exculpatory evidence, regardless of its source, as well as evidence upon which the investigator does not intend to rely in the final investigation report. Each party will have ten (10) days in which to submit a written response, which the investigator will consider prior to completion of the investigation report. If a party fails to submit a written response within ten (10) days, the party will be deemed to have waived their right to submit comments and the investigator will finalize the report without this information.
- E. The investigator will forward the final report to the Title IX Coordinator, who will distribute the report and evidence to the parties, as well as the disciplinary authority responsible for determining whether pursuing disciplinary action is warranted.

## Appendix B - Supplemental Title IX Disciplinary Hearing Procedure

### (1) Order of Precedence.

- A. This supplemental employee disciplinary procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. § 106. Disciplinary proceedings against an employee respondent alleged to have engaged in sexual harassment in violation of Title IX shall be governed by the University's administrative hearing practices and procedures, Chapter WAC 106-108, and this supplemental hearing procedure. To the extent the supplemental hearing procedure conflicts with WAC 106-108, and/or provisions set forth in employment contracts, collective bargaining agreements, employee handbooks, and other University employment policies and procedures, this supplemental hearing procedure will take precedence.

### (2) Prohibited Conduct Under Title IX

- A. Pursuant to Title IX of the Education Act Amendments of 1972, 20 U.S.C. §1681, the University may impose disciplinary sanctions against an employee who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."
- B. For purposes of this supplemental procedure, "sexual harassment" encompasses the following conduct:
  1. ***Quid pro quo harassment.*** An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.
  2. ***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 the University's educational programs or activities, or employment.
  3. ***Sexual assault.*** Sexual assault includes the following conduct:
    - a. **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.
    - b. **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.
    - c. **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).

- d. Statutory rape. Consensual sexual intercourse between someone who is eighteen (18) years of age or older and someone who is under the age of sixteen (16).
4. **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](#).
5. **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:
  - a. The length of the relationship;
  - b. The type of relationship; and
  - c. The frequency of interaction between the persons involved in the relationship.
6. **Stalking**. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

### (3) Title IX Jurisdiction

- A. This supplemental procedure applies only if the alleged misconduct:
  1. Occurred in the United States;
  2. Occurred during a university educational program or activity;
  3. Meets the definition of sexual harassment as that term is defined in this supplemental procedure; and
  4. At the time of filing a formal complaint, the complainant was participating or attempting to participate in the educational program or activity.
- B. For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the University exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the university.

- C. Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of Section A (1)-(4) have not been met. Dismissal under this supplemental procedure does not prohibit the university from pursuing disciplinary action against a respondent based on allegations that the respondent engaged in other misconduct prohibited by federal or state law, employment contracts or handbooks, or other university policies.
- D. If the Employee Conduct Officer designated by the University determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the Conduct Officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

#### **(4) Initiation of Discipline**

- A. Upon receiving the Title IX investigation report from the Title IX Coordinator, the Employee Conduct Officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.
- B. If the Employee Conduct Officer determines that there are sufficient grounds to proceed under these supplemental procedures, the Conduct Officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the Employee Conduct Committee and by serving the notice on the respondent and the complainant, and their respective advisors. The notice must:
  - 1. Set forth the basis for Title IX jurisdiction;
  - 2. Identify the alleged Title IX violation(s);
  - 3. Set forth the facts underlying the allegation(s);
  - 4. Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);
  - 5. Explain that each party is entitled to be accompanied by an advisor of their own choosing during the hearing and that:
  - 6. Advisors will be responsible for questioning all witnesses on the party's behalf;
  - 7. An advisor may be an attorney and/or, if the party is a represented employee, a union representative;
  - 8. A represented employee who chooses an advisor who is not a union representative must submit a signed waiver of union representation that includes consent from the union; and
  - 9. The university will appoint the party an advisor of the university's choosing at no cost to the party, if the party fails to choose an advisor; and
  - 10. Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in the party's absence.

- C. Service of the disciplinary notice or any other document required to be served under this supplemental procedure may be done personally or by first class, registered, or certified mail, or by electronic mail to the party's university email address.

## **(5) Employee Conduct Committee**

- A. For purposes of this supplemental Title IX procedure, the Employee Conduct Committee shall consist of three university employees appointed by the University President (or designee).

## **(6) Pre-Hearing Procedure**

- A. Upon receiving the disciplinary notice, the Chair of the Employee Conduct Committee will send a hearing notice to all parties in compliance with [WAC 10-08-040](#). In no event will the hearing date be set less than ten (10) days after the Title IX Coordinator provided the final investigation report to the parties.
- B. A party is entitled to be accompanied by an advisor of their choice during the disciplinary process at the party's own expense. The advisor may be an attorney and/or, if the party is a represented employee, a union representative.
  - 1. If the advisor is an attorney, the advisor must file a notice of appearance with the Chair of the Employee Conduct Committee with copies to all parties and the Employee Conduct Officer at least five (5) days before the hearing. If a notice of appearance is not filed within this timeframe, the party will be deemed to have waived the right to have an attorney as an advisor.
  - 2. If a party is a represented employee who chooses not to use a union-provided advisor, the party must provide the Chair of the Employee Conduct Committee with a signed waiver of union representation, including written consent from the union.
- C. In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the University intends to offer the evidence at the hearing.

## **(7) Rights of Parties**

- A. The provisions of this supplemental procedure shall apply equally to both parties.
- B. The university bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.
- C. The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.
- D. During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney or, if the respondent holds a

represented position, a union representative. If a party does not choose an advisor, then the Title IX Coordinator will appoint an advisor of the university's choosing on the party's behalf at no expense to the party.

**(8) Evidence.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

- A. Relevance: The Conduct Committee Chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.
- B. Relevance means that information elicited by the question makes a fact in dispute more or less likely to be true.
- C. Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:
  - 1. Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or
  - 2. Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.
- D. Cross-examination required: If a party or witness does not submit to cross-examination during the live hearing, the Conduct Committee must not rely on any statement by that party or witness in reaching a determination of responsibility.
- E. No negative inference: The Conduct Committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.
- F. Privileged evidence: The Conduct Committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:
  - 1. Spousal/domestic partner privilege;
  - 2. Attorney-Client and attorney work product privileges;
  - 3. Privileges applicable to members of the clergy and priests;
  - 4. Privileges applicable to medical providers, mental health therapists, and counsellors;
  - 5. Privileges applicable to sexual assault and domestic violence advocates; and
  - 6. Other legal privileges identified in RCW 5.60.060.

**(9) Initial Order**

- A. The Employee Conduct Committee will be responsible for drafting an Initial Order that:
1. Identifies the allegations of sexual harassment;
  2. Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;
  3. Makes findings of fact supporting the determination of responsibility;
  4. Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;
  5. Contains a statement of, and rationale for, the Committee's determination of responsibility for each allegation;
  6. Describes any disciplinary sanction or conditions imposed against the respondent, if any;
  7. Describes to what extent, if any, the complainant is entitled to remedies designed to restore or preserve complainant's equal access to the University's educational programs or activities; and
  8. Describes the process for appealing the Initial Order to the University President.
- B. The Conduct Committee Chair will serve the Initial Order on the parties simultaneously.

## **(10) Appeals**

- A. The parties have the right to appeal from the determination of responsibility and/or from a Title IX dismissal, in whole or part, of a formal complaint, as set forth in the Initial Order. A party may appeal by filing a written notice of appeal with the President's Office within twenty days of service of the Initial Order. A party's notice of appeal must explain why the party disagrees with the disciplinary decision and what relief or remedy the party is requesting. Copies of the appeal must be provided to the Employee Conduct Officer and to all parties and their advisors of record.
- B. The President or President's designee will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanctions and conditions imposed in the Initial Order are affirmed, vacated, or amended, and, if amended, set forth the new disciplinary sanctions and conditions.
- C. The President's Office shall serve the Final Decision on the parties simultaneously.
- D. All decisions reached through this process are final. No decisions or recommendations arising from this disciplinary procedure will be subject to grievance pursuant to any collective bargaining agreement.