



## "Title IX Updates"

**Proposed Motions: (Just a discussion Item. Will be giving feedback to the EOO)**

**Sponsor:** Mayra Guizar/ VP for Diversity

**Persons of Contact:** *Mayra Guizar*

**Date:** 4/31/14

### Attached Document

- existing version of "Preventing Sexual Harassment"
- Newly revised version "Sexual Misconduct: Preventing and Responding to Sex Discrimination, Sexual Harassment and Sexual Violence"

### Background & Context

Title IX is legislation that's under the Education Amendments of 1972. What it does is it protects those who are in education programs/activities that get federal financial help. "The Title IX regulation describes the conduct that violates Title IX. Examples of the types of discrimination that are covered under Title IX include sexual harassment, the failure to provide equal opportunity in athletics, and discrimination based on pregnancy," (<https://www2.ed.gov/policy/rights/guid/ocr/sexoverview.html>).

This piece of legislation is what protects our students at WWU, and it's what guides the EOO in what actions need to be taken next when working to protect survivors of sexual harassment, assault, and/or discrimination. These updates to WWU's Title IX are necessary, and you can see a huge difference between the current Title IX policy, and the updated one that's going under review. President Obama has also recently addressed sexual violence and how it's more than just a crime to the survivors, but to all. To look into the first report of the White House Task Force to Protect Students From Sexual Assault, which was released last week on Tuesday, April 22, 2014, please visit: [http://www.whitehouse.gov/sites/default/files/docs/report\\_0.pdf](http://www.whitehouse.gov/sites/default/files/docs/report_0.pdf).

### Summary of Proposal

Sue Guenter, who is Vice Provost for Equal Opportunity and Employment, is also the Title IX Coordinator. As the Title IX coordinator, she is responsible for oversight of the policies, preventive educational programs, and is the one who receives the sexual harassment and sexual violence reports. During our last talk time, we spoke about the updates, and then she asked if I could possibly pass this through other students. I then brought up having the Board of Directors look at the final product of the updated version of the policy, and Sue said that would be a great idea.

I've attached the first version which was passed and put into effect on June 9<sup>th</sup>, 2009. There's nothing specific that was pointed out by Sue that she wanted us to pay close attention to, but just to discuss the changes between the two documents and give feedback.

### Fiscally

None

### Rationale

It's important that students have a say when it comes to changes within the university, like these updates to Title IX, because these changes will affect and benefit all students, staff and faculty,

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Effective Date: June 9, 2009

Revision Date:

Approved By: President Bruce Shepard

Authority: See Below

Cancels: Appendix B, Student Catalog, Sexual Misconduct Policy and Procedure  
Appendix C, 2005-2007 Faculty Handbook  
Appendix A, Paragraph C, Student Handbook  
Administrative Policies and Procedures on Affirmative Action, Employment, Equal Opportunity, and Discrimination

See Also:	<u>POL-U1600.02</u>	Ensuring Equal Opportunity and Prohibiting Nondiscrimination
	<u>POL-U1600.03</u>	Accommodating Persons with Disabilities
	<u>POL-U1600.05</u>	Implementing Affirmative Action Program
	<u>PRO-U1600.02A</u>	Discrimination Complaint Procedure
	<u>POL-U1600.06</u>	Prohibiting Consensual Intimate Personal Relationships Between Supervisors and Supervisees
	<u>POL-U5615.01</u>	Responding to Campus Violence or Threats of Violence
	<u>POL-U5950.11</u>	Children on Campus
	<u>WAC 516-21</u>	Student Rights and Responsibilities Code
	<u>Code of Faculty Ethics for the Faculty of WWU</u>	Section 8: Consensual Intimate Personal Relationships Between Faculty and Students
	<u>Annual Security and Fire Safety Report</u>	

## **POL-U1600.04 SEXUAL MISCONDUCT: PREVENTING AND RESPONDING TO SEX DISCRIMINATION. SEXUAL HARASSMENT AND SEXUAL VIOLENCE**

*This policy applies to all employees, students, agents, groups, individuals, and organizations that use University facilities and persons who participate in University programs and activities to the extent provided by law.*

### **Authority:**

Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Chapter 49.60 RCW, and the Violence Against Women Reauthorization Act of 2013.

### **Preamble:**

Western is committed to preventing and responding to all forms of sexual misconduct. Sex discrimination, including sexual harassment and gender-based harassment, are violations of civil rights laws. Western is committed to the full implementation of the above referenced laws that address sexual harassment, including sexual violence and gender-based harassment. Western is also committed to the prevention of sexual harassment and gender-based harassment and to the timely and appropriate response to complaints. Sexual harassment, including sexual violence and

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gender based harassment, on or off campus, can have a serious impact on the quality of the educational and/or work experience. All employees and students have a right to work and educational environments free from sex discrimination. Therefore, Western adopts policies and programs aimed at preventing and responding to sex discrimination.

### Definitions:

**Sex Discrimination** - (1) sex-based harassment which includes sexual harassment and gender based harassment; or (2) other discrimination based on sex that involves disparate treatment or disparate impact because of an individual's sex.

**Sexual Harassment** - Sexual harassment is unwelcome conduct of a sexual nature (such as sexual violence, sexual assault, rape, domestic violence, stalking, sexual misconduct, dating violence, unwelcome sexual advances or requests for sexual favors, or other unwelcomed verbal, physical, or cyber conduct of a sexual nature) and can involve persons of the same or different sexes or sexual orientations.

**Gender-Based Harassment** - Non-sexual harassment of a person because of the person's sex and/or gender and/or gender identity, including but not limited to harassment based on the person's non-conformity with gender and gender identity stereotypes.

**Sexual Misconduct** - Any unwelcome behavior of a sexual nature that is committed without consent or by force, intimidation or coercion.

**Sexual Violence** - A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, and sexual coercion. All such acts of sexual violence are also forms of sexual harassment prohibited by Title IX.

**Sexual Assault** - Any actual or attempted sexual contact or behavior with another person without that person's consent. (WA RCW 7.90.150 (6a) a sex offense as defined in RCW 9.94A.030, any violation of RCW 9A.44.096, or any violation of RCW 9.68A.090, or any gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030.)

**Consent** - Consent is informed, freely given, and mutual. If coercion, intimidation, threats, or physical force are used there is no consent. If a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact, nature or extent of the sexual situation, there is no consent. This includes impairment or incapacitation due to alcohol or drug consumption, or being asleep or unconscious. There is no consent when there is force, expressed or implied, or use of duress or deception. Silence does not necessarily constitute consent. Past consent to sexual activities does not imply ongoing future consent.

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**Domestic Violence** - (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member. (RCW 26.50.010) \_\_\_\_\_.

**Family or Household Members** - Spouses, domestic partners, former spouses, former domestic partners, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren. (RCW 26.50.0101) \_\_\_\_\_.

**Dating Violence** - Violence committed by a person:

1. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
2. 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
  - c. the frequency of interaction between the persons involved in the relationship

**Stalking** - A person commits the crime of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:

1. He or she intentionally and repeatedly harasses or repeatedly follows another person; and
2. The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances; and
3. The stalker either:
  - a. Intends to frighten, intimidate, or harass the person; or
  - b. Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person. (See RCW 9A.46.110) \_\_\_\_\_.

### **1- The University Does Not Discriminate on the Basis of Sex in its Programs and Activities and Will Not Tolerate Sexual Harassment or Sexual Violence.**

Title VII and Title IX require the University to not discriminate on the basis of sex. Sexual and gender-based harassment are unacceptable and may be cause for discipline even if it does not rise to the level of a violation of law.

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Consistent with the law, this policy prohibits two types of sexual harassment:

A. Tangible Employment or Educational Adverse Impact:

This type of sexual harassment occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, living environment or participation in a University activity is conditioned upon, either explicitly or implicitly, submission to or rejection of unwelcome sexual advances or requests for sexual favors, or such submission or rejection is a factor in decisions affecting that individual's employment, education, living environment, or participation in a University program or activity. Generally, perpetrators will be agents or employees with some authority from the University.

B. Hostile Environment Sexual Harassment:

Hostile Environment Harassment is sufficiently serious (i.e., severe, pervasive, or persistent) and objectively offensive so as to deny or limit a person's ability to participate in or benefit from the University's programs, services, opportunities, or activities; or when such conduct has the purpose or effect of unreasonably interfering with an individual's employment or education. Harassment that creates a hostile environment ("hostile environment harassment") violates this policy. A hostile environment can be created by anyone involved in a University program or activity (e.g., administrators, faculty members, students, and even campus guests). Mere offensiveness is not enough to create a hostile environment. Although repeated incidents increase the likelihood that harassment has created a hostile environment, a serious incident, such as a sexual assault, even if isolated, can be sufficient.

## **2. The University is Committed to a Comprehensive Educational Program to Promote Awareness of and Prevent Sexual Harassment and Sexual Violence.**

- A. The Vice Provost for Equal Opportunity is Western's Title IX Coordinator. The Vice Provost is responsible for providing mandatory initial and refresher Sexual Harassment Prevention Training (SHPT) as required by WAC 357-34-100 for University employees. New employees should complete this training within their first six months of employment.
- B. SHPT includes information on Title IX obligations and the nature and consequences of sexual harassment, including sexual violence, and discusses reporting options and procedures for handling complaints.
- C. The Vice Presidents and Deans are responsible for ensuring that their employees complete the mandatory SHPT and refresher training.
- D. The Equal Opportunity Office, University Police, Enrollment and Student Services, Human Resources and other campus offices promote awareness of and provide additional communication about and training in the prevention of sexual harassment and sexual violence.

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- E. The Violence Against Women Act (VAWA) requires Western to provide Written Notice containing detailed information on resources, reporting options and rights regarding Sexual Harassment.

### **3. The University Offers Support and Resources for Persons Affected by Sexual Harassment.**

- A. **Consultation and Sexual Assault Support (CASAS) Services** (for students) - Contact CASAS Services at 360-650-3700. CASAS Services provides confidential, professional consultation, brief or ongoing counseling, information about medical services, legal information and reporting options, academic support, and support group for survivors of violence.
- B. **Student Health Center** (for students) - Western's Student Health Center (360-650-3400) is a primary care medical clinic providing a broad range of affordable health care to eligible students. Staffed by a team of physicians, nurse practitioners, registered nurses, and support staff, the mission of the Student Health Center is to assist students with preventive health care and consultations, as well as evaluating, diagnosing and treating health concerns, illnesses and injuries, thereby minimizing their impact on academic progress.
- C. **Counseling Center** (for students) - Western's Counseling Center (360-650-3164) provides individual, confidential counseling including crisis appointments and after-hours emergency services. The Counseling Center also assists students by referring them to other services on campus and to community resources that can offer more specialized or longer-term help with problems and concerns.
- D. **Dean of Students, Office of Student Life** (for students) - The Office of Student Life is dedicated to supporting the learning and development of students, and creating an environment that fosters student success and graduation. The primary purpose of the Office of Student Life is to ensure the well-being and success of Western students. They work closely with students (and their family members), faculty, and staff, in support of this purpose, and also collaborate with a number of campus departments.
- E. **Title IX Coordinator, Equal Opportunity Office** (for employees, students, others in the campus community affected by sexual violence)
- F. **Employee Assistance Program** (for employees) - The EAP helps public employees resolve personal and work-related problems. EAP staff understand the issues that face public service employees. Consultations are voluntary, confidential, and available at no cost to covered employees and adult members of their households.

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### G. Human Resources (for employees)

See Domestic Violence Resources for Employees, including Domestic Violence Leave Information.

### H. Campus Police (for employees, students, others affected by sexual violence on campus)

- i. See POL-U5615.01 Responding to Campus Violence or Threats of Violence
- ii. File a report with law enforcement
- iii. Can assist with safety planning and escorts

## 4. The University Provides a Comprehensive Response System for Reporting and Addressing Sexual Harassment and Sexual Violence Available to Students, Employees, and Others on Campus Affected by Sexual Harassment or Sexual Violence.

- A. The Vice Provost for Equal Opportunity/Title IX Coordinator investigates all discrimination complaints, including complaints of sexual harassment.

Western's discrimination complaint procedure provides an administrative complaint process (not legal or criminal) for prompt and equitable investigation and resolution of sexual harassment complaints. PRO-U1600.02A Discrimination Complaint Procedure

The University will take steps to prevent recurrence of sexual harassment, and to correct its discriminatory effects on the complainant and others if appropriate. Interim measures may be taken to assist or protect the complaining individual(s) during the complaint process as necessary with the complainant's consent (e.g., arranging for changes in class schedule and/or living arrangements, counseling, modifying class requirements or testing schedules as needed, etc.).

Individuals who believe they have been sexually harassed are encouraged to contact the Vice Provost for Equal Opportunity & Employment Diversity, who also serves as the Title IX Coordinator, Equal Opportunity Office, Western Washington University, Old Main 345, MS 9021, 516 High Street, Bellingham, WA 98225; 360.650.3307 (voice) or 711 (Washington Relay); [ooo@wwu.edu](mailto:ooo@wwu.edu); or the Department of Education's Office for Civil Rights.

The standard of evidence used by the Title IX Coordinator in investigating allegations of sexual harassment is a preponderance of evidence (more likely than not).

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- B. **Chief, University Police** responds to and investigates all on-campus incidents of sexual harassment or sexual violence when an individual seeks to file a criminal report or seeks a legal remedy. Off campus incidents are handled by the Bellingham Police.

When the survivor of a criminal act chooses to seek a legal remedy, they are encouraged to report all crimes of sexual violence to the appropriate law enforcement agency (University or Bellingham Police). The standard of evidence used by campus police in investigating alleged crimes is proof beyond a reasonable doubt.

C. **Student Conduct Officer**

The Student Conduct Officer responds to and investigates sexual misconduct. See WAC 516-21 for the Student Rights and Responsibilities Code.

### **5. The University Takes Action Towards Violators of This Policy.**

Anyone who is found to be in violation of this Policy will be subject to a range of sanctions, such as written reprimand, termination of employment, or expulsion.

### **6. All Members of the University Community Ensure That Commitment to Preventing Sexual Harassment is an Integral Part of WWU.**

### **7. Employees Must Report Sexual Misconduct.**

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

### **8. The University Prohibits Retaliation.**

The University, based on civil rights law, prohibits retaliation or encouraging others to retaliate against anyone reporting or thought to have reported a violation of this Policy. This means that any type of adverse action or behavior is prohibited against a student or employee who expresses a concern or complaint to the Equal Opportunity Office, or against a formal complainant, respondent or witness involved in a discrimination complaint investigation. Such retaliation will be considered independently, whether or not a complaint of discrimination is substantiated.



CURRENT

# POLICY

Effective Date: June 9, 2009  
Approved By: President Bruce Shepard  
Executive Policy Group

**Authority:**  
Title VII of the Civil Rights Act of 1964  
Title IX of the 1972 Education Amendments  
RCW 49.60. WAC 516-23-280

**Cancels:** Appendix C, **2005-2007** Faculty Handbook  
Appendix A, Paragraph C Student Handbook,  
Administrative Policies and Procedures on Affirmative Action,  
Employment, Equal Opportunity, and Discrimination

**See Also:**  
POL-U1600.02. POL-U1600.03.  
POL-U1600.05. PRO-U1600.02A

## **POL-U1600.04 PREVENTING SEXUAL HARASSMENT**

*Policy applies to all employees, students, volunteers, agents, groups and individuals. It also applies to organizations that use university facilities and other members of the university community to the extent provided by law.*

### **Definition:**

Sexual harassment is a form of sex discrimination and is therefore prohibited by law. Sexual harassment is unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:

- Submission to such conduct or activity is made either explicitly or implicitly a term or condition of an individual's employment or academic progress;
- Submission to or rejection of such conduct or activity is used as the basis for employment or academic decisions affecting such individuals, or
- Such conduct or activity unreasonably interferes with an individual's work or academic performance or creates an intimidating, hostile or offensive working or learning environment.

Sexual harassment can occur between persons without regard to gender, age, appearance, or professional status.

- 1. The University Provides a Positive Learning and Working Environment for Students and Employees and Will Not Tolerate Sexual Harassment**
- 2. The Vice Provost for Equal Opportunity & Employment Diversity Provides Education and Training on Sexual Harassment Prevention**

In accordance with state law and this policy:

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- A. The university provides on-going training about the nature and consequence of sexual harassment and procedures for handling complaints.
- B. University employees are required to be trained in the prevention of sexual harassment.

Deans and Vice Presidents are responsible for ensuring that their employees complete the mandatory sexual harassment prevention training.

### **3. The University Provides an Avenue for Reporting Sexual Harassment**

Individuals who believe they have been the subject of sexual harassment are encouraged to report incidents to the proper authorities as outlined in PRO-U1600.02A Discrimination Complaint Procedure.

### **4. The Vice Provost for Equal Opportunity and Employment Diversity Investigates Allegations of Sexual Harassment**

The university takes measures to ensure a working and learning environment that is free of sexual harassment. When the university becomes aware of allegations of sexual harassment it investigates those allegations.

### **5. The University Takes Action Towards Violators of This Policy**

Anyone who is found to be in violation of this policy will be subject to a range of sanctions, including written reprimand, termination, or expulsion.

### **6. Supervisors and Others in Leadership Positions have Special Responsibilities**

Persons in supervisory and leadership roles may face personal liability if they fail to take appropriate action when they become aware of instances of sexual harassment.

### **7. The University Prohibits Retaliation**

The university prohibits retaliation against anyone reporting or thought to have reported sexual harassment or encouraging others to retaliate. Such retaliation will be considered independently, whether a charge or informal complaint of sexual harassment is substantiated.