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Sexual and Gender-Based Harassment, Interpersonal Violence, and Other Sexual Misconduct (SIM)

Policy and Procedure

March 18, 2025

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I. POLICY STATEMENT

WesternU, consisting of its various colleges of graduate health sciences, and its clinical centers wherever located (collectively “WesternU”), is an institution founded upon the principles of compassion, excellence, and humanism.

This policy specifically addresses all forms of sex discrimination, including sexual harassment and other related acts referred to within this policy as Prohibited Conduct.

WesternU does not discriminate on the basis of sex in its educational programs or activities, including admissions and employment. Prohibited Conduct, for purposes of this policy, includes but is not limited to acts of sex discrimination including sexual harassment, sexual assault, dating violence, domestic violence, and stalking (collectively referred to as Prohibited Conduct in this policy). Please refer to WesternU’s Equal Opportunity Civil Rights (EOCR) policy/procedure for information that governs other forms of discrimination or harassment, including retaliation.

WesternU has adopted grievance procedures to ensure that it takes prompt and appropriate administrative action to address reports and complaints of Prohibited Conduct and to eliminate the recurrence of Prohibited Conduct. This policy is published in its entirety on WesternU’s Title IX website and is included as a reference in WesternU Catalog and Annual Security Report, which is available to all students and employees. WesternU circulates this policy annually to all employees.

This policy is intended to promote student safety and the wellbeing of all members of the WesternU community. It is the responsibility of each member of WesternU to contribute in a positive manner to the WesternU community and to foster an environment free from Prohibited Conduct. All members of the WesternU community are encouraged to take reasonable and prudent actions to prevent or stop an act of Prohibited Conduct.

Additionally, WesternU will support any member who takes such action and protect them from retaliation. Every WesternU member has the right to participate in all programs and activities without facing unlawful discrimination or harassment. WesternU also prohibits against any form of retaliation against a person, who under good faith, reported a violation under this policy or who participated in any investigation or proceeding under this policy.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws, which frame such codes generally.

II. NOTICE OF NON-DISCRIMINATION

In accordance with all applicable federal, state, and local laws, Western University of Health Sciences (WesternU) is committed to ensuring a campus community free from unlawful discrimination. WesternU strictly prohibits unlawful discrimination in all its programs, activities, admissions, and employment.

This policy applies to all aspects of the university, including education programs, employment, admissions, and any other WesternU activities.

WesternU prohibits discrimination based on the following characteristics:

- Race (including traits associated with race, such as hair texture and protective hairstyles)
- Ethnicity, Color, and National Origin
- Immigration Status and Ancestry
- Sex, Gender, Gender Identity, and Gender Expression
- Sexual Orientation
- Physical or Mental Disability
- Age
- Religion (including religious dress and grooming practices)
- Medical Condition and Genetic Information
- Marital Status
- Pregnancy (including childbirth, breastfeeding, or related medical conditions)
- Military or Veteran Status
- Perceived Characteristics - Discrimination is prohibited if an individual is perceived to have any of the above characteristics.
- Association with Protected Groups – Discrimination based on association with a person or group with one or more protected characteristics is also prohibited.
- Other Legally Protected Classes – WesternU complies with all federal, state, and local laws, regulations, and ordinances regarding discrimination.

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This policy prohibits:

- Discrimination based on sex, gender, gender identity, and gender expression, and sexual orientation
- Sexual violence
- Sexual harassment
- Retaliation

WesternU is committed to providing an inclusive and equitable environment free from unlawful discrimination or harassment in all aspects of university life.

Any student or employee who violates this policy, including its protections against retaliation may be subject to discipline.

WesternU will promptly and effectively address any such discrimination of which it has Knowledge/Notice using the resolution process in this policy.

WesternU has designated the Associate Vice President for the Office of Title IX and Equal Opportunity Compliance Initiatives (OTIXEO) to coordinate WesternU's compliance with federal and state civil rights laws regarding protected characteristics:

Cristina Alvarez, Title IX Coordinator
Associate Vice President
Office of Title IX and Equal Opportunity
Compliance Initiatives
309 E. 2nd Street
Pomona, CA 91766
(909) 469-7038
alvarezc@westernu.edu
www.westernu.edu/otixeo

Sara Aguirre, Deputy Civil Rights
Officer/Deputy Title IX Officer
Office of Title IX and Equal Opportunity
Compliance Initiatives
309 E. 2nd Street
Pomona, CA 91766
saguirre@westernu.edu
www.westernu.edu/otixeo

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Inquiries about WesternU's prohibitions against discrimination, harassment, and retaliation can be directed to Associate Vice President (AVP) for the Office of Title IX and Equal Opportunity Compliance Initiatives (OTIXEO) or to the U.S. Department of Education, Office for Civil Rights.

III. REPORTING PROHIBITED CONDUCT

WesternU encourages members of the WesternU community to report Prohibited Conduct. Individuals may choose to report Prohibited Conduct by:

- **Contacting the Title IX Coordinator or Deputy Title IX Coordinator(s)**
See contact information above. Reporting Prohibited Conduct to the Title IX Coordinator does not automatically initiate an investigation under this policy. A report allows WesternU to provide a wide variety of support and resources to impacted individuals and to prevent the reoccurrence of the conduct. After reporting Prohibited Conduct to the Title IX Coordinator, the Title IX Coordinator will provide information about WesternU's complaint procedures.
- **Contacting law enforcement**
An individual has the right to report criminal acts to law enforcement. See contact information in Section XVI, below.
- **Contacting law enforcement**
Students may file a complaint with the Office for Civil Rights of the U.S. Department of Education and employees may file a complaint with the California Civil Rights Department.

Because individuals may be deterred from reporting incidents of sexual harassment if alcohol, drugs, or other violations of WesternU policies were involved, WesternU will inform individuals that the primary concern is for student and employee safety and that use of alcohol or drugs never makes a complainant at fault for sexual harassment. An individual who participates as a complainant or witness in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for a violation of applicable WesternU conduct policies or procedures at or near the time of the incident, unless WesternU determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.

If there are parallel criminal and Title IX investigations, WesternU will cooperate with the external law enforcement agency and will coordinate to ensure that the Title IX process does not hinder legal process or proceedings.

WesternU will document reports of sexual harassment in compliance with the Clery Act, a federal law requiring data collection of crime within the campus geography. Under the Clery

Act, WesternU does not document personal information; WesternU reports the type of conduct, and the time, date, and location (For more information, see Section VI).

IV. RESPONSIBLE EMPLOYEES/ EMPLOYEES WHO HAVE A DUTY TO REPORT

Responsible Employee means an employee who has the authority to take action to redress Prohibited Conduct or provide supportive measures to students, or who has the duty to report Prohibited Conduct to the Title IX Coordinator.

Responsible Employees includes, but is not limited to, those individuals with any of the following positions or substantially similar positions or job duties, regardless of the specific title WesternU attaches to the position:

- Title IX Coordinator and Deputy Title IX Coordinators;
- Faculty and associate faculty, teachers, instructors, or lecturers;
- Teaching assistants and fellows, while performing the duties of employment by the institution;
- Laboratory directors, coordinators, or principal investigators;
- Rotations, internship, or externship directors or coordinators; and
- Study abroad program directors or coordinators.
- Members of the Senior Leadership Team
- Campus Security Director
- Manager of Campus Security
- Academic Deans of WesternU Colleges
- WesternU Student Affairs Deans and Associate Vice Presidents

Responsible Employee does not include those individuals who are also any of the following:

- A therapist, victim advocate or other position with similar responsibilities, or other individual acting in a professional capacity for which confidentiality is mandated by law.

Individuals who are not deemed Responsible Employees shall inform each student who provides the individual with information regarding Prohibited Conduct of the student's ability to report to a Responsible Employee and direct the student to those specific reporting

resources.

WesternU will ensure Responsible Employees receive training regarding their obligation to report Prohibited Conduct under this policy to the Title IX Coordinator. Failure to report disclosures of Prohibited Conduct to the Title IX Coordinator could lead to discipline, up to and including termination.

V. TIME LIMITS ON REPORTING

There is no time limitation on reporting Prohibited Conduct to the Title IX Coordinator or Title IX Deputy Coordinator. WesternU strongly encourages prompt reporting of Prohibited Conduct. Prompt reporting allows for the collection and preservation of evidence, including physical evidence, digital media, and witness statements. A delay may limit WesternU's ability to effectively respond to a report of Prohibited Conduct.

VI. CLERY REPORTING AND FEDERAL TIMELY WARNING OBLIGATIONS

Prohibited Conduct may be reported to local law enforcement, WesternU Student Affairs, Human Resources or Office of Security and Safety. For detailed information regarding the reporting of crimes or other Prohibited Conduct, please refer to the WesternU Annual Security Reports for the Pomona, CA and Lebanon, OR campuses at <https://www.westernu.edu/security/annual-security-report/>.

Pursuant to the Clery Act, WesternU includes statistics about certain offenses in its annual report on campus security and safety and provides that information to the United States Department of Education in a manner that does not include personally identifiable information about the involved individuals.

Certain institutional officials (those deemed Campus Security Authorities) have a duty to report the following for federal statistical reporting purposes (Clery Act):

- All “primary crimes,” which include criminal homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson
- Hate crimes, which include any bias-motivated primary crime as well as any bias-motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property
- Violence Against Women Act (VAWA-based crimes), which include sexual assault, domestic violence, dating violence, and stalking¹
- Arrests and referrals for disciplinary action for weapons law violations, liquor law violations, and drug law violations
- Hazing incidents

¹ VAWA is the Violence Against Women Act, enacted in 1994 and codified in part at 42 U.S.C. sections 13701 through 14040.

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All personally identifiable information is kept private, but statistical information regarding the type of incident and its general location (on- or off-campus or in the surrounding area, but no addresses are given) must be shared with the Clery Coordinator for publication in the Annual Security Report and daily campus crime log. Campus Security Authorities include student affairs/student conduct staff, campus law enforcement/public safety/security, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

The Clery Act also requires WesternU to issue timely warnings to the campus community about certain crimes that have been reported and may continue to pose a serious or continuing threat to employees and students. Consistent with the Clery Act, WesternU withholds any identifying information of the Complainant when issuing timely warnings to the campus community.

Refer to the Jeanne Clery Act policy for additional information

VII. STATEMENT ON CONSENSUAL RELATIONSHIPS

WesternU discourages romantic or sexual relationships between supervisors and employees, or between administrators, faculty members, or staff members and students. There is an inherent imbalance of power and potential for exploitation in such relationships. A conflict of interest may arise if the administrator, faculty members, or staff member must evaluate the student's or employee's work or make decisions affecting the employee or student. The relationship may create an appearance of impropriety and lead to charges of favoritism by other students or employees. A consensual sexual relationship may change, with the result that sexual conduct that was once welcome becomes unwelcome and harassing.

In the event that such relationships do occur, WesternU has the authority to transfer any involved employee, to eliminate or attenuate the supervisory authority of one over the other, or of a teacher over a student. Such action by the WesternU is a proactive and preventive measure to avoid possible charges of harassment and does not constitute discipline against any affected employee

VIII. STATEMENT ON TRUTHFULNESS

WesternU prohibits individuals deliberately and knowingly providing false or malicious information or statements under this policy or procedure. Individuals who violate this prohibition will be subject to disciplinary action. For students, intentionally providing false information during a WesternU proceeding or to a WesternU employee may be considered a violation of the WesternU Standards of Student Conduct. For employees, intentionally providing false information may be considered a violation of Professional Code of Conduct.

Additionally, witnesses and Parties who knowingly provide false evidence, tamper with or destroy evidence, or deliberately mislead an official conducting an investigation or resolution process can be subject to discipline under appropriate WesternU policies.

IX. SCOPE AND JURISDICTION

WesternU will use its Title IX Complaint Procedure found in **Appendix A** if the alleged Prohibited Conduct meets the following jurisdictional requirements:

- The Prohibited Conduct meets the definition of Title IX sexual harassment (see Definitions); and
- The Prohibited Conduct took place in a WesternU “education program or activity.” This includes locations, events, or circumstances over which WesternU exercised substantial control over both the Respondent and the context in which the Prohibited Conduct occurred, and includes any building owned or controlled by a student organization that is officially recognized by WesternU.
- The conduct took place in the United States.

WesternU will use its Non-Title IX Complaint Procedure found in **Appendix B** if the alleged Prohibited Conduct meets the following jurisdictional requirements:

- The Prohibited Conduct does not meet the jurisdictional requirements of the Title IX Complaint Procedure; and
- The Prohibited Conduct meets the definition of Non-Title IX Prohibited Conduct; and
- The Prohibited Conduct occurred either in a WesternU educational program or activity or the Prohibited Conduct has the purpose or effect of having a negative impact upon the Complainant’s work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.

X. DEFINITIONS

WesternU utilizes the following relevant terms and terminology in this policy and procedure:

- **Advisor** refers to the individual who assists a party during the Title IX Complaint Procedure or Non-Title IX Complaint Procedure. Further information regarding the role of Advisor can be found in the Advisor section below.
- **Complainant** refers to the individual who is alleged to be the victim of conduct that could constitute Prohibited Conduct.
- **Complaint** means a written or verbal statement filed with the Title IX that alleges Non-

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Title IX Prohibited Conduct in violation of this policy. Complaints must be filed with the Title IX Coordinator or Deputy Title IX Coordinator unless the Party submitting the Complaint alleges Prohibited Conduct against the Title IX Coordinator or Deputy Title IX Coordinator in which case it should be submitted directly to the SVP for the Division of Compliance.

- **Consent** is defined in the Affirmative Consent Section.
- **Decision-Maker** refers to the individual(s) responsible for making a Determination of Responsibility in the Title IX Complaint Procedure or Non-Title IX Complaint Procedure.
- **Determination of Responsibility** refers to a step in the Title IX Complaint Procedure or Non-Title IX Complaint Procedure in which the Decision-Makers(s), after a review of evidence and based on the Standard of Evidence, determine whether the Respondent is responsible for the alleged Prohibited Conduct.
- **Exculpatory Evidence** means any evidence that is favorable to the Respondent that shows or tends to show the Respondent is not responsible for the alleged Prohibited Conduct.
- **Formal Complaint** means a document filed by a Complainant or signed by the Title IX Coordinator alleging Title IX sexual harassment against a respondent and requesting that WesternU initiate its Title IX Complaint Procedure.
- **Hearing Officer** refers to the individual tasked with the responsibility of adjudicating the hearing in under this policy. This individual may be an external party and may be referred to as the Chair.
- **Inculpatory Evidence** means any evidence that shows or tends to show that the Respondent engaged in the allegation of Prohibited Conduct.
- **Informal Resolution** means a voluntary process that allows the Parties to resolve a Complaint or Formal Complaint without a full investigation and hearing, if applicable.
- **Investigator** refers to the individual designated to conduct the investigation of a Complaint or Formal Complaint.
- **Nonbinary** is a general term for people whose gender identities fall outside of the binary conception of woman or man (or male or female).
- **Remedies** refer to those actions provided to a complainant when WesternU determined a respondent is responsible for Prohibited Conduct. Remedies are designed to restore or preserve the complainant's equal access to the WesternU's education program or activities.

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- **Respondent** means an individual who has been reported to be the perpetrator of Prohibited Conduct under this policy.
- **Retaliation** is defined in the Prohibited Conduct section.
- **Sex Stereotype** refers to an assumption about a person's appearance or behavior or about an individual's ability or inability to perform certain kinds of work or attain certain levels of academic achievement based on a myth, social expectation, or generalization about the individual's sex (or gender, including gender identity and nonbinary status).
- **Sexual Harassment** is defined in the Prohibited Conduct section.
- **Standard of Evidence** refers to a preponderance of the evidence (i.e., whether, based on the evidence presented, it is more likely than not that the respondent committed each alleged violation).
- **Supportive Measures** refers to any non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Complaint or Formal Complaint or where no Complaint or Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to WesternU's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or WesternU's educational environment, or deter sexual harassment or other Prohibited Conduct. Please see the Supportive Measures section for more information.
- **Third Party** refers to any individual who is not a WesternU employee or student.
- **Witness** is any person(s) who can be called upon to provide relevant information about an allegation in which they are not the Complainant or Respondent.

XI. PROHIBITED CONDUCT

This policy prohibits the following prohibited conduct:

1. **TITLE IX SEXUAL HARASSMENT** – Conduct that satisfies one or more of the following²:
 - a. *Quid Pro Quo*: A WesternU employee conditioning the provision of an aid, benefit, or service of WesternU on an individual's participation in unwelcome

² The Title IX Sexual Harassment described here applies to conduct that occurred on or after August 13, 2020. If alleged conduct occurred prior to this date will be evaluated using the policy in place at the time of the alleged conduct.

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sexual conduct;

- b. *Hostile Environment Harassment*: Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to WesternU's education program or activity;
- c. *Sexual Assault*: Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent or unlawful, nonforcible sexual intercourse, including sexual exploitation and any of the following:
 - i. *Rape*: Sexual intercourse between two people, and may include oral or anal intercourse, without the Affirmative Consent of the Complainant.
 - ii. *Sexual Assault with an Object*: To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the Affirmative Consent of the Complainant.
 - iii. *Fondling*: The touching of the private body parts of another person for the purpose of sexual gratification, without the Affirmative Consent of the Complainant.
 - iv. *Incest*: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - v. *Statutory Rape*: sexual intercourse with a person who is under the age of 18 years.
- d. *Dating Violence*: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- e. *Domestic violence*: 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 California, 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

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of California.

- f. *Stalking*: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his/her/their safety or the safety of others; or suffer substantial emotional distress.

2. **NON-TITLE IX HARASSMENT** - Harassment based on sex, gender, gender identity, gender expression, sexual orientation is illegal and violates WesternU policy. Harassment shall be found where a reasonable person with the same characteristics as the victim of the harassing conduct would be adversely affected to a degree that interferes with his/her/their ability to participate in or to realize the intended benefits of a WesternU activity, employment, or resource.

Gender-based harassment does not necessarily involve conduct that is sexual. Any hostile or offensive conduct based on gender can constitute prohibited harassment if it meets the definition above. For example, repeated derisive comments about a person's competency to do the job, when based on that person's gender, could constitute gender-based harassment. Harassment comes in many forms, including but not limited to the following conduct that could, depending on the circumstances, meet the definition above, or could contribute to a set of circumstances that meets the definition:

Verbal: Inappropriate or offensive remarks, slurs, jokes, or innuendoes based on a person's race, gender, sexual orientation, or other protected status. This may include, but is not limited to, inappropriate comments regarding an individual's body, physical appearance, attire, sexual prowess, or sexual orientation; unwelcome flirting or propositions; demands for sexual favors; verbal abuse, threats or intimidation; or sexist, patronizing or ridiculing statements that convey derogatory attitudes based on sex, gender, gender identity, gender expression, or sexual orientation.

Physical: Inappropriate or offensive touching, assault, or physical interference with free movement. This may include, but is not limited to, kissing, patting, lingering or intimate touches, grabbing, pinching, leering, staring, unnecessarily brushing against, or blocking another person, whistling, or sexual gestures. It also includes any physical assault or intimidation directed at an individual due to that person's sex, gender, gender identity, gender expression, or sexual orientation.

Visual or Written: The display or circulation of visual or written material that degrades an individual or group based on sex, gender, gender identity, gender expression, or sexual orientation. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading materials, computer graphics, or electronic media transmissions.

Environmental: A hostile academic or work environment may exist where it is permeated by sexual innuendo; insults or abusive comments directed at an individual or group based on gender, race, nationality, sexual orientation or other protected status; or gratuitous comments regarding gender, race, sexual orientation, or other protected status that are not relevant to the subject matter of the class or activities on the job. A hostile environment can arise from an unwarranted focus on sexual topics or sexually suggestive statements in the classroom or work environment. It can also be created by an unwarranted focus on, or stereotyping of, particular sex, gender, gender identity, gender expression, or sexual orientation. An environment may also be hostile toward anyone who merely witnesses unlawful harassment in his/her/their immediate surroundings, although the conduct is directed at others. The determination of whether an environment is hostile is based on the totality of the circumstances, including such factors as the frequency of the conduct, the severity of the conduct, whether the conduct is humiliating or physically threatening, and whether the conduct unreasonably interferes with an individual's learning or work.

3. **NON-TITLE IX SEXUAL HARASSMENT** – In addition to the above, sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made from or in the work or educational setting, under any of the following conditions:
- a. submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, or progress by someone who is not an employee of WesternU;
 - b. submission to, or reject of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual by someone who is not an employee of WesternU;
 - c. the conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment;
 - d. submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through WesternU by someone who is not an employee of WesternU,.

This definition encompasses two kinds of sexual harassment:

“Quid pro quo” sexual harassment occurs when a person in a position of authority, who is not an employee of WesternU, makes educational or employment benefits conditional upon an individual's willingness to engage in or tolerate unwanted sexual conduct.

“Hostile environment” sexual harassment occurs when unwelcome conduct based on a person’s gender alters the conditions of an individual's learning or work environment, unreasonably interferes with an individual's academic or work performance, or creates an intimidating, hostile, or abusive learning or work environment. The victim must subjectively perceive the environment as hostile, and the harassment must be such that a reasonable person of the same gender would perceive the environment as hostile. A single or isolated incident of sexual harassment may be sufficient to create a hostile environment if it unreasonably interfered with the person’s academic or work performance, or created an intimidating, hostile, or offensive learning or working environment.

Sexually harassing conduct can occur between people of the same or different genders. The standard for determining whether conduct constitutes sexual harassment is whether a reasonable person of the same gender as the victim would perceive the conduct as harassment based on sex.

Sexual harassment includes sexual battery, sexual violence, and sexual exploitation³.

OTHER PROHIBITED CONDUCT:

1. HAZING:⁴

Any act or action which does or is likely to endanger the mental or physical health or safety of any individual as it relates to an individual’s initiation, admission into, or affiliation with any WesternU group or organization.

For the purposes of this definition:

It is not necessary that a person’s initiation or continued membership is contingent upon participation in the activity, or that the activity was sanctioned or approved by the student group or student organization, for an allegation of hazing to be upheld. It shall not constitute an excuse or defense to a hazing allegation that the participants took part voluntarily, gave Affirmative Consent to the conduct, voluntarily assumed the risks of hardship of the activity, or that no injury was suffered or sustained.

The actions of alumni, active, new, and/or prospective members of a student group or student organization may be considered hazing.

Hazing is not confined to the student group or student organization with which the

³ Sexual Battery, Sexual Exploitation, and Discrimination are defined in Appendix C.

⁴ Hazing may be addressed under this policy if the conduct alleged was sex-based and may be resolved through either the Title IX or Non-Title IX processes if the jurisdictional requirements are met.

individual subjected to the hazing is associated.

2. ONLINE HARASSMENT AND MISCONDUCT:

WesternU policies are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on WesternU's education program and activities, or when they involve the use of WesternU networks, technology, or equipment.

Although WesternU may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to WesternU, it will engage in a variety of means to address and mitigate the effects. These means may include use of the Resolution Process to address off-campus conduct whose effects contribute to limiting or denying a person access to WesternU's education program or activity.

3. RETALIATION:

1. Includes acts, words, intimidation, threats, reprisals, coercion, discrimination, and/or adverse employment or education actions against any person
2. for the purpose of interfering with any right or privilege secured by Policy or law (including federal, state, or local laws or ordinances and their implementing regulations), or because the person has engaged in protected activity, including:
 - i. Reporting Information,
 - ii. Making a good faith report or formal complaint,
 - iii. Serving as a witness
 - iv. Assisting, or
 - v. Participating or refusing to participate in any manner in an investigation, report, proceeding, Resolution Process as defined under this Policy (including an Informal Resolution Process), remedial process or disciplinary processes arising out of a University policy/procedure, or any other appropriate steps taken by WesternU to promptly and effectively end any discrimination in its education program or activity, prevent its recurrence, and remedy its effects.

For purposes of this definition, the exercise of rights protected under the First Amendment does not constitute retaliation. It is also not retaliation for WesternU to pursue Policy violations against those who make materially false statements in bad faith in the course of a resolution under the Policy. However, the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

Retaliation includes such conduct through associates or agents of a Reporting Party, Respondent, or participant in any investigation or proceeding related to this Policy.

Engaging in Retaliation for the purpose of discouraging others from engaging in an activity protected under this Policy is prohibited and suspicions of this conduct should be immediately reported to the AVP of OTIXEO. Individuals found to have engaged in Retaliation are subject to disciplinary action.

Examples of Retaliation include but are not limited to:

- Reprimanding or giving a performance evaluation that is lower than it should be;
- Transfers to a less desirable position;
- Engaging in verbal or physical abuse;
- Threatening to make, or actually make reports to authorities (such as reporting immigration status or contacting the police);
- Increased scrutiny;
- Spreading false rumors or;
- Making the person's work more difficult (for example, punishing an employee for filing a Formal Complaint by purposefully changing their work schedule to conflict with family responsibilities).

XII. CONFIDENTIALITY, PRIVILEGE, AND PRIVACY

WesternU will take reasonable steps to protect the privacy of parties and witnesses under its Procedures. These steps will not restrict the ability of parties to discuss the allegations under investigation or to gather and present relevant evidence.

Consistent with the requirements of this Procedure, WesternU shall keep confidential the identity of any individual who has made a report, Complaint, or Formal Complaint except as may be permitted by law, or to carry out the purposes of this Procedure. This means that WesternU will protect a party's privacy consistent with these Procedures but may disclose information to those who have a legitimate need to know and in order to process a Complaint or Formal Complaint under these Procedures.

Confidentiality is not absolute, however. Where criminal conduct has occurred, or where the health or safety of others in the community may be in danger, it may be necessary for WesternU to take appropriate steps to protect the safety of its students and employees, including the person who has reported the misconduct.

Student Complainant Requests for Confidentiality: If a student complainant requests

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confidentiality when reporting sexual harassment, which could preclude a meaningful investigation or potential discipline of the respondent, if found responsible, or requests that WesternU not pursue an investigation or disciplinary action to address alleged Prohibited Conduct, WesternU shall take the request seriously, while at the same time considering its responsibility to provide a safe and nondiscriminatory environment for all students, including for the Complainant. Western U shall normally grant the request when possible. In determining whether to disclose a Complainant's identity or proceed with an investigation over the objection of a Complainant, WesternU will consider whether any of the following apply:

- There are multiple or prior reports of sexual misconduct against the respondent;
- The respondent reportedly used a weapon, physical restraints, or engaged in battery;
- The alleged respondent is a faculty or staff member with oversight of students;
- There is a power imbalance between the complainant and respondent;
- The complainant believes he/she/they will be less safe if his/her/their name is disclosed or an investigation is conducted.
- WesternU can conduct a thorough investigation and obtain relevant evidence in the absence of the complaint's cooperation.

If WesternU determines it can honor a student's confidentiality request, WesternU shall still take reasonable steps to respond to the complainant, consistent with the request, to limit the effects of the alleged Prohibited Conduct and prevent its recurrence without initiating an investigation or revealing the identity of the complainant. WesternU shall also take immediate steps to provide for the safety of the student complainant while keeping the student complainant's identity confidential as appropriate. WesternU shall notify the complainant that the request for confidentiality will limit the steps WesternU will take to respond to the report of Prohibited Conduct.

If WesternU determines that it cannot honor the student's confidentiality request, WesternU shall inform the complainant prior to taking any action. WesternU shall also take immediate steps to provide for the safety of the student complainant where appropriate. In the event the complainant requests that WesternU inform the respondent that the student complainant requested WesternU not investigate or seek discipline, WesternU will honor this request.

XIII. SUPPORTIVE MEASURES

Supportive measures are non-disciplinary, non-punitive individualized services offered free of charge to the Complainant or the Respondent regardless of whether a Complaint or

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Formal Complaint has been filed. WesternU will provide the Complainant and Respondent with written notice of options for, available assistance in, and how to request available supportive measures. WesternU will provide such measures to Complainant and Respondent as appropriate and as reasonably available to restore or preserve equal access to WesternU's education program or activities. These measures are designed to protect the safety of all Parties, protect WesternU's educational environment, or deter sexual harassment. WesternU will provide supportive measures on a confidential basis and will not disclose that WesternU is providing supportive measures except to those with a need to know to enable WesternU to provide the service.

Supportive measures may include, but are not limited to:

- Temporary "no contact" directive,
- Changes to academic schedules and other course-related adjustments,
- Counseling
- Extensions of deadlines
- Campus escort services
- Changes in work locations, schedules, or assignments
- Leaves of absence
- Increased security and monitoring of certain areas of the campus
- Referrals to external support organizations (i.e., Center Against Rape and Domestic Violence, CARDV).

When requested by a complainant or otherwise determined to be appropriate, WesternU shall issue a no-contact directive prohibiting a respondent from contacting the complainant during the pendency of this Process. WesternU shall not issue a mutual no-contact directive automatically, but instead shall consider the specific circumstances of each report of Prohibited Conduct to determine whether a mutual no-contact directive is necessary or justifiable to protect a party's safety or well-being, or to respond to interference with an investigation. If WesternU issues any no-contact directive, WesternU shall provide the parties with an explanation of the terms of the directive, including the circumstances, if any, under which violation could be subject to disciplinary action. If WesternU issues a mutual no-contact directive, WesternU shall also provide the parties with a written justification for the directive.

XIV. EMERGENCY REMOVAL OF STUDENT RESPONDENT

WesternU can act to remove a student Respondent accused of Prohibited Conduct from its education program or activities, partially or entirely, on an emergency basis when an individualized safety and risk analysis has determined that an imminent and serious threat to the health or safety of any student or other individual justifies removal. This risk analysis is performed by the AVP of OTIXEO and may be done in conjunction with other campus partners using its standard objective violence risk assessment procedures.

OTIXEO office will promptly provide the student Respondent with written notice of any removal (including rationale) and an opportunity to challenge the removal. The student respondent will have three (3) business days after receipt of the notification to submit a written challenge to the action. Upon receipt of a written challenge, the AVP of OTIXEO will meet with the student (and their Advisor, if desired) as soon as reasonably possible thereafter to allow them to show cause why the removal/action should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate, should be modified, or lifted. When this meeting is not requested within three (3) business days, objections to the emergency removal or interim suspension will be deemed waived. A student can later request a meeting to show why they are no longer an imminent and serious threat because conditions related to imminence or seriousness have changed.

The Respondent may provide information, including expert reports, witness statements, communications, or other documentation for consideration prior to or during the meeting. When applicable, a Complainant may provide information to the AVP of OTIXEO for review.

An emergency removal may be affirmed, modified, or lifted as a result of a requested review or as new information becomes available. The AVP of OTIXEO will communicate the final decision in writing, typically within three (3) business days of the review meeting.

XV. ADMINISTRATIVE LEAVE OF AN EMPLOYEE RESPONDENT

Following a report of Prohibited Conduct, WesternU may place a non-student employee on administrative leave during the pendency of the investigation, resolution process and/or any associated grievances/appeals thereafter. In reaching a determination as to administrative leave, the AVP of OTIXEO will consult with the Respondent's immediate supervisor or designee, Chief Human Resources Officer, Provost or other appropriate officials. The AVP of OTIXEO will issue a notice of administrative leave to the Respondent.

XVI. OTHER RESOURCES

WesternU offers a variety of on- and off-campus resources to support individuals who experienced Prohibited Conduct.

Emergency medical and police services

Telephone number: 911 or 9-911 (on campus)

Local Police Assistance

Upon request, WesternU can assist individuals with notifying law enforcement. Law enforcement can also assist with obtaining protective orders, including a restraining order.

Pomona Police Department

Address: 490 West Mission Blvd, Pomona, CA 91766

Telephone number: (909) 622-1241 or (909) 620-2155

Lebanon Police Department

Address: 40 N. 2nd Street, Unit 100, Lebanon, OR 97355,

Telephone number: (541) 451-1751

Local Campus Security Assistance

Pomona: Mon – Sun 7 days a week, 24 hours a day

Telephone number: (909) 706-3000 or Ext. 3000

Oregon: Mon – Sun 7 days a week, 6 a.m. to 1 a.m.

Telephone number: (541) 259-0301 or Ext. 0301

Telephone number for Premier Security: (541) 968-4840

For a complete listing of resources, please visit:

WesternU Office of Title IX & Equal Opportunity Compliance Initiatives

Website: <https://www.westernu.edu/otixeo/resources/>

WesternU Employees

Website: <https://www.westernu.edu/hr/benefits/>

WesternU Students

Website: <https://www.westernu.edu/students/students-services/students-services-counseling/>

XVII. AFFIRMATIVE CONSENT

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Affirmative consent means affirmative, conscious, and voluntary agreement to engage in sexual activity. Both Parties must give affirmative consent to sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he/she/they has the affirmative consent of the other or others to engage in the sexual activity. Lack of protest, lack of resistance, or silence does not indicate consent. Affirmative consent must be ongoing throughout a sexual activity and one can revoke his/her/their consent at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, is not an indicator of consent.

The Respondent's belief that the Complainant consented will not provide a valid defense unless the belief was actual and reasonable, based on the facts and circumstances the Respondent knew, or reasonably should have known, at the time of the incident. A Respondent's belief is not a valid defense where:

- The Respondent's belief arose from the Respondent's own intoxication or recklessness;
- The Respondent did not take reasonable steps to ascertain whether the Complainant affirmatively consented; or
- The Respondent knew or a reasonable person should have known that the Complainant was unable to consent because the Complainant was incapacitated, in that the Complainant was:
 - Asleep or unconscious;
 - Unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication; or
 - Unable to communicate due to a mental or physical condition.

XVIII. PRESERVATION OF EVIDENCE

The preservation of evidence is critical to potential criminal prosecution and to obtaining restraining/protective orders, and it is particularly time sensitive. WesternU will inform the Complainant of the importance of preserving evidence by taking actions such as the following:

Sexual Assault

- Seek forensic medical assistance at the nearest hospital, ideally within 120 hours of the incident (sooner is better).
- Avoid urinating, showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.

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- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
- If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or a secure evidence container (if provided one by law enforcement)

Seeking medical treatment can be essential, even if it is not for the purposes of collecting forensic evidence.

Stalking/Dating Violence/Domestic Violence/Sex-Based Harassment

- Evidence in the form of text and voice messages will be lost in most cases if the Complainant changes their phone number.
 - Make a secondary recording of any voice messages and/or save the audio files to a cloud server.
 - Take screenshots and/or a video recording of any text messages or other electronic messages (e.g., Instagram, Snapchat, Facebook).
 - Save copies of email and social media correspondence, including notifications related to account access alerts.
 - Take time-stamped photographs of any physical evidence, including notes, gifts, etc., in place when possible.
 - Save copies of any messages, including those showing any request for no further contact.
 - Obtain copies of call logs showing the specific phone number being used rather than a saved contact name if possible.

During the initial meeting between the Complainant and the Title IX Coordinator, the importance of taking these actions will be discussed, if timely.

XIX. STANDARD OF PROOF

WesternU uses the preponderance of the evidence standard of proof when determining whether a Policy violation occurred. This means that WesternU will decide whether it is more likely than not, based upon the available information at the time of the decision, that the Respondent violated this Policy.

XX. INDEPENDENCE AND CONFLICTS OF INTEREST

The Title IX Coordinator manages the Office of Title IX & Equal Opportunity Compliance

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Initiatives (OTIXEO) and acts with independence and authority, free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this Policy and these procedures.

WesternU will ensure that any individual designated by WesternU as a Title IX Coordinator, Investigator, decision-maker, any person designated by WesternU to facilitate an informal resolution process, or other individuals involved in implementing the Title IX complaint procedure and non-Title IX complaint procedure do not have potential or actual bias or conflict of interest in the investigatory, hearing, sanctioning, or appeal process or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

WesternU will ensure that the above individuals receive training on topics as required by law.

APPENDIX A: TITLE IX COMPLAINT PROCEDURE

I. RECEIPT OF REPORT

After receiving a report of sexual harassment, the Title IX Coordinator or designee will contact the Complainant and reporting party to explain rights under this policy and procedure and invite the Complainant to an initial meeting. The Title IX Coordinator or designee will discuss supportive measures with the Parties.

II. FORMAL COMPLAINT

A complainant may file a Formal Complaint in person, by mail, or by electronic mail. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the education program or activity of WesternU.

In some instances, the Title IX Coordinator may file a Formal Complaint. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a complainant or otherwise a party.

WesternU reserves the right to make changes to this procedure as necessary and once those changes are posted online, they are in effect. As a member of the WesternU community, we encourage you to check online for the updated versions of all policies and procedures. If government regulations change in a way that impacts this procedure, this document will be construed to comply with government regulations in their most recent form.

III. RETALIATION

WesternU prohibits retaliation against any individuals for exercising their rights under WesternU policy or law; reporting information or filing a good-faith complaint; for testifying, assisting, or participating in an investigation or resolution process for the purpose of interfering with any right or privilege secured by WesternU University policy or law, or because the individual has engaged in protected activity, including reporting information, making a good faith report or complaint, testifying, assisting, or for participating or refusing to participate in any manner in an investigation or Resolution Process under this Policy and Procedure.

IV. PRELIMINARY REVIEW

Following receipt of a Formal Complaint, the Title IX Coordinator will conduct a preliminary review to determine next steps with regards to the Title IX Complaint Process. The Title IX Coordinator will consider the nature of the report, the safety of the individual and the campus community, and the Complainant's expressed preference for the manner of resolution in determining the appropriate course of action.

V. CONSOLIDATION OF FORMAL COMPLAINTS

WesternU may consolidate Formal Complaints against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when they arise out of the same facts or circumstances. When more than one complainant or more than one respondent is involved, references below to a party, complainant, or respondent include the plural, as applicable.

VI. DISMISSAL OF FORMAL COMPLAINTS

WesternU must investigate the allegations in a Formal Complaint. However, WesternU must dismiss the Formal Complaint and will not process the complaint under the procedures in Appendix A if any of the following three circumstances exist:

1. If the conduct alleged in the Formal Complaint would not constitute Title IX Sexual Harassment as defined in the Prohibited Conduct section, even if proved;
2. If the conduct alleged in the Formal Complaint did not occur in WesternU's education program or activity;
3. If the conduct alleged in the Formal Complaint did not occur against a person in the United States.

WesternU has discretion to dismiss a Formal Complaint or any allegation under the following circumstances:

1. If at any time during the investigation or hearing: a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations;
2. If the Respondent is no longer enrolled or employed by WesternU; or
3. If there are specific circumstances that prevent WesternU from gathering evidence sufficient to reach a determination regarding responsibility as to the Formal Complaint or allegations.

If WesternU dismissed the Formal Complaint or any allegations, the Title IX Coordinator shall simultaneously provide the Parties with written notice of the dismissal and reason. WesternU will also notify the Parties of their right to appeal.

WesternU may commence proceedings under other policies and procedures (including Appendix B of this policy) after dismissing a Formal Complaint.

VII. EQUITABLE TREATMENT OF THE PARTIES

WesternU’s determination of responsibility is a neutral, fact-finding process. WesternU will treat Complainants and Respondents equitably. These procedures will apply equally to both Parties. WesternU will not discipline a Respondent unless it determines the Respondent was responsible for Title IX sexual harassment at the conclusion of this process.

Parties have the right to have an Advisor present at every meeting or proceeding described in this Title IX Complaint Procedure.

VIII. STATEMENT OF PRESUMPTION OF NON-RESPONSIBILITY

The investigation is a neutral, fact-finding process. WesternU presumes all reports are in good faith. Further, WesternU presumes the Respondent is not responsible for the alleged conduct. WesternU makes its determination regarding responsibility at the conclusion of this process.

IX. CONFIDENTIALITY AGREEMENTS

To protect the privacy of those involved, the Parties and Advisors are required to sign a confidentiality agreement prior to attending an interview or otherwise participating in WesternU’s process. The confidentiality agreement restricts unauthorized disclosure of information and evidence obtained solely through this procedure. The confidentiality agreement will not restrict the ability of either Party to discuss the allegations under investigation.

X. TIMELINE AND EXTENSIONS

WesternU will undertake its process promptly and as swiftly as possible. WesternU will complete the investigation and its determination regarding responsibility or the informal resolution process within 180 working days.

When appropriate, the Title IX Coordinator may determine that good cause exists to extend the 180 working day period to conduct a fair and complete investigation, to accommodate an investigation by law enforcement, to accommodate the unavailability of witnesses or delays by the Parties, to account for WesternU breaks or vacations, or due to the complexity of the investigation. WesternU will provide notice of this extension to the Complainant and Respondent in writing and include the reason for the delay and anticipated timing of completion.

A Party may request an extension from the Title IX Coordinator in writing by explaining the reason for the delay and the length of the continuance requested. The Title IX Coordinator will notify the Parties and document the grant or denial of a request for extension or delay as part of the case recordkeeping. WesternU shall grant a student Party’s reasonable request for an extension of a deadline related to a Complaint

during periods of examinations or school closures.

XI. NOTICE OF ALLEGATION(S)

Upon receipt of a Formal Complaint, the Title IX Coordinator will provide the following written notice to the parties who are known:

- a. Notice of the Sexual and Gender-Based Harassment, Interpersonal Violence, and Other Sexual Misconduct (SIM) Policy and Procedure;
- b. Notice of the allegations of Title IX sexual harassment including sufficient details known at the time and sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting Title IX sexual harassment, and the date and location of the alleged incident, if known;
- c. Statement that the Respondent is presumed not responsible for the alleged conduct and that Determination regarding Responsibility is made at the conclusion of the Title IX Complaint Process;
- d. Notice that the parties that they may have an Advisor of their choice, who may be, but is not required to be, an attorney. A student Party may request WesternU provide an Advisor to the student;
- e. Notice that the parties will have the opportunity to inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which WesternU does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a Party or other source.
- f. Inform the parties of the ***Statement on Truthfulness***.
- g. For student Parties, notice regarding appropriate counseling resources WesternU has developed and maintains.

If, during the course of the investigation, WesternU decided to investigate additional allegations that were not included in the Notice of Allegation, WesternU will provide notice to the parties of the additional allegations.

XII. INFORMAL RESOLUTION

At its discretion, WesternU may offer the Parties informal resolution in lieu of resolving a Complaint through the WesternU's procedures. WesternU does not offer informal resolution, including settlement, to resolve allegations that an employee engaged in sexual

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harassment of a student, to resolve allegations that an employee engaged in sexual assault, sexual violence, or sexual battery, or to resolve allegations of sexual violence involving a student Party.

WesternU shall not require the Parties to participate in an informal resolution process. WesternU does not require waiver of the right to an investigation and determination of a Complaint as a condition of enrollment or continuing enrollment, or employment or continuing employment, or exercise of any other right. WesternU must obtain the Parties' voluntary, written consent to the informal resolution process.

WesternU will inform the Parties in writing of any informal resolution process it offers and determines is appropriate, if any. Before the initiation of an informal resolution process, WesternU will explain in writing to the Parties:

- a. The allegations;
- b. The requirements of the informal resolution process;
- c. That any Party has the right to withdraw from the informal resolution process and initiate or resume procedures at any time before agreeing to a resolution;
- d. That if the Parties agree to a resolution at the end of the informal resolution process, the Parties cannot initiate or resume procedures arising from the same allegations; and
- e. What information WesternU will maintain and whether and how WesternU could disclose such information for use in Title IX Complaint procedures if such procedures are initiated or resumed.
- f. Written notice is provided to both Parties disclosing the allegations, requirements of the informal resolution process including the circumstances which preclude the parties from resuming a Formal Complaint arising from the same allegations once resolved
- g. Provides an opportunity for either party to withdraw from the process, prior to resolution concluding, and resuming the Formal Complaint Procedure.
- h. Parties voluntarily agree, in writing
- i. The matter does not involve allegations of an employee engaging in Prohibited Conduct against student

Not all allegations may be appropriate for Informal Resolution, particularly those allegations which involve Assault, Domestic Violence, Dating Violence or Stalking. The Title IX Coordinator may be utilized to facilitate informal resolutions, as appropriate.

Informal Resolution Approaches

(1) Supportive Resolution

The Title IX Coordinator or Informal Resolution Facilitator will meet with the Complainant to determine reasonable supports that are designed to restore or preserve the Complainant's access to the Recipient's Education Program and Activity. Such supports can be modified as the Complainant's needs evolve over time or circumstances change. If the Respondent has received the NOIA, the Informal Resolution Facilitator may also provide reasonable supports for the Respondent as deemed appropriate. This option is available when the Complainant does not want to engage the other resolution options and the Title IX Coordinator does not believe there is a need to sign a Formal Complaint. At the discretion of the Informal Resolution Facilitator, this resolution option can result in an agreement between the Complainant and the Recipient that does not require assent from any other party, as long as it does not unduly burden any other party or function punitively with respect to them.

(2) Accepted Responsibility

The Respondent may accept responsibility for any or all of the alleged Policy violations at any point during the Formal Complaint Process. If the Respondent indicates an intent to accept responsibility for all alleged Policy violations, the ongoing process will be paused, and the Title IX Coordinator will determine whether Informal Resolution is an option.

If Informal Resolution is available, the Informal Resolution Facilitator will determine whether all Parties and the Recipient are able to agree on responsibility, restrictions, sanctions, restorative measures, and/or remedies. If so, the Informal Resolution Facilitator implements the accepted Finding that the Respondent is in violation of WesternU's SIM Policy, implements agreed-upon restrictions and remedies, and determines any other appropriate responses in coordination with other appropriate administrator(s), as necessary.

This resolution is not subject to appeal once all Parties indicate their written agreement to all resolution terms. When the Parties cannot agree on all terms of resolution, the Formal Complaint Process will either begin or resume.

When a resolution is reached, the appropriate sanction(s) or responsive actions are promptly implemented to effectively stop the Prohibited Conduct, prevent its recurrence, and remedy its effects, both on the Complainant and the community.

(3) Alternative Resolution

WesternU offers a variety of alternative resolution mechanisms to best meet the specific needs of the Parties and the nature of the allegations. Alternative resolution may involve agreement to pursue individual or community remedies, including

targeted or broad-based educational programming or training; supported direct conversation or interaction between the Parties; indirect action by the Title IX Coordinator or other appropriate Recipient officials; and other forms of resolution that can be tailored to the needs of the Parties. Some alternative resolution mechanisms will result in an agreed-upon outcome, while others are resolved through dialogue. All Parties must consent to the use of an alternative resolution approach, and the Parties may, but are not required to, have direct or indirect contact during an alternative resolution process.

The Title IX Coordinator has the authority to determine whether alternative resolution is available or successful, to facilitate a resolution that is acceptable to all Parties, and/or to accept the Parties' proposed resolution, usually through their Advisors, often including terms of confidentiality, release, and non-disparagement.

Parties do not have the authority to stipulate restrictions or obligations for individuals or groups that are not involved in the alternative resolution process. The Informal Resolution Facilitator will determine whether additional individual or community remedies are necessary to meet the institution's compliance obligations in addition to the alternative resolution.

The Title IX Coordinator maintains records of any resolution that is reached and will provide notification to the Parties of what information is maintained. Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., dissolution of the agreement and resumption of the Formal Complaint Process, referral to the conduct process for failure to comply, application of the enforcement terms of the agreement). Where the failure to abide by the Informal Resolution agreement terms results in a failure to remedy a Policy violation, the Administrator must consider whether to dissolve the agreement and reinstate the Formal Complaint Process to remedy the impact as required by law. The results of Formal Complaints resolved by alternative resolution are not appealable.

XIII. INVESTIGATION

The investigation and adjudication of a Formal Complaint is not an adversarial process between the complainant, the respondent, and the witnesses. The complainant does not have the burden to prove, nor does the respondent have the burden to disprove, the underlying allegation or allegations of misconduct.

The Title IX Coordinator is responsible to oversee investigations to ensure timely resolution and compliance with Title IX and this procedure.

WesternU will investigate Title IX Formal Complaints fairly and objectively. Individuals serving as investigators will have training on what constitutes sexual harassment, WesternU's Title IX procedures, and trauma-informed investigation techniques. WesternU will also ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence and complies

with this procedure.

XIV. NOTICE OF INVESTIGATIVE INTERVIEW

WesternU will provide the parties with written notice of date, time, location, participants and purpose of investigative interviews to a Party whose participation is invited or expected with sufficient time to prepare to participate.

XV. WITNESSES

The Investigator will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence that are relevant and otherwise permissible.

XVI. EVIDENCE

WesternU will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. WesternU will objectively evaluate all evidence that is relevant and otherwise permissible—including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a complainant, respondent, or witness.

A. Use of Privileged Information

WesternU does not require, allow, rely upon, or otherwise use questions or evidence that would constitute, or seek disclosure of, information protected under a legally-recognized privilege (e.g., attorney-client privilege, doctor-patient privilege, spousal privilege, etc.), unless the person holding the privilege provides voluntary, written consent to waive the privilege.

B. Evidence of Past Sexual History

An investigator or Decision-Maker shall not consider the past sexual history of a Party except in the limited circumstances described below:

- The investigator or Decision-Maker shall not consider the prior or subsequent sexual history between the Complainant and anyone other than the Respondent for any reason unless directly relevant to prove that physical injuries alleged to have been inflicted by the Respondent were inflicted by another individual; or
- The investigator or Decision-Maker shall not consider the existence of a dating relationship or prior or subsequent consensual sexual relations between the Complainant and the Respondent unless the evidence is relevant to how the Parties communicated consent in prior or subsequent consensual sexual relations.

- Where the investigator or Decision-Maker allows consideration of questions or evidence about a dating relationship or prior or subsequent consensual sexual relations between the Complainant and the Respondent, the mere fact that the Complainant and Respondent engaged in other consensual sexual relations with one another is never sufficient, by itself, to establish that the conduct in question was consensual.

Before allowing the consideration of any evidence proffered pursuant to this section, the investigator or Decision-Maker shall provide a written explanation to the Parties as to why consideration of the evidence is consistent with this procedure.

XVII. EVIDENCE REVIEW

Prior to the investigator preparing an investigative report, WesternU shall provide the parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including the evidence upon which the Investigator does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

WesternU will make available to each party and the party's Advisor, if any, the evidence subject to evidence review in an electronic format or a hard copy. WesternU will allow the parties at least 10 business days to submit a written response, which the Investigator will consider prior to completion of the Investigative Report.

XVIII. INVESTIGATIVE REPORT

The Investigator will prepare a final investigative report, which will fairly summarize relevant evidence and include as exhibits evidentiary materials as deemed appropriate by the Investigator. The investigator will not make a determination regarding responsibility.

The investigator may redact information not directly related to the allegations or privileged information. However, the investigator will keep a log of information he/she/they does not produce to the Parties. The investigator will provide this log only to the Title IX Coordinator. The Title IX Coordinator will not disclose the log to the Parties but will maintain the log in the Title IX Coordinator's file, in the event it later becomes relevant.

WesternU will provide the final investigative report in an electronic format or a hard copy to each Party and their Advisors, if any, at least 10 business days prior to the live hearing. The parties may provide a written response to the report with 10 business days of issuance of the final investigative report. This report remains confidential and will only

be disclosed as necessary to meet the hearing requirements specified herein, or, for faculty respondents who may be subject to the Adequate Cause for Dismissal process outlined in the University Faculty Handbook. Any such disclosures are subject to the confidentiality obligations and restrictions articulated in this policy/procedure.

XIX. HEARING

Upon the conclusion of an investigation, WesternU will provide a live hearing in order to make a Determination of Responsibility. The hearing will be facilitated according to the following:

- a. **Notice of Hearing:** WesternU will provide all Parties notice of the date, time, location, participants, and purpose of the scheduled hearing(s) and pre-meeting(s). WesternU will provide parties access to the evidence and Investigative Report during the hearing.
- b. **Hearing Officer:** WesternU may appoint a Hearing Officer to assist the procedural aspects of the hearing. The Hearing Officer does not make the final Determination of Responsibility.
- c. **Witnesses:** Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s), unless:
 - All Parties and the Decision-maker assent to the new witness's participation in the hearing without remanding the Formal Complaint back to the Investigator,
 - The Decision-maker deems the evidence presented by the new witness to be relevant and not information already established in the record, and
 - The witness's late involvement was not the result of bad faith by the witness, the Parties, or others.

If the above criteria are not met, but the witness's evidence is deemed relevant and not duplicative, the Decision-maker may, at their discretion, engage in any of the following actions:

- Delay the hearing
- Provide the Parties with at least five (5) business days to review the relevant portions of the new witness's statements, if such statements are submitted
- Remand the Formal Complaint back to the Investigator for further investigation or verification
- Allow the Parties to review and comment on the testimony of the new witness
- If the evidence is deemed not relevant, the Decision-maker may proceed with the hearing absent the new witness's participation.

- d. **Decision-Maker(s):** The Hearing will be heard by a single Decision-Maker or a panel of Decision-Maker(s). Decision-Makers are selected from a pool of trained individuals. Members of the pool are trained in all aspects of the Title

IX process. They receive annual training organized by the Title IX Coordinator, including a review of WesternU policies and procedures as well as applicable federal and state laws and regulations so that they are able to appropriately review evidence, understand the allegations and protect safety and promote accountability. All pool members are required to attend this annual training to be eligible to serve.

- e. **Conflicts of Interests:** WesternU will provide the parties a list of the name of the Decision-Maker(s) at least three (3) business days in advance of the hearing. In cases where the Complainant or Respondent objects to the Decision-Maker based on a conflict of interest, the Complainant or Respondent may request the Title IX Coordinator select a different Decision-Maker. Parties must raise any objections to the Decision-Maker(s) prior to the hearing.
- f. **Pre-Meeting:** The Hearing Officer may meet with both parties prior to the scheduled hearing to exchange the names of witnesses who will be participating in the hearing and address other pertinent hearing details at least five (5) business days prior to the hearing. The Hearing Officer will not require the parties to provide their proposed cross-examination questions in advance of the hearing, but the Parties are encouraged to submit their questions to the Hearing Officer during this time.
- g. **Participation of the Parties:** All parties have the opportunity to present facts and arguments during the hearing. However, a Party's advisor will conduct cross-examination.
- h. **WesternU Advisor:** If a party does not have an Advisor present at the hearing, WesternU will provide without fee or charge to that party, an Advisor of WesternU's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.
- i. **Support Persons:** In addition to an Advisor, each party will be authorized to bring one support person for moral support during the hearing, provided that the support person signs a confidentiality agreement. This individual is strictly prohibited from participating in any manner during the hearing. If the individual displays disruptive, disrespectful, or offensive behavior, they will be removed from the proceedings.
- j. **Private Proceedings:** There will be no observers in the hearing, aside from the designated Advisors to the Parties or the Panel. The Hearing Officer may allow witnesses who have relevant information to appear at a portion of the hearing, separately, in order to respond to specific questions from the panel or the parties involved, and then be excused. Proceedings are private and confidential. All persons present at any time during the hearing are expected to maintain the privacy and confidentiality of the proceedings in accord with WesternU policy. While the contents of the hearing are private, the parties have discretion to share their own experiences if they so choose and should discuss doing so with their Advisors.

XX. HEARING FORMAT:

- **Live Hearing:** WesternU may provide a live hearing with all Parties physically present in the same geographic location or, at WesternU's discretion if a Party or a witness requests, WesternU may provide Parties, witnesses, and other participants the ability to appear at the live hearing virtually with technology enabling participants simultaneously to see and hear each other in real time. If remote participation is desired, the individual should request remote participation from the Hearing Officer at least three (3) business days prior to the hearing.
- **Audio or Visual Recording:** WesternU will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the Parties for inspection and review upon request and under supervision. The parties may not record the proceedings and no other unauthorized recordings are permitted.
- **Standard of Proof:** The Decision-Maker shall provide an explanation of the meaning of the preponderance of the evidence standard and affirm that it shall apply to adjudications under this procedure. The preponderance of the evidence standard is met if WesternU determines that it is more likely than not that the alleged conduct occurred, based on the facts available at the time of the decision.

XXI. ORDER OF HEARING: Typically, a hearing will be facilitated in the following order:

1. Investigator presents the report. The Decision-Maker and Parties may question the Investigator.

The evidence contained in the Investigative Report is not binding on the Decision-Maker.

2. WesternU will provide the Parties an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory evidence.

Only relevant evidence will be admissible during the hearing. Relevant evidence means evidence, including evidence relevant to the credibility of a Party or witness, having any tendency in reason to prove or disprove any disputed fact material to the allegations under investigation.

Cross-Examination: Each party's Advisor may ask the other party and any witnesses relevant questions, including challenging credibility. Cross-examination must be conducted directly, orally, and in real time by the party's Advisor and never by a party personally.

XXII. RELEVANT EVIDENCE: Only relevant cross-examination and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a

cross-examination or other question, the Decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

Formal rules of evidence do not apply. In making determinations of relevance, the Decision-maker(s) may take guidance from the formal rules of evidence. Any evidence that the Decision-maker(s) believes is relevant and credible may be considered. The Hearing Officer will address any evidentiary or relevancy concerns prior to and during the hearing, may exclude irrelevant or immaterial evidence and may ask the Decision-maker(s) to disregard evidence lacking in credibility or that is improperly prejudicial.

Both parties retain the right to object to the introduction of evidence protected by a recognized privilege, such as (but not limited to) the attorney-client privilege or the medical provider-patient privilege. The Hearing Officer will determine all questions of procedure and evidence.

Anyone appearing at the hearing to provide information will respond to questions on his/her/their own behalf. Generally, the parties may not introduce evidence, including witness testimony, at the hearing that the party did not identify during the investigation and that was available at the time of the investigation. However, the decision maker(s) has/have discretion to accept for good cause, or exclude, such new evidence offered at the hearing.

XXIII. CHARACTER EVIDENCE: The Decision-maker(s) may decline to hear from character witnesses if deemed irrelevant. In that event, the Decision-maker(s) may accept up to two (2) letters supporting the character of each of the parties.

XXIV. FAILURE TO TESTIFY: If a party or witness does not submit to cross-examination at the hearing, the Decision-Maker may admit any statement of that Party or witness in reaching a determination regarding responsibility. The Decision-Maker will give the statements whatever weight the Decision-Maker determines appropriate, bearing in mind that the statements have not been tested by cross-examination. In doing so, the Decision-Maker should consider, and if possible determine, whether the witness or Party made the statement and what the statement proves.

The Decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

XXV. IMPACT STATEMENTS: Prior to the conclusion of the hearing, the parties may submit an impact statement to the Title IX Coordinator. Any impact statements will only be made available to the decision maker(s) during deliberations if a Respondent is found responsible for violating WesternU policy. If the respondent is found not responsible,

the statements will not be shared with the Decisions Makers.

XXVI. DELIBERATIONS: The Decision-Maker(s) will deliberate in closed session to determine whether the Respondent is responsible for the alleged conduct. The Decision-Maker(s) will base the determination(s) on a preponderance of the evidence (i.e., whether it is more likely than not that the respondent committed each alleged violation). If the respondent is found responsible, the Decision-Maker(s) will recommend appropriate sanctions.

XXVII. DETERMINATION OF RESPONSIBILITY

The Decision-Maker will prepare a written determination of responsibility. The Title IX Coordinator will issue the written determination of responsibility within twenty (20) business days following the conclusion of the hearing.

The Decision-Maker will objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence. A Decision-Maker may not make credibility determinations based on an individual's status as a Complainant, Respondent, or witness. In evaluating the evidence, the Decision-Maker will use the preponderance of the evidence standard. Thus, after considering all the evidence it has gathered, the Decision-Maker will decide whether it is more likely than not that Title IX sexual harassment occurred.

The Notice of Outcome will include:

Identification of the allegations potentially constituting Title IX sexual harassment;

- a. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including who conducted the investigation and gave notifications to the Parties. The determination will also state when, where, and the date the investigator interviewed the Parties and witnesses, conducted site visits, the methods used to gather other evidence. The procedural section should also discuss the dates and how the Parties were provided the opportunity to review and inspect evidence and the date of any hearings held and who attended the hearing;
- b. Findings of fact supporting the determination. In making these findings, the Decision-Maker will focus on analyzing the findings of fact that support the determination of responsibility or non-responsibility;
 - a. Conclusions regarding the application of the Policy to the facts;
 - c. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
 - d. A statement of, and rationale for, any disciplinary sanctions WesternU imposes on

the Respondent. WesternU will inform the Complainant of the sanctions against the Respondent

- e. A Statement of whether WesternU will provide the Complainant with remedies designed to restore or preserve equal access to WesternU's education program or activity. WesternU need not disclose to the Respondent remedies that do not affect him/her/them as part of the written determination;
- f. The procedures and permissible bases for the Parties to appeal.

The Title IX Coordinator will provide the Parties with the written determination simultaneously. The Notice of Outcome may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address as indicated in official WesternU records, or emailed to the Parties' WesternU-issued or designated email account. Once mailed, emailed, or received in person, the written determination is presumptively delivered.

The determination regarding responsibility becomes final either on the date that WesternU provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if no Party appeals, the date on which an appeal would no longer be considered timely. The imposition of sanctions will take effect immediately and will not be stayed pending the resolution of any appeal⁵.

XXVIII. SANCTIONING

Following a determination that Title IX sexual harassment occurred, WesternU may impose disciplinary sanctions on the Respondent. The action will be prompt, effective, and commensurate with the severity of the offense. The Decision-maker(s) may work collaboratively with other WesternU employees to identify and implement appropriate sanctions for violations of this policy. When identifying appropriate sanctions, the Decision-Maker may, but is not required to, consider the following:

- The nature of the conduct;
- Whether the Respondent was found responsible for multiple violations;
- Aggravating, mitigating, or compelling information provided during the process:
 - Aggravating factors that warrant a more severe sanction may include but are not limited to: failure to cooperate with the investigation, providing false information, wrongful personal conduct during the course of the process (such as violating no-contact orders), whether the Respondent refuses to

⁵ The implementation of sanctions for faculty may be subject additional procedures under the University Faculty Handbook.
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accept any responsibility.

- Mitigating factors that warrant a less severe sanction may include, but are not limited to: evidence of clearly erroneous or unintentional behavior or that the conduct was committed by mistake, demonstrations of responsibility for the conduct, demonstration of genuine remorse for one's behavior, commitment to reforming behavior in the future, adherence to directives, cooperation with the investigation;
- The impact of the respondent's actions on the individuals personally affected, the WesternU community, and WesternU's principles, namely the value of Humanism;
- A Respondent's disciplinary record for any violation of WesternU policy;
- Whether the respondent represents a foreseeable risk of harm to others;
- What is needed to ameliorate any potential threat to the WesternU community;
- Any identified gaps in learning outcomes or professional development deficiencies exposed by the conduct;
- Any other factor that is reasonably dictated by the standards of fairness and equity; and
- Any other factor needed to reach a just and appropriate resolution in the case.

The following are possible sanctions that WesternU may impose.

XXIX. STUDENT SANCTIONS

- *Reprimand*: A formal statement that the conduct was unacceptable and a warning that further violation of any WesternU policy, procedure, or directive will result in more severe sanctions/responsive actions;
- *Required Education*: A mandate to meet with and engage in either WesternU-sponsored or external educational program to better comprehend the misconduct and its effects;
- *Restrictions*: A student may be restricted in their activities, including, but not limited to, being restricted from locations, programs, participation in certain activities or extracurriculars, study abroad, or from holding leadership roles in student organizations;
- *Probation*: An official sanction for violation of WesternU policy, providing for more severe disciplinary sanctions if the student is found in violation of any WesternU policy, procedure, or directive within a specified period of time. Probation may include

denial of specified social privileges, exclusion from extra-curricular activities, exclusion from designated areas of campus, no-contact orders, and other measures deemed appropriate;

- *Suspension*: Separation from WesternU, or one or more of its facilities, for a defined period of time after which the student is eligible to return. During an institution-wide suspension, the student is banned from WesternU property, functions, events, and activities unless they receive prior written approval from an appropriate institutional official;
- *Expulsion*: Permanent separation from WesternU . The student is banned from WesternU property, and the student's presence at any WesternU-sponsored activity or event is prohibited;
- *Withholding Diploma*: WesternU may withhold a student's diploma for a specified period of time and deny a student participation in commencement activities;
- *Revocation of Degree*: WesternU reserves the right to revoke a degree previously awarded from WesternU for fraud, misrepresentation, and/or other violation of WesternU policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation;
- *Other Actions*: WesternU may assign any other sanctions as deemed appropriate.

XXX. STUDENT GROUP AND ORGANIZATION SANCTIONS

The following are the common sanctions that may be imposed upon student groups or organizations singly or in combination:

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any WesternU policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Probation*: An official sanction for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the group or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social and event privileges, denial of WesternU funds, ineligibility for honors and awards, restrictions on new member recruitment, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Termination of student group or organization recognition and/or institutional support for a defined period of time not to exceed two (2) years and/or until specific criteria are met. During the suspension period, a student group or

organization may not conduct any formal or informal business or participate in WesternU-related activities, whether they occur on- or off-campus. Re-recognition is possible but not guaranteed and will only be considered after the end of the suspension period and based on meeting all re-recognition criteria and obtaining clearance from WesternU.

- *Expulsion*: Permanent termination of student group organization recognition and revocation of the privilege to congregate and conduct business on campus as an organization for any reason.
- *Loss of Privileges*: Restricted from accessing specific WesternU privileges for a specified period of time.
- *Other Actions*: In addition to or in place of the above sanctions, WesternU may assign any other sanctions as deemed appropriate.

XXXI. EMPLOYEE SANCTIONS

- *Verbal or Written Warning*
- *Performance Improvement Plan/Management Process*
- *Enhanced Supervision, Observation, or Review*
- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase/Pay Grade*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Shift or schedule adjustments*
- *Reassignment*
- *Delay of (or referral for delay of) Tenure Track Progress*
- *Assignment to a New Supervisor*
- *Restriction of Stipends, Research, and/or Professional Development Resources*

- *Suspension/Administrative Leave with Pay*
- *Suspension/Administrative Leave without Pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions/responsive actions, WesternU may assign any other responsive actions as deemed appropriate.

XXXII. THIRD PARTIES

- *No-contact directive*
- *Restriction of WesternU privileges*
- *Restrictions/limitations/ban on access to campus property;*
- *Discontinuation of relationship or association*
- *Referral for action under other policies*

Failure to Comply with Sanctions, Responsive Actions, and/or Informal Resolution Terms
All Respondents are expected to comply with the assigned sanctions, responsive actions, corrective actions, and/or Informal Resolution terms within the timeframe specified by the final Decision-maker(s), including the Appeal Officer or Decision-maker or the Informal Resolution agreement.

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or for any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from WesternU.

Supervisors are expected to enforce the completion of sanctions/responsive actions for their employees.

XXXIII. APPEAL

Both a Complainant and Respondent have the right to appeal WesternU's dismissal of a Formal Complaint or any allegations or final determination of responsibility. This appeal process is the sole recourse available for complaints filed under this policy.

A. GROUNDS FOR APPEAL

A Party may appeal based on the following grounds:

1. A procedural irregularity affected the outcome;

2. New evidence, not reasonably available at the time of WesternU's determination regarding responsibility, that could affect the outcome; or
3. The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the specific Complainant or Respondent that affected the outcome.

B. REQUEST FOR APPEAL

Any party may submit a written request for appeal ("Request for Appeal") to the Title IX Coordinator within five (5) business days of the delivery of the determination regarding responsibility.

The Title IX Coordinator will designate an Appeal Officer to hear the appeal. No Appeal Officer will have been previously involved in the process. The Title IX Coordinator will forward the Request for Appeal to the Appeal Officer who will determine if the Request for Appeal meets the grounds for appeal. This is not a review of the merits of the appeal, but solely a determination as to whether the request could reasonably be construed to meet the grounds and is timely filed.

If the Request for Appeal does not provide information that meets the grounds for appeal identified above, the Appeal Officer will deny the Request for Appeal. WesternU will provide written notification to the Parties and their Advisors simultaneously notified of the denial and the rationale.

C. APPEAL PROCESS

If the Request for Appeal meets the grounds for appeal, WesternU will notify all Parties and their Advisors. WesternU will allow the non-appealing Party to submit a written statement in support of, or challenging, WesternU's decision to dismiss the Formal Complaint or allegations or WesternU's decision in the determination regarding responsibility. WesternU will allow the non-appealing Party at least ten (10) business days from the date of notice of the appeal to submit the written statement.

The Appeal Officer will issue a written decision on whether to grant or deny the appeal, and the rationale for the decision, within 45 working days after the Appeal Officer receives the response to the appeal or the last day to provide a response. WesternU will provide the written decision simultaneously to both Parties.

The Appeal Officer may extend or otherwise modify the deadlines provided above. Either Party may seek an extension by submitting a written request to the Appeal Officer explaining the need for the extension and the proposed length of the extension. The Appeal Officer will respond to the request within 48 hours in writing and will inform the Parties simultaneously whether the extension is granted.

D. APPEAL OUTCOME

The Appeal Officer will issue a written decision on the appeal, and the rationale for the decision, within 45 working days after the Appeal Officer receives the response to the appeal from the non-appealing Party or the last day to provide a response. WesternU will provide the written decision simultaneously to both Parties.

The Appeal Officer may uphold, modify, or overturn the decision under appeal. If an error cannot be cured, the Appeal Officer may order a new investigation.

XXXIV. ADVISORS

All parties are entitled to an Advisor of their choosing⁶ to guide and accompany them throughout the process. This individual may be a friend, family member, attorney, or any other supporter a party chooses.

A party is entitled to be accompanied by his/her/their Advisor in all meetings and interviews at which the party is expected to be present, including intake, interviews, meetings, hearing, and appeals.

An Advisor assists a party in the process, which could include reviewing of any communication between WesternU and the Party, reviewing relevant policies and procedures, assisting in gathering of relevant evidence (including the identification of witnesses), drafting of pertinent party/witness questions, and accompanying the Party to meetings during the process. Advisors are responsible for conducting cross-examination of the parties and witnesses during the hearing. WesternU will appoint an Advisor if a Party does not have an advisor for the hearing. Student parties may request WesternU appoint an Advisor for the entirety of the Complaint Process.

The following contains important guidelines governing the use of an Advisor in the process:

- A Party must advise the Title IX Coordinator of the identity of his/her/their selected Advisor at least five (5) business days before the date of their first meeting (if known).
 - A party must provide subsequent timely notice to the Title IX Coordinator if he/she/they change Advisors.
 - If a Party does not select an Advisor before the hearing, WesternU will provide

⁶ Choosing an Advisor who is also a witness in the process creates potential for bias and conflict of interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the Decision-maker.

an Advisor of WesternU's choice at no cost to the party.

- Parties and Advisors are required to sign a confidentiality agreement prior to attending an interview or otherwise participating in WesternU's process. The confidentiality agreement restricts unauthorized disclosure of information and evidence obtained solely through the procedure. The confidentiality agreement will not restrict the ability of either Party to discuss the allegations under investigation.
- Advisors should help their parties prepare for each meeting, and are expected to advise ethically, with integrity and in good faith.
- WesternU generally expects an Advisor to adjust their schedule to allow them to attend meetings/interviews/hearings when planned, but WesternU may change scheduled meetings/interviews/hearings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay. WesternU may also make reasonable provisions to allow an Advisor who cannot be present in person to attend a meeting/interview/hearing by telephone, video conferencing, or other similar technologies as may be convenient and available.
- The Advisor may not testify in or obstruct an interview or disrupt the process.
- Any Advisor who steps out of their role in any meeting under this process will be warned once. If the Advisor continues to disrupt or otherwise fails to respect the limits of their role, the Advisor will be asked to leave the meeting. When an Advisor is removed from a meeting, that meeting will typically continue without the Advisor present. Subsequently, the Title IX Coordinator will determine whether the Advisor may be reinstated or may be replaced by a different Advisor.
- Advisors are not permitted to create an audio or video recording of any kind during any proceeding of procedure.

XXXV. RECORDKEEPING

For a period of at least seven (7) years after closing the case, WesternU will maintain records of:

- Any original report or Formal Complaint;
- Any actions taken in response to the report, including supportive measures provided to the Parties;
- Each investigation including any determination regarding responsibility, and any audio or audiovisual recording or transcript required under Title IX regulations;
- Any disciplinary sanctions imposed on the Respondent;
- Any remedies provided to the Complainant or the community designed to restore or preserve equal access to WesternU's education program or activity;

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- Any appeal and the result therefrom;
- Any Informal Resolution and the result;
- All materials used to provide training to the Title IX Coordinator, Investigators, Decision-makers, Appeal Officers, Informal Resolution Facilitators. WesternU will make these training materials available on its website.

WesternU will maintain records in accordance with federal and state laws and regulations.

APPENDIX B: NON-TITLE IX COMPLAINT PROCEDURE

I. RECEIPT OF REPORT

When a responsible employee reports actual or suspected Prohibited Conduct, the Title IX Coordinator will assess the report and provide outreach, as appropriate, to each identifiable Party who is alleged to be the victim of the reported conduct. The outreach shall include all of the following information:

- WesternU received a report that the Party may have been a victim of Prohibited Conduct;
- A statement that retaliation for filing a complaint or participating in the complaint process, or both, under this procedure is prohibited;
- Counseling resources within WesternU or in the community;
- Where a crime may have occurred, notice that the Party has the right, but not the obligation, to report the matter to law enforcement;
- WesternU's complaint and investigation procedures established pursuant to this procedure;
- Potential supportive measures, such as no-contact directives and academic schedule changes, where applicable;
- The importance of preserving evidence;
- A request for the student to meet with the Title IX coordinator or other designated employee to discuss options for responding to the report; and
- The manner in which Western responds to reports of Prohibited Conduct and a description of potential disciplinary consequences.

II. COMPLAINTS

A Complaint is a written or verbal statement filed with WesternU that alleges Prohibited Conduct in violation of this Policy. Complaints must be filed with the Title IX Coordinator unless the Party submitting the Complaint alleges Prohibited against the Title IX Coordinator, in which case it should be submitted directly to the Senior Vice President for the Division of Compliance, Ethics, and Culture.

Regardless of whether a Complaint was filed under this Complaint Procedure, if WesternU becomes aware of possible Prohibited Conduct, the Title IX Coordinator will conduct a prompt assessment to determine whether WesternU must initiate an investigation.

Upon notice to the Title IX Coordinator, the process contained herein involves a prompt preliminary review to determine if there is reasonable cause to believe policy has been violated. If so, WesternU will initiate a confidential investigation that is thorough, reliable, impartial, prompt, and fair. The subsequent hearing process determines whether applicable policy has been violated. If so, WesternU will promptly implement effective remedies designed to end the discrimination, prevent its recurrence, and address its effects.

III. OVERSIGHT OF COMPLAINT PROCEDURE

The Title IX Coordinator is charged with receiving complaints of Prohibited Conduct and coordinating their investigation.

The investigation of complaints must be assigned by the Title IX Coordinator to a neutral investigator. A neutral investigator means an outside investigator or an internal investigator who is not in the chain of command of the respondent, not substantially implicated by the allegations in the complaint, and who is otherwise impartial. Neutral investigators must be properly trained to conduct such investigations. The investigator may not have any real or perceived conflicts of interest and must be able to investigate the allegations impartially using trauma-informed investigation techniques.

IV. TIMELINE FOR COMPLETION

WesternU will undertake its investigation promptly and swiftly as possible. To that end, WesternU shall investigate Complaints and issue the Notice of Outcome 180 working days of WesternU receiving the Complaint. WesternU will toll the timeline while the Parties are engaged in good faith efforts at informal resolution.

V. ADVISORS

Both Parties have the right to select an advisor of his/her/their choice or to request WesternU provide an advisor. WesternU shall inform the Parties of their right to select an advisor of their choice or to request WesternU provide an advisor. An advisor, with written permission from the Complainant or Respondent, shall receive updates along with the Complainant or Respondent during the complaint process and sanctioning or discipline process, if applicable, and shall participate in the process as an advocate.

Student Parties in Complaints involving sexual harassment have the right to consult with an attorney, at his/her/their own expense, at any stage of the Complaint process if he/she/they wishes to do so. An attorney may serve as a support person or advisor.

VI. INTAKE AND PROCESSING OF THE COMPLAINT

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Upon receiving a Complaint, the Title IX Coordinator will:

- Consider whether WesternU can undertake efforts to informally resolve the charges, including but not limited to mediation, rearrangement of work/academic schedules, obtaining apologies, providing informal counseling, training, etc.
- Advise all Parties that he/she/they need not participate in an informal resolution of the Complaint, as described above, and they have the right to end the informal resolution process at any time.
- Advise a student Complainant that he/she/they may file a Complaint with the Office for Civil Rights of the U.S. Department of Education and employee Complainants may file a Complaint with the California Civil Rights Department. All Complainants should be advised that they have a right to file a Complaint with local law enforcement, if the act complained of is also a criminal act. WesternU must investigate even if the Complainant files a Complaint with local law enforcement. In addition, WesternU should ensure that Complainants are aware of any available resources, such as counseling, health, and mental health services.
- In matters involving student sexual harassment, provide student Parties notice regarding appropriate counseling resources developed and maintained by WesternU.
- Take interim steps to protect a Complainant from coming into contact with an accused individual, especially if the Complainant is a victim of sexual violence. The Title IX Coordinator should notify the Complainant of his/her/their options to avoid contact with the accused individual and allow students to change academic situations as appropriate. For instance, WesternU may prohibit the accused individual from having any contact with the Complainant pending the results of the investigation. When taking steps to separate the Complainant and accused individual, WesternU shall minimize the burden on the Complainant. For example, it is not appropriate to remove Complainants from classes while allowing accused individuals to remain.

VII. INVESTIGATIONS

WesternU shall promptly investigate every Complaint. This includes Complaints involving activities that occur off campus and in connection with all the academic, educational, extracurricular, athletic, and other programs of WesternU, whether those programs take place in WesternU's facilities, on a WesternU bus, or at a class or training program sponsored by WesternU at another location. WesternU shall promptly investigate complaints of Prohibited Conduct that occur off campus if the alleged conduct creates a hostile environment on campus.

The investigation and adjudication of alleged Prohibited Conduct is not an adversarial process between the Complainant, the Respondent, and the witnesses, but rather a

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process for WesternU to comply with its obligations under existing law. The Complainant does not have the burden to prove, nor does the Respondent have the burden to disprove, the underlying allegation or allegations of misconduct.

Investigations are best conducted within a confidential climate. Therefore, WesternU does not reveal information about ongoing investigations except as necessary to fulfill its legal obligations. WesternU will keep the investigation confidential to the extent possible, but it cannot guarantee absolute confidentiality because release of some information on a “need-to-know-basis” is essential to a thorough investigation and to protect the rights of student and employee Respondents during the investigation process and any ensuing discipline.

The Title IX Coordinator shall:

- Notify the Complainant that WesternU will commence an impartial fact-finding investigation of the allegations contained in the Complaint.
- For Complaints involving a student party to a sexual harassment complaint: Notify the student Parties that WesternU is conducting an investigation. The notice shall include the allegations against the Respondent and the alleged WesternU policy violations under review. If new allegations that arise during the course of WesternU’s investigation that could subject either student Party to new or additional discipline or corrective action, the Title IX Coordinator shall provide a supplemental notice to the student Parties.

1. INVESTIGATION STEPS

Investigators will use the following steps: interviewing the Complainant; interviewing the accused individual; identifying and interviewing witnesses and evidence identified by each Party; identifying and interviewing any other witnesses, if needed; reminding all individuals interviewed of WesternU’s no-retaliation policy; considering whether any involved person should be removed from the campus pending completion of the investigation; reviewing personnel/academic files of all involved Parties; reach a conclusion as to the allegations and any recommended disciplinary and remedial action.

When WesternU evaluates the Complaint, it shall do so using a preponderance of the evidence standard. Thus, after considering all the evidence it has gathered, WesternU will decide whether it is more likely than not that Prohibited Conduct has occurred.

Student Complainants should be aware that any evidence available but not disclosed during the investigation might not be considered at a subsequent hearing, if a hearing is required under this procedure.

All employees are expected to cooperate with a WesternU investigation into allegations of Prohibited Conduct. Lack of cooperation impedes the ability of WesternU to

investigate thoroughly and respond effectively. However, lack of cooperation by a Complainant or witnesses does not relieve WesternU of its obligation to investigate. WesternU will conduct an investigation if it is discovered that Prohibited Conduct is, or may be occurring, with or without the cooperation of the alleged victim and regardless of whether a Complaint is filed. No employee will be retaliated against as a result of lodging a Complaint or participating in any workplace investigation.

2. WRITTEN REPORT

The results of the investigation of a Complaint shall be set forth in a written report that will include at least all of the following information:

- A description of the circumstances giving rise to the Complaint;
- A description of the procedural steps taken during the investigation, including all individuals contacted and interviewed;
- A summary of the testimony provided by each witness with information relevant to the allegations, including the Complainant;
- An explanation of why an identified potential witness was not interviewed;
- An analysis of relevant data or other evidence collected during the course of the investigation, including a list of relevant documents;
- A specific finding as to whether each factual allegation in the Complaint occurred based on the preponderance of the evidence standard;
- A table of contents if the report exceeds ten pages and
- Any other information deemed appropriate by WesternU.

This report remains confidential and will only be disclosed as necessary to meet the Track 1 hearing requirements specified herein, or, for student respondents on Track 2, as a function of the Student Conduct Hearing Procedures in the University Catalog, or, for faculty Respondents on Track 2, as a function of the Adequate Cause for Dismissal process outlined in the University Faculty Handbook. Any such disclosures are subject to the confidentiality obligations and restrictions articulated in this policy/procedure.

3. EVIDENCE OF PAST SEXUAL HISTORY

An investigator or hearing officer, if required by this procedure, shall not consider the past sexual history of the Complainant or Respondent except in the limited circumstances described below:

- The investigator or hearing officer shall not consider prior or subsequent sexual

history between the Complainant and anyone other than the Respondent for any reason unless directly relevant to prove that physical injuries alleged to have been inflicted by the Respondent were inflicted by another individual;

- The investigator or hearing officer shall not consider the existence of a dating relationship or prior or subsequent consensual sexual relations between the Complainant and the Respondent unless the evidence is relevant to how the Parties communicated consent in prior or subsequent consensual sexual relations;
 - Where the investigator or hearing officer allows consideration of evidence about a dating relationship or prior or subsequent consensual sexual relations between the Complainant and the Respondent pursuant to this circumstance, the mere fact that the Complainant and Respondent engaged in other consensual sexual relations with one another is never sufficient, by itself, to establish that the conduct in question was consensual.

Before allowing the consideration of any evidence proffered pursuant to this section, the investigator or hearing officer shall provide a written explanation to the Parties as to why consideration of the evidence is consistent with this procedure.

VIII. OVERVIEW OF ADJUDICATION TRACKS

WesternU provides two tracks to adjudicate a Complaint after the completion of the investigation.

Track 1 applies when all of the following apply:

1. The Respondent is a Student;
2. The credibility of one (or both) of the parties, or any witness is central to the Determination of Responsibility; and
3. The Respondent may be subject to dismissal or suspension if found in violation of this Policy.

Track 1 requires a hearing as described more fully below.

Track 2 applies to all other Complaints. Under Track 2, the Investigator decides the Determination of Responsibility and there is no hearing.

A. TRACK 1 – HEARING

Upon the conclusion of an investigation, WesternU will provide a live hearing in order to make a determination of responsibility. The hearing will be facilitated according to the following:

Western University of Health Sciences
Sexual Harassment, Interpersonal Violence, and Other Sexual Misconduct Policy and Procedure

- **Notice of Hearing:** WesternU will provide all Parties notice of the date, time, location, participants, and purpose of the scheduled hearing(s) and pre-meeting(s). WesternU will provide parties access to the evidence and Investigative Report during the hearing.
- **Hearing Officer:** WesternU may appoint a Hearing Officer to assist the procedural aspects of the hearing. The Hearing Officer does not make the final Determination of Responsibility.
- **Decision-Maker(s):** The Hearing will be heard by a single Decision-Maker or a panel of Decision-Maker(s). Decision-Makers are selected from a pool of trained individuals. Members of the pool are trained in all aspects of the complaint process. They receive annual training, including a review of WesternU policies and procedures as well as applicable state laws and regulations so that they are able to appropriately review evidence, understand the allegations and protect safety and promote accountability. All pool members are required to attend this annual training to be eligible to serve.

Conflicts of Interests: WesternU will provide the parties a list of the name of the Decision-Maker(s) at least three (3) business days in advance of the hearing. In cases where the Complainant or Respondent objects to the Decision-Maker based on a conflict of interest, the Complainant or Respondent may request the Title IX Coordinator select a different Decision-Maker. Parties must raise any objections to the Decision-Maker(s) prior to the hearing.

Pre-Meeting: The Hearing Officer may meet with both parties prior to the scheduled hearing to exchange the names of witnesses who will be participating in the hearing and address other pertinent hearing details at least five (5) business days prior to the hearing. Student parties shall have the opportunity to submit written questions to the Hearing Officer in advance of the hearing.

Participation of the Parties: All parties have the opportunity to present facts and arguments during the hearing. However, neither a Party or a Party's advisor will conduct cross-examination.

Support Persons: In addition to an Advisor, each party will be authorized to bring one support person for moral support during the hearing, provided that the support person signs a confidentiality agreement. This individual is strictly prohibited from participating in any manner during the hearing. If the individual displays disruptive, disrespectful, or offensive behavior, they will be removed from the proceedings.

Private Proceedings: There will be no observers in the hearing, aside from the designated Advisors to the Parties. The Hearing Officer may allow witnesses who have relevant information to appear at a portion of the hearing, separately, in order to respond to specific questions from the Decision-Maker or the parties involved, and then be excused. Proceedings are private and confidential. All persons present at any

time during the hearing are expected to maintain the privacy and confidentiality of the proceedings in accord with WesternU policy. While the contents of the hearing are private, the parties have discretion to share their own experiences if they so choose and should discuss doing so with their Advisors.

Hearing Format:

Live Hearing: WesternU may provide a live hearing with all Parties physically present in the same geographic location or, at WesternU's discretion if a Party or a witness requests, WesternU may provide Parties, witnesses, and other participants the ability to appear at the live hearing virtually with technology enabling participants simultaneously to see and hear each other in real time. If remote participation is desired, the individual should request remote participation from the Hearing Officer at least three (3) business days prior to the hearing.

Audio or Visual Recording: WesternU will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the Parties for inspection and review. The parties may not record the proceedings and no other unauthorized recordings are permitted.

Standard of Proof: The Decision-Maker shall provide an explanation of the meaning of the preponderance of the evidence standard and affirm that it shall apply to adjudications under this procedure. The preponderance of the evidence standard is met if WesternU determines that it is more likely than not that the alleged conduct occurred, based on the facts available at the time of the decision.

Order of Hearing: Typically, a hearing will be facilitated in the following order:

- Investigator Presents the Report. The Decision-Maker may question the Investigator.
 - WesternU will provide the Parties an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory evidence.
 - Parties nor their Advisors are permitted to ask the other party and any witnesses questions. A Party and their Advisor may submit questions to the Decision-Maker for consideration. The Decision-Maker must pose all questions.
- i. **Relevant Evidence:** The Decision-Maker may ask relevant questions only of a party or witness. At the hearing, a party shall have an opportunity to note an objection to the questions posed. WesternU may limit such objections to written form, and neither the Hearing Officer nor WesternU are obligated to respond, other than to include any objection in the record. The Hearing Officer shall have the authority and obligation to discard or rephrase any question that the hearing officer deems to be repetitive, irrelevant, or harassing. In making these determinations, the Hearing Officer is not bound by, but may take

guidance from, the formal rules of evidence.

Anyone appearing at the hearing to provide information will respond to questions on his/her/their own behalf. Generally, the parties may not introduce evidence, including witness testimony, at the hearing that the party did not identify during the investigation and that was available at the time of the investigation. However, the decision maker(s) has/have discretion to accept for good cause, or exclude, such new evidence offered at the hearing.

- ii. **Character evidence:** The Decision-maker(s) may decline to hear from character witnesses if deemed irrelevant. In that event, the Decision-maker(s) may accept up to two (2) letters supporting the character of each of the parties.
- iii. **Impact Statements:** Prior to the conclusion of the hearing, the parties may submit an impact statement to the Title IX Coordinator. Any impact statements will only be made available to the decision maker(s) during deliberations if a Respondent is found responsible for violating WesternU policy. If the respondent is found not responsible, the statements will not be shared with the Decisions Makers.
- iv. **Deliberations:** The Decision-Maker(s) will deliberate in closed session to determine whether the Respondent is responsible for the alleged conduct. The Decision-Maker(s) will base the determination(s) on a preponderance of the evidence (i.e., whether it is more likely than not that the respondent committed each alleged violation). If the respondent is found responsible, the Decision-Maker(s) will recommend appropriate sanctions.
- v. **NOTICE OF OUTCOME:** Upon the conclusion of hearing, the Hearing Officer will issue a written Notice of Outcome to the parties simultaneously. The Notice of Outcome will include the determination as to whether Prohibited Conduct occurred including findings of fact supporting the determination. The possible outcomes for each allegation of Prohibited Conduct are “Responsible” or “Not Responsible.” The Notice of Outcome will also identify sanctions and remedies, if applicable.

WesternU may deliver the Notice of Outcome by one or more of the following methods: in person, mailed to the Parties’ local or permanent address as indicated in official WesternU records, or emailed to the Parties’ WesternU-issued or designated email account. Once mailed, emailed, or received in person, the outcome notification is presumptively delivered.

The parties have a right to appeal the Notice of Outcome. See the Appeals section for more information.

The Notice of Outcome becomes final either on the date that WesternU provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. The imposition of sanctions will take effect immediately and will not be stayed pending the resolution of any appeal.

B. TRACK 2 – NO HEARING

Under Track 2, WesternU will apply the preponderance of the evidence standard. The preponderance of the evidence standard is met if the investigator determines that it is more likely than not that the alleged misconduct occurred, based on the facts available at the time of the decision.

Upon the conclusion of the Investigation, WesternU will issue a written Notice of Outcome to the parties simultaneously. The Notice of Outcome will include the determination as to whether Prohibited Conduct occurred including findings of fact supporting the determination. The possible outcomes for each allegation of Prohibited Conduct are “Responsible” or “Not Responsible.” The Notice of Outcome will also identify sanctions and remedies, if applicable.

The Parties may appeal the Notice of Outcome. See the Appeals section for more information. The Notice of Outcome becomes final either on the date that WesternU provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. For student Respondents, the matter may be referred to the College for handling under the student conduct hearing procedures. The imposition of sanctions will take effect immediately and will not be stayed pending the resolution of any appeal

IX. SANCTIONS⁸

The following are possible sanctions that WesternU may impose.

Student Sanctions

- *Reprimand*: A formal statement that the conduct was unacceptable and a warning that further violation of any WesternU policy, procedure, or directive will result in more severe sanctions/responsive actions;
- *Required Education*: A mandate to meet with and engage in either WesternU-sponsored or external educational program to better comprehend the

⁸ The implementation of sanctions for faculty may be subject additional procedures under the University Faculty Handbook.

misconduct and its effects;

- *Restrictions*: A student may be restricted in their activities, including, but not limited to, being restricted from locations, programs, participation in certain activities or extracurriculars, study abroad, or from holding leadership roles in student organizations;
- *Probation*: An official sanction for violation of WesternU policy, providing for more severe disciplinary sanctions if the student is found in violation of any WesternU policy, procedure, or directive within a specified period of time. Probation may include denial of specified social privileges, exclusion from extra-curricular activities, exclusion from designated areas of campus, no-contact orders, and other measures deemed appropriate;
- *Suspension*: Separation from WesternU, or one or more of its facilities, for a defined period of time after which the student is eligible to return. During an institution-wide suspension, the student is banned from WesternU property, functions, events, and activities unless they receive prior written approval from an appropriate institutional official;
- *Expulsion*: Permanent separation from WesternU . The student is banned from WesternU property, and the student's presence at any WesternU-sponsored activity or event is prohibited;
- *Withholding Diploma*: WesternU may withhold a student's diploma for a specified period of time and deny a student participation in commencement activities;
- *Revocation of Degree*: WesternU reserves the right to revoke a degree previously awarded from WesternU for fraud, misrepresentation, and/or other violation of WesternU policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation;
- *Other Actions*: WesternU may assign any other sanctions as deemed appropriate.

X. STUDENT GROUP AND ORGANIZATION SANCTIONS

The following are the common sanctions that may be imposed upon student groups or organizations singly or in combination:

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any WesternU policy, procedure, or directive will result in more severe sanctions/responsive actions.

- *Probation*: An official sanction for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the group or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social and event privileges, denial of WesternU funds, ineligibility for honors and awards, restrictions on new member recruitment, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Termination of student group or organization recognition and/or institutional support for a defined period of time not to exceed two (2) years and/or until specific criteria are met. During the suspension period, a student group or organization may not conduct any formal or informal business or participate in WesternU-related activities, whether they occur on- or off-campus. Re-recognition is possible but not guaranteed and will only be considered after the end of the suspension period and based on meeting all re-recognition criteria and obtaining clearance from WesternU.
- *Expulsion*: Permanent termination of student group organization recognition and revocation of the privilege to congregate and conduct business on campus as an organization for any reason.
- *Loss of Privileges*: Restricted from accessing specific WesternU privileges for a specified period of time.
- *Other Actions*: In addition to or in place of the above sanctions, WesternU may assign any other sanctions as deemed appropriate

XI. EMPLOYEE SANCTIONS

- *Verbal or Written Warning*
- *Performance Improvement Plan/Management Process*
- *Enhanced Supervision, Observation, or Review*
- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase/Pay Grade*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*

- *Transfer*
- *Shift or schedule adjustments*
- *Reassignment*
- *Delay of (or referral for delay of) Tenure Track Progress*
- *Assignment to a New Supervisor*
- *Restriction of Stipends, Research, and/or Professional Development Resources*
- *Suspension/Administrative Leave with Pay*
- *Suspension/Administrative Leave without Pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions/responsive actions, WesternU may assign any other responsive actions as deemed appropriate.

XII. THIRD PARTY

- *No-contact directive*
- *Restriction of WesternU privileges*
- *Restrictions/limitations/ban on access to campus property;*
- *Discontinuation of relationship or association*
- *Referral for action under other policies*

XIII. APPEAL

Both a Complainant and Respondent have the right to appeal the Notice of Outcome, including the finding and sanctions. This appeal process is the sole recourse available for complaints filed under this policy.

I. Grounds for Appeal

A Party may appeal, based on the following grounds:

1. A procedural irregularity that affected the outcome.

2. New evidence, not reasonably available at the time of the investigation regarding responsibility, that could affect the outcome; or
3. The Title IX Coordinator, Investigator(s), Hearing Officer, or Decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the specific Complainant or Respondent that affected the outcome.

II. Request for Appeal

Any party may submit a written request for appeal (“Request for Appeal”) to the Title IX Coordinator within five (5) business days of the delivery of the Notice of Outcome and/or Notice of Sanctions.

The Title IX Coordinator will designate an Appeal Officer to hear the appeal. No Appeal Officer will have been previously involved in the process. The Title IX Coordinator will forward the Request for Appeal to the Appeal Officer who will determine if the Request for Appeal meets the grounds for appeal. This is not a review of the merits of the appeal, but solely a determination as to whether the request could reasonably be construed to meet the grounds and is timely filed.

If the Request for Appeal does not provide information that meets the grounds for appeal identified above, the Appeal Officer will deny the Request for Appeal. WesternU will provide written notification to the Parties and their Advisors simultaneously notified of the denial and the rationale.

III. Appeal Process

If the Request for Appeal meets the grounds for appeal, WesternU will notify all Parties and their Advisors. WesternU will allow the non-appealing Party to submit a written statement in support of, or challenging, WesternU’s decision to dismiss the Formal Complaint or allegations or WesternU’s decision in the determination regarding responsibility. WesternU will allow the non-appealing Party at least ten (10) business days from the date of notice of the appeal to submit the written statement.

The Appeal Officer will issue a written decision on whether to grant or deny the appeal, and the rationale for the decision, within 45 business days after the Appeal Officer receives the response to the appeal or the last day to provide a response. WesternU will provide the written decision simultaneously to both Parties.

The Appeal Officer may extend or otherwise modify the deadlines provided above. Either Party may seek an extension by submitting a written request to the Appeal Officer explaining the need for the extension and the proposed length of the extension. The Appeal Officer will respond to the request within 48 hours in writing and will inform the Parties simultaneously whether the extension is granted.

IV. Appeal Outcome

The Appeal Officer will issue a written decision on the appeal, and the rationale for the decision, within 45 business days after the Appeal Officer receives the response to the appeal from the non-appealing Party or the last day to provide a response. WesternU will provide the written decision simultaneously to both Parties.

The Appeal Officer may uphold, modify, or overturn the decision under appeal. If an error cannot be cured, the Appeal Officer may order a new investigation.

APPENDIX C: OTHER PROHIBITED MISCONDUCT

- I. SEXUAL BATTERY:** The intentional touching of another person's intimate parts without Affirmative Consent, intentionally causing a person to touch the intimate parts of another without Affirmative Consent, or using a person's own intimate part to intentionally touch another person's body without Affirmative Consent.

II. SEXUAL EXPLOITATION:

A person taking non-consensual or abusive sexual advantage of another, that does not constitute one of the definitions listed above, for their own benefit or for the benefit of anyone other than the person being exploited.

Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the Affirmative Consent of the person being observed)
- Invasion of sexual privacy (e.g., doxxing)
- Knowingly making an unwelcome disclosure of (or threatening to disclose) an person's sexual orientation, gender identity, or gender expression
- Taking pictures, video, or audio recording of another person in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the Affirmative Consent of all involved in the activity; or exceeding the boundaries of Affirmative Consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's Affirmative Consent), including the making or posting of non-consensual pornography
- Prostituting another person
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give Affirmative Consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing)
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
- Knowingly soliciting a minor for sexual activity
- Engaging in sex trafficking

- Knowingly creating, possessing, or disseminating child sexual abuse images or recordings
- Creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually related things that never happened, or placing identifiable real people in fictitious pornographic or nude situations without their Affirmative Consent (i.e., Deepfakes)

The prohibited conduct, below, is applicable to this policy as conduct directed to the Complainant on the basis of his/her/their actual or perceived sex, gender, and/or gender identity.

III. DISCRIMINATION:

Discrimination is different treatment with respect to a person's employment or participation in an education program or activity based, in whole or in part, upon the person's actual or perceived protected characteristic. Discrimination also includes allegations of a failure to provide reasonable accommodations as required by law or policy, such as for disability, religion, or creed or that a person is receiving unequal pay because of their protected characteristic.

Discrimination can take two primary forms:

- 1) Disparate Treatment Discrimination: Any intentional differential treatment of a person or persons that is based on a person's actual or perceived protected characteristic and that:
 - Excludes a person from participation in;
 - Denies the person benefits of; or
 - Otherwise adversely affects a term or condition of a person's participation in a WesternU program or activity.
- 2) Disparate Impact Discrimination: Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a disproportionate impact on a protected group or person that:
 - Excludes a person from participation in;
 - Denies the person benefits of; or
 - Otherwise adversely affects a term or condition of a person's participation in a WesternU program or activity.