

# **WESTERN OREGON UNIVERSITY**

## **POLICY AND PROCEDURES ON SEXUAL AND GENDER-BASED MISCONDUCT AND OTHER FORMS OF INTERPERSONAL VIOLENCE**

*Effective for incidents that occur on or after August 14, 2020.*

Western Oregon University expects that all students have the right to be free from all forms of sexual misconduct, examples of which can include acts of sexual assault, sex/gender harassment, sex/gender discrimination, sexual exploitation and indecent exposure.

Incidents of sexual misconduct may also involve other prohibited conduct such as bullying/intimidation, domestic violence, dating violence, stalking and retaliation. The university prohibits such conduct, regardless of whether it is related to an instance of sexual misconduct. All of the conduct referenced in the prior sentences will be referred to collectively throughout this policy as “prohibited conduct.”

Western Oregon University will promptly and equitably respond to all reports of sexual misconduct in order to eliminate the misconduct, prevent its recurrence, and address its effects on any individual and/or the community.

### **I. NOTICE OF PROHIBITION OF SEX DISCRIMINATION**

At Western Oregon University, we strive to have a diverse and inclusive campus. It is the policy of Western Oregon University to provide a campus environment free from discrimination and harassment on the basis of race, color, religion, ethnicity or national origin, age, gender orientation, sex (including sexual harassment), gender, genetic information, marital status, sexual orientation, veteran status, veteran of the Vietnam era, or disability or any other status protected under law.

Title IX is a federal law that provides, “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 education program or activity receiving Federal financial assistance.”

The University must define and respond to Title IX Misconduct as required by regulations issued in May 2020 by the U.S. Department of Education to implement Title IX of the Education Amendments of 1972, codified at 34 C.F.R. Part 106 (the “Title IX Regulations”). The Title IX Regulations allow the University to define and regulate Prohibited Conduct that falls outside the definition of Title IX Misconduct, but which the University is committed to addressing as a matter of University policy and/or as required by other applicable law. Accordingly, the University’s Policy prohibiting Sexual and Gender-Based Misconduct and Title IX Misconduct is consistent

with the Title IX Regulations, as well as the University's mission and commitment to ensuring a safe and non-discriminatory campus community.

Prohibited Conduct undermines the character and purpose of the University and the University will take appropriate prompt and effective action to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects. Prohibited Conduct may also constitute crimes that violate federal and state law.

## **II. PROHIBITED CONDUCT**

This section describes prohibited sexual misconduct and definitions under Title IX (Title IX Sexual Misconduct), this Policy, or other laws or regulations (Non-Title IX Sexual Misconduct).

The Title IX regulations issued by the United States Office for Civil Rights provide definitions of specific conduct prohibited under Title IX. The University's commitment to eradicating sexual misconduct extends to other conduct that does not fall within those definitions.

This policy classifies sexual misconduct into two categories: (i) sexual misconduct that is covered by Title IX, a federal law; and (ii) other sexual misconduct not covered by Title IX. **If conduct falls under both categories, Title IX and its procedures govern.** The distinction between sexual misconduct governed by Title IX and other sexual misconduct is relevant because the procedures for resolving complaints differ in important ways, whether Title IX applies or not.

### **A. Title IX Sexual Misconduct**

Sexual harassment is any unwelcome sexual advance, request for sexual favors, or other unwanted verbal or physical conduct of a sexual nature. Sexual harassment also includes harassment based on gender, sexual orientation, gender identity or gender expression, which may include acts of verbal, nonverbal or physical aggression, intimidation or hostility based on sex/gender or sex/gender-stereotyping, even if the acts do not involve conduct of a sexual nature.

Under Title IX, Sexual Harassment is conduct on the basis of sex that satisfies one or more of the following:

1. **Quid Pro Quo.** Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature by a person having power or authority over another constitutes sexual harassment when submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational or employment progress, development or performance.
2. **Unwelcome Conduct.** Conduct made on the basis of sex that is determined by a reasonable person to be so severe, pervasive AND objectively offensive that it effectively denies a person equal access to the university's education program, activity or employment.

3. **Sexual Assault.** Any sexual act directed against another person, without that person's consent (including instances where the victim is incapable of giving consent), and includes each of the following:
  - a. *Forcible Rape* – (i) sexual intercourse, or (ii) oral or anal sexual intercourse, or (iii) use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, either (A) forcibly and/or against that person's will, or (B) against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity;
  - b. *Fondling* – touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or not against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
  - c. *Incest* – nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - d. *Statutory Rape* – nonforcible sexual intercourse with a person who is under the statutory age of consent.
4. **Dating Violence** – Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of (a) the length of the relationship, (b) the type of relationship, and (c) the frequency of interaction between the persons involved in the relationship.
5. **Domestic Violence** – 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.
6. **Stalking** – Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for his, her or their safety or the safety of others; or (b) suffer substantial emotional distress.

## **B. Non-Title IX Sexual Misconduct**

Non-Title IX Sexual Misconduct is a broad, non-legal term that encompasses a wide range of behaviors that are prohibited by this Policy or federal and state law, including but not limited to, sexual harassment, sexual assault, rape, acquaintance rape, stalking, and relationship violence (including dating and domestic violence). Non-Title IX Sexual Misconduct includes conduct occurring both on-campus and off-campus, if the conduct was in connection with a University or University-recognized education program or activity, or if

the conduct may have the effect of creating a hostile environment for a member of the WOU community.

It is a violation of University policy and/or applicable law to commit or to attempt to commit any of the acts listed below.

1. **Sexual assault** is any intentional sexual contact, however slight, by a person upon another person, without consent.

Sexual contact includes:

- Any sexual intercourse which includes: vaginal or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact, by a person upon another person.
- Intentional contact with another person's breasts, buttock, groin or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts.
- Any other intentional bodily contact in a sexual manner.

*See Section IV for the definitions of consent, incapacitation, coercion, and force.*

2. **Sexual Harassment.** Under university policy, sexual harassment may include conduct that creates a hostile environment or is retaliatory in nature. The university will assess objective and subjective factors in determining whether a hostile environment exists. A single, isolated incident of sexual harassment alone may create a hostile environment if the incident is sufficiently severe, such as rape or other forms of sexual assault. The more severe the conduct, the less need there is to show that the conduct was persistent or pervasive in nature.

A hostile environment exists when sexual or sex-based harassment is sufficiently serious to deny or limit a student's ability to participate in or benefit from the University's programs or activities or has the effect of unreasonably interfering with an employee's work performance or altering the terms and conditions of the employee's employment. A hostile environment can be created by anyone involved in a University program or activity (e.g., administrators, faculty members, students, and campus visitors).

In determining whether sex-based harassment has created a hostile environment, the University considers the conduct in question from both a subjective and objective perspective. It will be necessary, but not enough, that the conduct was unwelcome to the student who was harassed. The University will also need to find that a reasonable person in the student's position would have perceived the conduct as undesirable or offensive in order for that conduct to create or contribute to a hostile environment.

To determine whether a hostile environment exists for a student or employee, the University will consider a variety of factors related to the severity, persistence, or

pervasiveness of the sex-based harassment, including: (1) the type, frequency, and duration of the conduct; (2) the identity and relationships of persons involved; (3) the number of individuals involved; (4) the location of the conduct and the context in which it occurred; and (5) the degree to which the conduct affected the student's education or the employee's employment.

The more severe the sex-based harassment, the less need there is to show a repetitive series of incidents to find a hostile environment. Indeed, a single instance of sexual assault may be sufficient to create a hostile environment. Likewise, a series of incidents may be sufficient even if the sex-based harassment is not particularly severe.

Examples of sexual harassment include, but are not limited to:

- An attempt to coerce an unwilling person into a sexual relationship
  - Repeatedly subjecting a person to egregious, unwelcome sexual attention
  - Punishment for a refusal to comply with a sexual-based request
  - Conditioning a benefit on submitting to sexual advances
  - Sexual violence
  - Intimate-partner violence
  - Stalking
  - Gender-based bullying
3. **Sexual Exploitation** – Occurs when a person takes sexual advantage of another person for the benefit of anyone other than that person, without that person's consent.

Examples of sexual exploitation:

- Invasion of sexual privacy
- Prostituting another person
- Nonconsensual digital, video or audio recording of nudity or sexual activity
- Unauthorized sharing or distribution of digital, video or audio recording of nudity or sexual activity
- Engaging in voyeurism
- Going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you having consensual sex)
- Knowingly exposing someone to or transmitting a sexually transmitted infection or HIV to another person
- Intentionally or recklessly exposing one's genitals in nonconsensual circumstances
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation

4. **Stalking** includes repeated conduct involving unwanted attention, harassment, physical or verbal contact or any other repeated conduct that would place a reasonable person in fear of physical, emotional or psychological harm.

Stalking includes the concept of cyberstalking. Cyberstalking is a particular form of stalking in which electronic media such as the Internet, social networks, blogs, cell phones, texts or other similar devices or forms of contact are used to pursue, harass or to make unwelcome contact with another person in an unsolicited fashion.

Examples of stalking include, but are not limited to:

- Unwelcome and repeated visual or physical proximity to a person
- Repeated oral or written threats
- Extortion of money or valuables
- Unwelcome/unsolicited written communication, including letters, cards, emails, instant messages and messages on online bulletin boards and/or social media
- Unwelcome/unsolicited communications about a person, her/his family, friends or co-workers
- Sending/posting unwelcome/unsolicited messages with an assumed identity
- Direct physical and/or verbal threats against a victim or a victim's loved ones
- Vandalism
- Trespassing
- Unsolicited and unwanted gifts
- Manipulative and controlling behaviors such as threats to harm oneself, or someone close to the victim
- Any combination of these behaviors directed toward an individual person

5. **Intimate-partner violence**, also referred to as dating violence, domestic violence and relationship violence, includes any act of violence or threatened act of violence against a person who is or has been involved in a sexual, dating, domestic or other intimate relationship with that person. It may involve one act or an ongoing pattern of behavior.

Intimate-partner violence can encompass a broad range of behavior including, but not limited to, physical violence, sexual violence, emotional violence and economic abuse. Intimate-partner violence may take the form of threats, assault, property damage, violence or threat of violence to one's self, one's sexual or romantic partner, or to the family members or friends of the sexual or romantic partner.

6. **Bullying** includes any intentional electronic, written, verbal or physical act or a series of acts directed at another person or persons on the basis of sex, gender, gender identity or sexual orientation, that is severe, persistent or pervasive and that has the intended effect of substantially interfering with a person's education or work; creating a threatening environment; or substantially disrupting the orderly operation of the university.

**Intimidation** includes any verbal, written or electronic threats of violence or other threatening behavior directed toward another person or group on the basis of sex, gender, gender identity or sexual orientation that reasonably leads the person(s) in the group to fear for their physical well-being.

7. **Indecent Exposure.** A person commits indecent exposure if that person exposes their genitals or any person who identifies as a female exposes their breasts in any public place or in any place where there are other persons present under circumstances in which one knows or should know that this conduct is likely to offend, affront or alarm.
  
8. **Retaliation.** The university prohibits any forms of retaliation against an individual or the individual's family or friends for the purpose of interfering with that individual's rights or privileges secured under Title IX. This means that the university will not tolerate any form of retaliation taken against anyone who reports or publicly opposes conduct prohibited by this policy, or anyone who cooperates in the investigation of a report of conduct prohibited by this policy.

Examples of retaliation can include, but are not limited to bullying, intimidation, threats, coercion, force, etc, and include third party retaliation.

### III. JURISDICTION

The policy applies to all of the following areas:

- On campus owned property, including the Salem site (campus?)
- Off campus, including online or electronic conduct if the conduct occurs:
  - In connection with a university-related program or activity including university-sponsored study abroad, internships and athletic contests.
  - When the behavior may pose a serious threat of harm to any member(s) of the university community.
  - When the behavior may have the effect of creating a hostile environment for any member(s) of the university community.

Regardless of when or where the conduct occurs, the university will offer resources and assistance to community members who experience and/or are affected by prohibited conduct. In those instances when this policy does not apply, the university will assist the reporting party or *Complainant* in identifying and contacting external law enforcement.

### IV. DEFINITIONS

1. **Consent** means an informed, freely given agreement, communicated by clearly understandable words or actions, to participate in each form of sexual activity.

Guidance for consent:

- Consent cannot be inferred from silence, passivity or lack of active resistance.
- A current or previous dating or sexual relationship is not sufficient to constitute consent, and consent to one form of sexual activity does not imply consent to other forms of sexual activity.
- When consent is requested verbally, absence of any explicit verbal response constitutes lack of consent.
- A verbal “no” constitutes lack of consent, even if it sounds insincere or indecisive.
- Consent is not freely given when it is obtained by force or violence, a threat of force or violence or any other form of physical or psychological coercion or intimidation.
- Either person may withdraw consent at any time. Withdrawal of consent may be demonstrated by words or actions that express a desire to end sexual activity. Once withdrawal of consent has been expressed, sexual activity must cease.
- A person who is the object of sexual aggression is not required to physically or otherwise resist the aggressor; the lack of informed, freely given consent to sexual contact constitutes sexual misconduct.
- Intoxication is not an excuse for failure to obtain consent.
- A person incapacitated by alcohol or drug consumption, or who is unconscious or asleep or otherwise physically or mentally impaired, is incapable of giving consent.
- A person who is below the legal age of consent is incapable of giving consent.

2. **Incapacitation.** Western Oregon University utilizes the Oregon Revised Code definition [ORS. 125.005(5)] of an incapacitated person which means “a condition in which a person’s ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that the person presently lacks the capacity to meet the essential requirements for the person’s physical health or safety.”

In evaluating consent in cases of alleged incapacitation, the university asks two questions:

1. Did the person initiating sexual activity know that the other party was incapacitated? and, if not,
2. Should a sober, reasonable person, in the same situation, have known that the other party was incapacitated?

If the answer to either of these questions is “yes,” consent was absent and the conduct is likely a violation of this policy.

To assess incapacitation, one must look for the common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation. Although every individual may manifest signs of incapacitation differently, typical signs often include slurred or incomprehensible speech, unsteady manner of walking, combativeness, emotional volatility, vomiting, incontinence, or lack of any responsive behavior. A person

who is incapacitated may not be able to understand some or all of the following questions: Do you know where you are? Do you know how you got here? Do you know what is happening? Do you know who you are with?

3. **Coercion** is conduct, including intimidation and express or implied threats of immediate or future physical, emotional, reputational, financial or other harm toward another, that would reasonably place the other in fear, and that is used to compel the other individual to engage in an activity.
  
4. **Force** is the use or threat of violence or intimidation to overcome an individual's freedom of will to choose whether to participate in an activity.

## **V. REPORTING AND COMPLAINT RESOLUTION PROCESS**

### **1. REPORTING**

Western Oregon University strongly supports and encourages prompt reporting of sexual misconduct. Prompt reporting helps to provide immediate resources to victims and contributes to keeping the campus safe. Additionally, prompt reporting helps to ensure preservation of evidence that may assist in proving a violation of university policy and/or a criminal offense. However, there are no time limitations for making reports of sexual misconduct. Complainants may follow their own timeline for reporting.

All WOU employees (except those designated as confidential resources) are responsible employees. Student employees who have positional responsibility for the welfare of others, such as resident assistants, peer mentors, and student government leaders are also considered mandatory reporters. This means reporting any information known or learned about through the disclosure of others related to possible or alleged instances of sexual misconduct.

Making a report gives notice to the university to provide resources and initial support. Making a report is not the same as filing a Formal Complaint. The filing of a Formal Complaint is part of the Complaint Resolution process described later in this document.

#### **a. MAKING A REPORT**

If a person believes he or she, or someone he or she knows, has been the victim of sexual misconduct, he or she must promptly make a report to the university's Title IX Coordinator, the university's Title IX deputy coordinator, or a member of the office of Student Conduct. Reports can be made using the Anonymous Report Form on WOU Portal or on the Division of Student Affairs website.

#### **b. REPORTING TO LAW ENFORCEMENT**

Instances of sexual misconduct may violate both university policy and the law. As a result, the university encourages victims to pursue their complaints through both the university's processes and the criminal justice system. In addition to helping ensure protection for the campus community, criminal investigations may be useful in gathering of relevant evidence, particularly forensic evidence. A complainant has the right to choose whether to notify, or decline to notify law enforcement. The university does not share any identifying information without the permission of the complainant unless required by a court request.

University proceedings will be instituted against a person charged with conduct that potentially violates both the criminal law and the policy without regard to the pendency of civil or criminal litigation. University proceedings may be carried out prior to, simultaneously with, or following civil or criminal proceedings. Determinations made or sanctions imposed by the university will not necessarily be subject to change because criminal charges arising out of the same facts giving rise to violation of university policy were dismissed, reduced or resolved in favor of or against the criminal law defendant.

#### **c. AMNESTY FOR THOSE WHO REPORT SEXUAL MISCONDUCT**

The university encourages reporting and seeks to remove any barriers to reporting by making the procedures for reporting transparent and straightforward. The university recognizes that an individual who has been violating other campus policies (alcohol, drug, etc.) at the time of an act of sexual misconduct may be hesitant to make a report because of potential consequences for their own conduct. An individual who reports sexual misconduct, either as a Reporting Party or a third-party witness, will not be subject to disciplinary action by the university for their own personal violation of campus policy at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. The university may, however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs.

#### **d. PROTECTION OF MINORS**

In the event that the university receives a report of prohibited conduct from a minor, the university will make all necessary reports and disclosures pursuant to Oregon law. The university will take any further steps necessary to protect the minor from further prohibited conduct and/or harm.

#### **e. FALSE REPORTS**

The university will not tolerate intentional false reporting of incidents. It is a violation of the Student Code of Conduct to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

## **f. PRIVACY OF INFORMATION**

The Title IX coordinator or designee will seek consent for a Formal Complaint from the Complainant before beginning a formal investigation. If the Complainant requests confidentiality or asks that the report not be pursued, the university will take all reasonable steps to investigate and respond to the report consistent with the request for confidentiality or the request not to pursue an investigation.

The university will evaluate such requests in the context of its responsibility to provide a safe and nondiscriminatory environment for all members of the community. Thus, the university may weigh the request for confidentiality against factors including but not limited to the following: the seriousness of the alleged harassment; the Complainant's age; whether there have been other harassment complaints about the same individual; and the alleged Respondent's rights to receive information about the allegations if the information is maintained by the school as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99.15

If the university determines that it cannot ensure confidentiality, it will notify the Complainant of that determination. If a Complainant insists that their name or other identifiable information not be disclosed to the alleged perpetrator, the university will inform the Complainant that the university's ability to respond may be limited. Even if the university cannot take disciplinary action against the alleged Respondent because the Complainant insists on confidentiality, the university will attempt to pursue other steps to limit the effects of the improper conduct and prevent its recurrence.

The university will also inform the Complainant that Title IX prohibits retaliation, and that it will take action to prevent retaliation as well as action against anyone who engages in retaliation.

## **g. CONFIDENTIAL RESOURCES**

If a Complainant would like to discuss the details of the incident but not report the incident to the university's Title IX Coordinator [or office of Student Conduct], the Complainant may speak with a counselor in the Student Health and Counseling Center or a Confidential Employee in Abby's House.

The above employees will maintain confidentiality except in extreme cases of immediate threat or danger, or abuse of a minor. Campus counselors are available to help students free of charge and can be seen on an emergency basis during normal business hours. These employees will submit (each quarter) anonymous, aggregate statistical information for Clery Act purposes unless they believe it would be harmful to a specific student. No personally identifiable information will be disclosed when reporting this statistical information.

Finally, the U.S. Department of Education's Office of Civil Rights is a federal entity charged with enforcing Title IX compliance. Inquiries about these issues and complaints regarding violations of rights guaranteed under Title IX may also be referred to:

The Office for Civil Rights/Office for Civil Rights  
Seattle Office, U.S. Department of Education  
915 Second Avenue, Room 3310  
Seattle, WA 98174-1099  
or by calling 206- 607-1600  
or by emailing OCR.Seattle@ed.gov

#### **h . SUPPORTIVE MEASURES**

Upon notification of alleged sexual misconduct, the university will offer interim supportive and reasonable protective measures designed to restore or preserve equal access to the university's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties, provide a safe educational and/or work environment, or prevent further acts of misconduct. The university will determine the necessity and scope of any interim measures. Even if a Complainant or Respondent do not specifically request that supportive action be taken, the university may choose to impose interim measures at its discretion to ensure the safety of any individual, the broader university community, or the integrity of the review process.

Persons seeking such assistance should speak with the Title IX Coordinator, the Title IX Deputy Coordinator, [or the office of Student Conduct] who will coordinate such requests on behalf of the person. The university will maintain contact with the parties to ensure that all concerns regarding safety and emotional or physical well-being are being addressed.

All individuals are encouraged to report concerns about failure of another individual to abide by any restrictions imposed by an interim measure. The university will take immediate and responsive action to enforce measures previously ordered or implemented by the university.

The university may impose any remedy that can be tailored to the involved parties to achieve the goals of this policy, even if not specifically listed here.

The range of interim measures may include:

##### *i. No Contact Order (NCO)*

A Complainant or Respondent may request, or the university may impose, communication and contact restrictions to prevent further potentially harmful interaction. These communication and contact restrictions generally prohibit in-person, telephone, electronic or third-party communications. In some cases, an individual may also wish to consider a protection order from the local courts. This is a civil proceeding independent of the university. If a court order is issued, the university will, to the best of the institution's ability, assist the protected person in benefiting from the restrictions imposed by the court and facilitate on-campus compliance with the order. The university may also limit an individual's or organization's access to certain university facilities or activities as part of the No Contact Order.

## *ii. Academic, employment, or residential modifications*

A Complainant will be offered the ability to request an academic or employment accommodation or a change in residence after a report of sexual misconduct. An individual who requests assistance in changing his or her academic, employment or living situation after an incident of sexual misconduct will receive appropriate and reasonably available accommodations. The university will keep all such accommodations confidential, unless maintaining such confidentiality would impair the university's ability to provide the accommodation(s).

These accommodations may include, but are not limited to:

- Academic accommodations, including a change in class schedule, taking an incomplete, dropping a course without penalty, attending a class via electronic or other alternative means, providing an academic tutor or extending deadlines for assignments.
- Change of residential living assignment.
- Change in work assignment or schedule.
- Providing an escort to ensure safe movement around campus.

## *iv. Interim Removal*

Where the report of sexual misconduct poses an ongoing risk of harm to the safety or well-being of an individual or members of the campus community, the university may place an individual or organization on interim removal or suspension from campus. Pending resolution of the report, the individual or organization may be denied access to campus. When interim removal or suspension is imposed, the university will make reasonable efforts to complete the investigation and resolution in an expedited time frame.

## **I. SUPPORT INFORMATION**

Western Oregon University is committed to providing support for students who have been impacted by sexual misconduct in any form. Below is a brief description of resources available. For more information or to request accommodation which may not be listed, students should contact the Title IX Coordinator, the Title IX Deputy Coordinator, [or the office of Student Conduct].

Available resources:

- Student Health and Counseling Center
- Abby's House
- Sable House
- Center for Hope and Safety

- Assistance making a police report, which could include accessing a trained victim's advocate from Polk County Victim Assistance Services - 850 Main Street, Dallas, OR 97338, (503) 623-9268

## 2. COMPLAINT RESOLUTION

### A. INITIAL ASSESSMENT

After receiving a report of prohibited conduct committed by a student, the Title IX Coordinator or designee will make an initial assessment of the reported information and respond to any immediate health or safety concerns raised by the report and offer the university's immediate support and assistance as able. They will assess the nature and circumstances of the report, determine if the allegations fit within the parameters of the policy, including whether it provides the names and/or any other information that personally identifies the Complainant, the Respondent, any witness and/or any other individual with knowledge of the reported incident and if there is a Complainant who desires to move forward with a formal investigation.

The assessment will also ascertain the ages of the Complainant and Respondent, if known, and, if either of the parties is a minor (under 18), take all necessary actions based upon the facts and circumstances of the case, including contacting the appropriate child protective service agency, if required by law.

The Title IX Coordinator will also ensure that the Complainant receives an explanation of all available resources and options, including the following:

- Immediate support and assistance available through university resources and the Complainant's right to supportive measures regardless of whether they choose to participate in a university or law enforcement investigation.
- The opportunity to meet with the Title IX Coordinator in person to discuss their resources, rights and options.
- Expectation of a prompt and equitable response to a report of prohibited conduct that involves a reliable, thorough and impartial process conducted by trained individuals free from conflict of interest and bias.
- Expectation of a process that presumes that a respondent is not responsible until a determination of responsibility is made at the conclusion of the process.
- The Complainant's right to contact or decline to contact law enforcement.
- The Complainant's right to seek medical treatment and information on preserving potentially key forensic and other evidence.
- The Complainant's right to seek protective measures when the university conducts an investigation.
- The Complainant's option of identifying an individual to attend all meetings, interviews, and/or hearing as a support person and advisor (one of each).
- The university's prohibition against retaliation, that the university will take prompt action when retaliation is reported and how to report acts of retaliation.
- Notification of how the Complainant may choose to, or decline to, participate in the various steps of the process, including filing a Formal Complaint

- Notification that the Title IX Coordinator may, in certain circumstances, proceed without complainant's participation and that non-participation may limit the ability of the university to respond.

In the event when a Formal Complaint is filed, protective measures are imposed or any other action that impacts a Respondent, the Title IX Coordinator will meet with the Respondent to also ensure that Respondent is notified and receives written information on available resources and options. The Title IX Coordinator will ensure that a Respondent is informed of:

- The nature of the investigation, the identities of the parties (if known), the Complainant's written statement or if there is no written statement, a concise summary of the conduct at issue, and potential policy violations.
- The opportunity to meet with the Title IX Coordinator in person to discuss their resources, rights and options.
- Expectation of a prompt and equitable response to a report of prohibited conduct that involves a reliable, thorough and impartial process conducted by trained individuals free from conflict of interest and bias.
- Expectation of a process that presumes that a respondent is not responsible until a determination of responsibility is made at the conclusion of the process.
- The immediate support and assistance available through university resources.
- The Respondent's option of identifying an individual to attend all meetings, interviews, and/or hearing as a support person and advisor (one of each).
- The university's prohibition against retaliation, that the university will take prompt action when retaliation is reported and how to report acts of retaliation.

Upon completion of the Initial Assessment, the Title IX Coordinator or designee will determine the course of action under this policy, which may include:

1. Formal resolution: includes a) an investigation and review panel hearing to determine, by a preponderance of the evidence, if there has been a policy violation; b) the imposition of sanctions and other appropriate remedies if there has been a finding; and c) the opportunity to challenge the outcome of the investigation or the sanction through an appeal;
2. Informal resolution/mediation
3. Additional remedies: may include training and other educational measures to members of the university community.

The Title IX Coordinator's course of action will be guided by:

- Whether the Complainant wishes to file a formal complaint, requests anonymity, requests that an investigation not be pursued, and/or requests that no disciplinary action be taken.
- The availability of information or evidence suggesting that a policy violation may have occurred
- The university's Title IX obligation to investigate or otherwise determine what happened and take corrective action as appropriate to eliminate, prevent and address the effects of

the prohibited conduct.

## **B. FORMAL COMPLAINT**

The filing of a Formal Complaint initiates the resolution process. The Formal Complaint is a document filed by and signed a Complainant or signed by the Title IX Coordinator alleging sexual harassment and/or other forms of sexual misconduct against a Respondent and requesting that the university investigate the allegations.

A Formal Complaint may be withdrawn if the Complainant informs the Title IX Coordinator in writing that they want to withdraw the complaint or the allegations. The Title IX Coordinator may choose to withdraw a Formal Complaint if a Respondent is no longer participating in or attempting to participate in the education or program activity of the university or the Complainant submits a written request to withdraw the complaint. In the event that a Formal Complaint is withdrawn, either by the Complainant or Title IX Coordinator, all parties will be notified in writing of the decision.

## **C. FORMAL RESOLUTION**

### *Investigation*

A complete and thorough investigation into a formal complaint will be conducted by the Title IX Coordinator/team or designee. The investigation shall be concluded within a reasonable amount of time. The investigation will be conducted in a manner that is thorough, prompt, reliable and impartial, and will likely include interviews of the parties involved, interviews of witnesses, and gathering of other relevant information and documentation.

Both parties will be notified in writing of the allegation and investigation and provided with a copy of this policy. In this notice, each party will be reminded that they can identify up to two individuals to attend meetings in the capacity of a support person and/or advisor (one of each), that they have the right to request and review all evidence, the presumption that the respondent is not responsible until a determination of responsibility is made at the conclusion of the process and information regarding the university's conduct policy on the making of false statements.

If a conflict of interest between the university and the Complainant and/or Respondent is identified by the Title IX Coordinator, Deputy Coordinators or president of the university, investigators from outside of the institution may be employed to complete the investigation.

The Coordinator or Deputy will assign two formally trained Title IX investigators to gather information relating to the Complainant's report. The names of the investigators will be reviewed with both Complainant and Respondent for input as to a possible conflict of interest. In the event that the Coordinator or Deputy concludes that a conflict of interest exists, a new investigator(s) will be selected.

Investigators will interview those involved in the incident including witnesses identified by the Complainant and Respondent. Investigators will review the notes from interviews with the interviewees to ensure that the notes reflect a complete and accurate representation of the interview. Comments regarding notes on which the interviewer and Complainant or Respondent do not agree will be included as part of the final report presented to the Hearing Panel.

The investigators will also gather any available physical evidence, written documentation, communications between the parties and other electronic records, so long as the investigator is able to obtain such documentation. The Complainant and the Respondent may submit questions to be asked of the other party and/or any witnesses. Investigators will review submitted questions and may choose which questions are necessary as they deem relevant and appropriate to the investigation. After gathering evidence, both parties will be given 10 days to review and submit a written response.

A person's privileged and confidential documents, such as medical, counseling/psychological, and similar treatment records will not be required to disclose. In situations where a party provides their written permission to share privileged records as part of the investigation, only the portion of the records directly related to the allegations raised in the formal complaint will be included in the case file for review by the other party and for use in the investigative process.

Evidence related to the prior sexual history of the Complainant is generally not relevant to the determination of a policy violation unless it is offered to prove that someone other than the Respondent committed the alleged conduct, or in cases where it is offered to prove consent. While, sexual history between the parties may be relevant in understanding the manner of their previous sexual communications, as indicated in the policy section on Consent, "a current or previous dating or sexual relationship is not sufficient to constitute consent, and consent to one form of sexual activity does not imply consent to other forms of sexual activity."

Investigators will produce a final report that fairly summarizes the evidence gathered. Investigators will promptly schedule separate meetings with the Complainant and Respondent to present the investigator's final report, review the Formal Hearing process, provide this process in writing and answer any questions the parties may have regarding the process. At this time, the parties will be given 10 days to respond in writing to the report. After this time, the report is considered finalized.

#### **D. HEARING PROCESS**

A three-member hearing panel will be assembled to determine if a violation occurred based on a preponderance of evidence standard (is it more likely than not that a violation occurred) and if necessary, sanctions for the violation(s). The three-member hearing panel will consist of Title IX trained WOU faculty and staff. One member will be assigned as chairperson for the Hearing.

The Complainant and Respondent will each have a pre-hearing meeting convened by the office of Student Conduct. The party's advisor must be in attendance. During this meeting the office of Student Conduct representative will discuss guidelines and expectations for the hearing.

The Complainant and Respondent and their advisors and/or support person as well as the two investigators will meet with the review panel to allow for questions and responses to the final report. Witnesses may also be called to make statements as determined by the office of Student Conduct. Parties can choose to be present via electronic means to allow for the two parties to not be physically present in the room at the same time. The Hearing will be recorded and made available to the parties for their review during the formal resolution process. Recordings are the property of Western Oregon University.

The Chairperson will facilitate the hearing using a pre-written, formal script. The Complainant and Respondent will have copies of the script to follow during the course of the hearing. The Complainant and Respondent have an opportunity to make opening statements and respond to any questions from the Review Panel and advisors. If witnesses are called, they will make their statements and then be questioned by the panel and advisors

At the hearing, each party's advisor is responsible for asking relevant questions to the other party and any witnesses. Questions must be relevant; those that tend to prove or disprove a fact at issue or challenge credibility. Questions should not be inappropriate, harassing, intimidating, irrelevant or repetitive.

Examples of questions that are not relevant include:

- Questions related to prior sexual history of the Complainant, unless it is offered to prove that someone other than the Respondent committed the alleged conduct, or in cases where it is offered to prove consent.
- Questions related to information that is protected by a legally recognized privilege.
- Questions related to a person's privileged and confidential documents, such as medical, counseling/psychological, and similar treatment records unless the party has given written consent.
- Repeating the same question.

The Hearing Panel will objectively evaluate all evidence to determine its relevance, materiality, weight and reliability. Prior to either party or any witnesses responding to questions from an advisor, the Hearing Panel Chair will first determine whether the question is relevant and provide a brief explanation regarding any decision of relevancy, or request rephrasing of the question. The Chair is not required to give a lengthy explanation of a relevancy determination during the hearing. The Chair reserves the right to remove an advisor who questions in an abusive, intimidating, harassing or disrespectful manner. In the event that an advisor is removed, the Hearing will be suspended until an alternative advisor is found or assigned.

In the event that either the Complainant, Respondent or any witnesses do not submit to cross-examination at the Hearing, the Hearing Panel must not rely on any statement of that party or witness in reaching a determination regarding responsibility. The Hearing Panel cannot infer responsibility based only on nonparticipation or refusal to answer cross-examination questions.

Upon hearing all statements and reviewing all materials, the Hearing panel will retire to deliberations to determine findings of responsible or not responsible. The Hearing panel will reconvene the hearing with the Complainant and Respondent to notify them of their findings. If the Respondent is found responsible for any or all allegations, the Hearing panel will retire again to determine consequences or sanctions. The Hearing Panel will reconvene one final time to inform the Respondent of their decision. The office of Student Conduct will notify the Complainant and Respondent in writing of the Hearing panel's decision within five (5) business days of the hearing. The written decision will include the following:

- Description of the allegations of violation of policy.
- Finding of facts brought up at the review panel hearing supporting the determination.
- Conclusions regarding the application of facts to the policy.
- Statement and rationale for the determination of responsibility.
- Any disciplinary sanctions imposed on the Respondent.
- Statement on university's procedures for appeal of the decision.

The written notification will be provided to the Complainant and Respondent simultaneously.

Any notifications sent pursuant to this policy will not constitute a violation of section 444 of the General Education Provisions Act (20 U.S.C. § 1232g), commonly known as the Family Education Rights and Privacy Act of 1974 (FERPA).

## **E. SANCTIONS**

The following sanctions may be imposed upon any member of the community found to have violated the policy. The following are the typical sanctions that may be imposed upon students or employees:

Examples of possible consequences/sanctions include:

- Written warning
- Community service
- Fine/restitution
- Organizational sanctions
- Probation
- Withholding diploma
- Suspension
- Expulsion
- Other actions

### *i. STANDARDS OF SANCTIONING FOR SEXUAL MISCONDUCT:*

- Any person found responsible for nonconsensual sexual contact (where no intercourse/penetration has occurred) will likely receive a sanction ranging from

probation to expulsion, depending on the severity of the incident, and taking into account any previous disciplinary violations.\*

- Any person found responsible for nonconsensual sexual intercourse will likely face a recommended sanction of suspension or expulsion.\*
- Any person found responsible for sexual exploitation or sexual harassment will likely receive a recommended sanction ranging from warning to expulsion, depending on the severity of the incident, and taking into account any previous disciplinary violations.\*

\*The decision-making body reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the hearing panel nor any appeals body or officer will deviate from the range of recommended sanctions unless compelling justification exists to do so.

## **F. APPEALS**

A decision reached by the Hearing Panel may be appealed by the Complainant or Respondent to the Vice President for Student Affairs (VPSA). An appeal must be submitted in writing within five (5) business days of receiving the written decision from the office of Student Conduct. An appeal will only be considered if it falls within one of the following categories:

- The original hearing was not conducted in conformity with this policy or the *Code of Student Responsibility*.
- The decision reached was based on less than a preponderance of the evidence.
- The sanctions imposed were not appropriate to the violation and the student's previous conduct history.
- New evidence exists that was not available at the time of the hearing.

The VPSA will notify the opposing party of the appeal and afford that party the opportunity to author a written response supporting or challenging the hearing panel's decision or to decline the opportunity to respond. The response is to be submitted within five (5) business days of the notification.

After receiving the appeal and written responses from both parties, the VPSA will render a decision on the appeal and notify the Complainant and Respondent in writing within ten (10) business days of the appeal decision. The appeal decision of the VPSA is the final decision of the university.

If an appeal is upheld by the VPSA, the matter, if appropriate and relevant) may be returned to the original Hearing Panel to allow reconsideration of the original determination and/or

sanction(s). The VPSA may also remand the hearing back to a new panel or order a new investigation.

If an appeal is not upheld, the matter shall be considered final and binding upon all involved.

## **VI. ADOPTION OF POLICY STATEMENT**

The University adopts this Policy with a commitment to: (1) eliminating, preventing, and addressing the effects of Prohibited Conduct; (2) fostering an environment where all individuals are well-informed and supported in reporting Prohibited Conduct; (3) providing a fair and impartial process for all parties; and (4) identifying the procedures by which violations of this Policy will be evaluated.

*Date: August 14, 2020*