

**POLICY**

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Approved By: President Bruce Shepard

**Authority:** See Below

Revises:	POL-U1600.04 Appendix A  Appendix B	Preventing Sexual Harassment University Catalog, WWU Policies on Equal Opportunity/ Affirmative Action, Sexual Harassment, Reasonable Accommodation University Catalog, Sexual Misconduct Policy
See Also:	<a href="#">POL-U1600.02</a> <a href="#">POL-U1600.03</a> <a href="#">POL-U1600.05</a> <a href="#">PRO-U1600.02A</a> <a href="#">POL-U1600.06</a>  <a href="#">POL-U5615.01</a> <a href="#">POL-U5300.20</a> <a href="#">WAC 516-21</a> <a href="#">Code of Faculty Ethics for the Faculty of WWU</a> <a href="#">Annual Security and Fire Safety Report</a>	Ensuring Equal Opportunity and Prohibiting Discrimination and Retaliation Accommodating Persons with Disabilities Implementing Affirmative Action Program Discrimination Complaint Procedure Prohibiting Consensual Intimate Personal Relationships Between Supervisors and Supervisees Responding to Campus Violence or Threats of Violence Bringing Children to Campus Student Rights and Responsibilities Code Section 8: Consensual Intimate Personal Relationships Between Faculty and Students

## **POL-U1600.04 PREVENTING AND RESPONDING TO SEX DISCRIMINATION, INCLUDING SEXUAL MISCONDUCT**

*This policy applies to all students, employees, agents, groups, third parties, individuals, and organizations that use University facilities and persons who participate in University programs and activities to the extent provided by law, regardless of sexual orientation or gender identity. This policy applies to all Western locations (i.e., main campus, satellite locations, Lakewood); locations where Western activities are taking place (i.e., field trips, away sporting events); Western sponsored transportation (i.e., buses to off-campus events); and off-campus non-Western sponsored events where the off-campus behavior creates a negative adverse impact back on campus.*

**Authority:**

[Title VII of the Civil Rights Act of 1964](#), [Title IX of the Education Amendments of 1972](#), [Chapter 49.60 RCW](#), and the [Violence Against Women Reauthorization Act of 2013 \[Campus Sexual Violence Elimination \(SaVE\) Act Provision\]](#).

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## Preamble:

Western prohibits sex discrimination, which includes sexual misconduct. Sexual harassment, gender harassment, and sexual violence are forms of sexual misconduct. Western is committed to preventing, addressing, and responding to sex discrimination. Sex discrimination, on or off campus, can have a serious impact on the quality of the educational and/or work experience. All students and employees have a right to work and educational environments free from sex discrimination. Therefore, Western adopts policies and programs aimed at preventing and responding to sex discrimination and prohibits retaliation against individuals who file or participate in sex discrimination complaints, as outlined in Title IX and Title VII. Western has numerous reporting options and resources for survivors of sexual misconduct, some of which are confidential and some of which have limited confidentiality as discussed below in Paragraph 2.

## Definitions:

**Sex Discrimination** – Disparate treatment or disparate impact based on an individual’s sex. This includes sexual misconduct in all its forms—sexual harassment, gender based harassment, and sexual violence, as well as other discrimination that treats or impacts people disparately on the basis of sex, gender, or gender identity.

**Sexual Misconduct** – An umbrella term for the following types of sex discrimination—sexual harassment, gender-based harassment, and sexual violence.

**Sexual Harassment** – Unwelcome conduct of a sexual nature. This includes unwelcome sexual advances or requests for sexual favors, or other unwelcomed verbal, physical, or cyber conduct of a sexual nature and can involve persons of the same or different sexes or sexual orientations. Sexual harassment also includes sexual violence, sexual assault, rape, domestic violence, stalking, sexual misconduct, and dating violence.

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

- A. **Quid Pro Quo:** Sexual harassment that has a tangible educational or employment impact. This type of sexual harassment occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, living environment or participation in a University activity is conditioned upon, either explicitly or implicitly, submission to or rejection of unwelcome sexual advances or requests for sexual favors, or such submission or rejection is a factor in decisions affecting that individual’s employment, education, living environment, or participation in a University program or activity. Generally, perpetrators will be agents or employees with some authority from the University.
- B. **Hostile Environment Sexual Harassment:** Hostile environment harassment is sufficiently serious (i.e., severe, pervasive, or persistent) and objectively offensive so as to deny or limit a person’s ability to participate in or benefit from the University’s

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

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

**Sexual Violence** – Physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (for example, due to the individual's age or use of drugs or alcohol, or because an intellectual or other disability prevents the individual from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, non-consensual sexual contact, non-consensual sexual intercourse, sexual exploitation, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by employees, students, or third parties. All such acts of sexual violence are forms of prohibited sex discrimination.

- **Sexual Assault** – Any actual or attempted sexual contact or behavior with another person without that person's consent. (WA RCW 7.90.150 (6a) a sex offense as defined in RCW [9.94A.030](#), any violation of RCW [9A.44.096](#), or any violation of RCW [9.68A.090](#), or any gross misdemeanor that is, under chapter [9A.28](#) RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW [9.94A.030](#).)
- **Domestic Violence** – (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW [9A.46.110](#) of one family or household member by another family or household member. (RCW [26.50.010](#))
- **Dating Violence** – Violence committed by a person:
  1. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  2. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - a. the length of the relationship
    - b. the type of relationship
    - c. the frequency of interaction between the persons involved in the relationship

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- **Stalking** – A person commits the crime of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:
  1. He or she intentionally and repeatedly harasses or repeatedly follows another person; and
  2. The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances; and
  3. The stalker either:
    - a. Intends to frighten, intimidate, or harass the person; or
    - b. Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

(See RCW [9A.46.110](#))

**Consent** – Means that at the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. (RCW [9A.44.010](#))

- If coercion, intimidation, threats, or forcible compulsion is used there is no consent.
- If a person is mentally incapacitated or physically helpless or impaired such that a reasonable person would believe the incapacitated person cannot understand the fact, nature or extent of the sexual situation, there is no consent. This includes impairment or incapacitation due to alcohol or drug consumption, or being asleep or unconscious or because of an intellectual or other disability that prevents the person from having the capacity to give consent.
- There is no consent when there is force, expressed or implied, or use of duress or deception.
- Coercion, forcible compulsion, or threat of either invalidates consent.
- Silence or an absence of resistance does not imply consent.
- Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another person.
- Consent can be withdrawn at any time.
- Past consent to sexual activities does not imply ongoing future consent.

**Forcible Compulsion** – Physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to herself or himself or another person, or in fear that she or he or another person will be kidnapped (RCW [9A.44.010](#))

**Sexual Intercourse** – (a) Has its ordinary meaning and occurs upon any penetration, however slight, and (b) also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such a persons are of the same or different sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes, and (c) also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or different sex. (See RCW [9A.44.010](#))

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**Sexual Contact** – Any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party. (RCW [9A.44.010](#))

**Mental Incapacity** – That condition existing at the time of the offense which prevents a person from understanding the nature or consequences of the act of sexual intercourse or sexual contact whether that condition is produced by illness, defect, the influence of a substance or from some other cause. (See RCW [9A.44.010](#))

**Physically Helpless** – A person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act. (RCW [9A.44.010](#))

**Family or Household Members** – Spouses, domestic partners, former spouses, former domestic partners, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren. (RCW [26.50.010](#))

**Retaliation** – Any adverse action against any individuals because they have opposed discrimination (made a report or filed a complaint), responded to a complaint, served as a witness in an investigation, or participated in any manner in an investigation is strictly prohibited.

### **1. The University Does Not Discriminate on the Basis of Sex in its Programs and Activities and Will Not Tolerate Sex Discrimination, Including Sexual Misconduct.**

The University prohibits the crimes of sexual assault, dating violence, domestic violence, and stalking. Further, Title IX and Title VII require the University to not discriminate on the basis of sex. Sex discrimination, including sexual misconduct, is unacceptable and may be cause for discipline even if it does not rise to the level of a violation of law.

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

- A. The Vice Provost for Equal Opportunity is Western's Title IX Coordinator. The Vice Provost is responsible for providing mandatory initial and refresher Sexual Harassment Prevention Training (SHPT) for University employees. New employees should complete this training within their first six months of employment.

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- B. SHPT includes information on Title IX obligations and the nature and consequences of sexual harassment, including sexual misconduct, and discusses reporting options, resources, and procedures for handling complaints.
- C. The Vice Presidents and Deans are responsible for ensuring that their employees complete the mandatory SHPT and refresher training.
- D. The University provides sexual violence primary prevention and awareness training to new, matriculated students and new employees. The Director, Prevention and Wellness Services is responsible for implementing this training for students and the Vice Provost for Equal Opportunity is responsible for implementing this program for employees.

In alignment with Western's culture and values, participation in these programs is mandatory.

- E. The Equal Opportunity Office, University Police, Enrollment and Student Services, Human Resources and other campus offices, promote awareness of and provide additional communication about and training in the prevention of sex discrimination, including sexual misconduct, in implementing an ongoing prevention and awareness campaign for students and employees.
- F. Primary prevention and awareness training for incoming students and new employees, and an ongoing prevention and awareness campaign, include the following: A statement that the University prohibits sexual assault, dating violence, domestic violence and stalking; the definition of these four offenses; the definition of consent; discussion of safe and positive options for bystander intervention; information on risk reduction; information about engaging men in prevention of sex discrimination, including sexual misconduct, and; information about relevant investigative and disciplinary procedures at the University.

### **3. The University and Community Offer Support and Resources for Persons Affected by Sex Discrimination, Including Sexual Misconduct.**

[Support services and reporting options](#) are provided for survivors of sex discrimination, including sexual misconduct.

Confidential support resources are available to students through services provided by university psychologists, mental health counselors, survivor advocates, and other health care professionals, and to faculty and staff via the Employee Assistance Program. Some off-campus reports may also be legally privileged, such as reports to clergy, private legal counsel, or health care professionals.

When sexual misconduct complaints are made to the Assistant Dean of Students/Student Conduct Officer (hereafter referred to as Student Conduct Officer), the Student Conduct Officer

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may issue an interim administrative no-contact order to all parties. No-contact orders may also be issued by the Student Conduct Officer as a sanction for Student Conduct Code violations.

Protective measures or accommodations provided by the University to individuals who report sexual violence will be shared by the University only to the extent reasonably necessary in order to carry out the terms of the protective measure or accommodation.

Regardless of whether it occurred on or off campus, individuals who report to the University that they have experienced sexual violence will be provided with information in writing about the following:

- Procedures to follow regarding: preservation of evidence; to whom and how to report; the option of notifying law enforcement, including University and local police, and to be assisted by the University's Title IX Coordinator or CASAS in notifying law enforcement if the victim so chooses, or to decline to notify law enforcement, and; the victim's rights and University's responsibilities regarding protection and no-contact orders.
- Both the University-based and the community-wide victim advocacy, counseling, health and other resources listed in the Support Services and Reporting Options document linked to above;
- Options available, assistance available in obtaining, and how to request changes to academic, living, transportation, and working situations, or protective measures;
- How the University will protect confidentiality of victims and other necessary parties, including how publicly available recordkeeping will be completed without inclusion of personally identifying information about the victim, and how accommodations and protective measures will be kept confidential to the extent possible without limiting the University's ability to provide the accommodations or protective measures;
- The applicable University procedures for investigations and disciplinary proceedings, as contained in the Discrimination Complaint Procedure and Student Code of Conduct.

#### **4. The University Provides a Comprehensive Response System for Reporting and Addressing Sex Discrimination, Including Sexual Misconduct.**

- A. The response system is available to students, employees and others on campus affected by sex discrimination, including sexual misconduct. Individuals have the right to file a criminal complaint and an institutional discrimination or disciplinary complaint simultaneously. Complaints against anyone to whom this policy applies may be made to the Vice Provost for Equal Opportunity/Title IX Coordinator or the police. Complaints against students by students may also be made to the Student Conduct Officer. As required by Title IX, the University will investigate reports of sexual violence even when no complaint is filed.
- B. Institutional discrimination and disciplinary complaints regarding sexual violence are conducted by officials who, as relevant to their roles in these processes, receive annual training on issues related to sexual assault, dating violence, domestic violence, and

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stalking, and how to conduct investigation and hearing processes that protect victims' safety and promote accountability.

- C. Victims of sexual violence are encouraged to [preserve evidence](#) that may assist in proving the sexual violence occurred or may be helpful in obtaining a protection order from a court with jurisdiction.
- D. **Vice Provost for Equal Opportunity/Title IX Coordinator** investigates all discrimination complaints, including complaints of sex discrimination, including sexual misconduct. Western's discrimination complaint procedure provides an administrative complaint process (not legal or criminal) for prompt, equitable and impartial investigation and resolution of sex discrimination complaints. [PRO-U1600.02A Discrimination Complaint Procedure](#)

The University will take steps to prevent recurrence of all forms of sex discrimination, and to correct its discriminatory effects on the complainant and others if appropriate. Interim measures may be taken to assist or protect the complaining individual(s) during the complaint process as necessary with the complainant's consent (e.g., safety planning, arranging for changes in class schedule and/or living arrangements, counseling, modifying class requirements or testing schedules as needed, without penalty to the complainant).

Individuals who believe they have been discriminated against or are survivors of sexual misconduct are encouraged to contact the Vice Provost for Equal Opportunity & Employment Diversity, who also serves as the Title IX Coordinator, Equal Opportunity Office, Western Washington University, Old Main 345, MS 9021, 516 High Street, Bellingham, WA 98225; (360) 650.3307 (voice) or 711 (Washington Relay); [ooo@wwu.edu](mailto:ooo@wwu.edu); or the Department of Education's Office for Civil Rights.

The standard of evidence used by the Title IX Coordinator in investigating allegations of discrimination is a preponderance of evidence (i.e., that it is more likely than not that the allegations are true).

- E. **Chief, University Police** responds to and investigates all on-campus incidents of sexual misconduct when an individual seeks to file a criminal report. Off campus incidents are handled by the Bellingham Police or the police department with jurisdiction over the location where the alleged sexual misconduct occurred.

When the survivor of a criminal act chooses to seek a legal remedy, they are encouraged to report all crimes of sexual violence to the appropriate law enforcement agency (typically either University or Bellingham Police). University Police may be contacted by calling (360) 650-3911 in an emergency or (360) 650-3555 to make a report, and are located in the Campus Services Building, 2001 Bill McDonald Parkway. University officials and offices, including the Title IX Coordinator (for anyone affected by sexual misconduct) or CASAS (for students) can assist victims in reporting to law enforcement if the victim so

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chooses. The standard of evidence used in criminal proceedings is proof beyond a reasonable doubt.

- F. **Student Conduct Officer** responds to and investigates sexual misconduct. See WAC [516-21](#) for the Student Rights and Responsibilities Code. The procedures applicable in student conduct investigations provide for prompt, fair, and impartial investigation and resolution of sexual misconduct reports. The standard of evidence used by the Student Conduct Officer in investigating allegations of sexual misconduct is a preponderance of evidence (i.e., that it is more likely than not that the allegations are true). The Student Conduct Officer may take immediate interim measures in cases of sexual misconduct by imposing sanctions, including no-contact orders. The Student Conduct Officer may be contacted by calling (360) 650-3706, and is located in Viking Union 506.
- G. When a report is investigated via the Discrimination Complaint Procedure or Student Conduct Code, or by University or local police, due process may mandate disclosure of information provided by the complainant or respondent to the Title IX Coordinator/Equal Opportunity Office, Student Conduct Officer, or law enforcement with the other party and a limited number of witnesses.
- H. When sexual violence is reported to the Title IX Coordinator, University Police, or the Student Conduct Officer, the University will keep the report confidential to the greatest extent possible while also providing protective measures and accommodations requested by the survivor and taking necessary action to keep other members of the campus community safe. If a survivor requests that their name not be revealed to the alleged perpetrator or requests that the University not investigate the report, the University will discuss with the survivor the limitations this places on the University's ability to hold the perpetrator accountable. Personally identifying information regarding complainants/survivors of sexual violence contained in records maintained by the University regarding sexual violence will not be publicly disclosed except to the extent required by law.

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

Anyone who is found to be in violation of this policy will be subject to a range of sanctions. As outlined in the Student Code of Conduct, possible sanctions for students are: warning; conditional status; loss of privileges; no-contact orders; requirement to engage in educational activities, assessment, counseling or treatment; requirement to provide restitution; campus housing relocation or termination; suspension or deferred suspension from the University, and; expulsion from the University. Possible sanctions for employees include written reprimand, leave without pay and termination of employment.

### **6. All Members of the University Community Ensure That Commitment to Preventing Sex Discrimination, Including Sexual Misconduct is an Integral Part of Western.**

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

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

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

The University, based on civil rights law, prohibits retaliation or encouraging others to retaliate against anyone reporting or thought to have reported a violation of this policy. This means that any type of adverse action or behavior is prohibited against those who file a complaint or third-party report, or otherwise participate in an investigative or disciplinary process. Retaliation will be considered independently, whether or not a complaint is substantiated. The University will take strong responsive action if retaliation occurs.